

Federal Disaster Recovery Funding: Minimizing Roadblocks to Maximize Resources

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Executive Summary

The increased frequency and magnitude of major disasters in the U.S. in recent years has caused the federal government to be more involved in disaster recovery assistance. In 2011 and 2012, the U.S. experienced 25 major natural disasters, each accounting for at least a billion dollars in damage. Eleven of these billion-dollar disasters caused a combined \$110 billion in damage in 2012, making it the second costliest year after 2005 (Hurricane Katrina). Even the most resilient local communities and states struck by these disasters require massive amounts of federal government assistance for their recovery efforts.

This report is intended to help guide local and state economic recovery stakeholders — including economic development organizations, local and state government agencies, chambers of commerce, economic development districts and other recovery officials — around some of the roadblocks to using federal funds for economic recovery purposes. The report shares how federal requirements can sometime hinder the recovery process and provides insights about the process of requesting waivers of these requirements. Many of the **report's** recommendations are based on input from economic recovery practitioners and federal officials interviewed for this research. Local communities can use this information to help maximize the speed and efficiency of their economic recovery efforts after a disaster.

This report is divided in three sections. The first section introduces the subject and provides an overview of the federal approach to recovery, including presidentially-declared disasters and the National Disaster Recovery Framework (NDRF). It also outlines some of the federal programs associated with economic recovery and highlights major challenges to meeting **these programs'** federal requirements. Disaster-impacted communities that are familiar with the most common barriers to meeting federal requirements will be in a better position to confront challenges along the road to recovery.

The second section provides general guidelines for states and disaster-impacted communities for requesting waivers of funding requirements from federal government agencies. These include:

- Identifying a lead organization at the local level for representing the economic recovery interests of an impacted community;
- Communicating early and often with federal officials about federal requirements;
- Reviewing successful waivers of other disaster-impacted states;
- Presenting a community's unique recovery needs alongside other compelling information to justify waiver requests; and
- Promoting frequent engagement between impacted communities and the state agencies that serve as coordinators of disaster recovery activities.

The final section provides information on waivers associated with the major federal agencies that fund post-disaster economic recovery efforts. This includes the U.S. Department of Housing and Urban Development (HUD), the U.S. Economic Development Administration (EDA), the U.S. Small Business Administration (SBA), the U.S. Department of Labor's Employment and Training Administration (ETA), and the U.S. Department of Agriculture (USDA).

It also highlights the most commonly requested waivers by federal agency and provides agency specific recommendations for justifying waiver requests.

Readers of this report should note that its content should be seen as a snapshot, and that federal post-disaster funding programs and policies evolve. IEDC encourages readers to periodically check www.iedconline.org/web-pages/resources-publications/disaster-preparedness-and-recovery/ for updates to this report's content and recommendations and for additional resources to help navigate federal funding processes and requirements for economic recovery efforts.

Section I

Introduction

Overview

When major disasters strike, communities are seldom prepared to deal with the complex challenges associated with the economic recovery process that follows. Catastrophes often require massive capital infusions and assistance beyond what an individual community or state can provide. Part of the disaster recovery process will almost certainly involve the federal government and its sources of financial assistance. Yet, many economic development organizations (EDOs) are not well-versed in the process of obtaining and maximizing federal funding assistance until they are confronted with having to request these funds for the first time.

This report is intended to inform disaster-impacted communities and their EDOs about issues that arise with the use of federal funds for economic recovery, how federal requirements can sometimes hinder the economic recovery process, and to share insights on the process for requesting waivers of federal requirements that pose significant barriers for local communities. For the purposes of this report, economic recovery is defined as the recovery efforts of local businesses and the local economy, and does not cover the immediate response efforts focused on life-saving and property-saving activities.¹

Communities face many complex challenges when trying to meet statutory and regulatory requirements of federal funds for disaster recovery. Among the most significant are labor and wage requirements, local or state matching funds, environmental reviews, income level requirements, and the requirement that individuals, businesses, and other entities do not receive duplicative assistance from different federal agencies (i.e. duplication of benefits). Some federal requirements can be waived, but federal agencies require an often lengthy justification process in which applicants must provide detailed and formally documented explanations for why exceptions to these requirements should be made.

Based on myriad interviews with local economic recovery practitioners, federal program officers, state officials, and congressional staff, this report highlights reasons that federal requirement waivers are sometimes necessary and provides insight on how disaster-impacted communities can move forward through a waiver request process. While this report offers guidance for navigating the sometimes challenging process of requesting waivers, it is not intended to offer an exhaustive review of all federal programs that fund disaster recovery assistance.

¹ While some communities may include housing as part of their economic recovery efforts and housing is a critical component of community rebuilding after a disaster, this report does not cover the topic of housing assistance.

Federal Approach to Recovery

Presidential Disaster Declaration

This report focuses exclusively on presidentially-declared disasters. Presidentially-declared disaster areas are regions or states for which the President of the United States has issued a major disaster declaration that authorizes the federal government to provide post-disaster assistance. The declaration begins with the submission of a written request for federal assistance by a state governor to the president.² The advantage of a presidential declaration is that it creates an opportunity for communities to access a substantial amount of federal assistance programs, resources, and funding to accelerate response and recovery initiatives.

The National Response Framework (NRF) and the National Disaster Recovery Framework (NDRF) represent the U.S. government's concerted effort to communicate the federal framework for disaster response and disaster recovery, including making existing federal post-disaster functions work more effectively together. Where the NRF is largely concerned with short-term response, the NDRF covers long-term recovery efforts, including the vast majority of economic recovery functions. Disaster-impacted communities should develop a broad understanding of the NDRF, as it helps to inform state and local officials about the federal recovery process and programs that may be available to impacted communities. The following section highlights the purpose and resources of the NDRF.

National Disaster Recovery Framework

The National Disaster Recovery Framework (NDRF) provides guidance on how federal government agencies coordinate disaster recovery assistance with one another and with state, tribal, and local governments with the goal of assisting disaster-impacted communities with recovery efforts. The NDRF recognizes that local, state, and tribal governments bear the chief responsibility for community recovery efforts, but that federal resources are necessary to supplement the local recovery needs.

The NDRF's goal is to outline roles and responsibilities and provide a comprehensive organizing structure for disaster recovery that all levels of government can follow. The framework “establishes a clear structure for (federal) interagency and nongovernmental partners to align resources and work together to support recovery in a holistic, coordinated manner.”³

The NDRF incorporates the values of the “whole community” with an emphasis on six core principles that are reflected in six recovery support functions (RSFs) (Primary coordinating agencies are in parentheses).

² This process is set forth in the Robert T. Stafford Disaster Relief and Emergency Act, 42 U.S.C. 5121-5206 (Stafford Act)

³ National Disaster Recovery Framework - Frequently Asked Questions. Federal Emergency Management Agency (FEMA) website. Available at www.fema.gov/national-disaster-recovery-framework-frequently-asked-questions, June 10, 2013.

1. **Community Planning and Capacity Building**
(Federal Emergency Management Agency (FEMA))
2. **Economic**
(Department of Commerce's Economic Development Administration (EDA))
3. **Health and Social Services**
(Department of Health and Human Services (HHS))
4. **Housing**
(Department of Housing and Urban Development (HUD))
5. **Infrastructure Systems**
(United States Army Corps of Engineers (CORPS))
6. **Natural and Cultural Resources**
(Department of the Interior (DOI))

In addition to *post-disaster* recovery, the NDRF also seeks to establish leadership roles, responsibilities, coordination, and guide recovery planning between all levels of government *before* a disaster occurs.

The majority of federal agencies are legally obligated to initially coordinate with a state governor's office on all response and recovery efforts. The governor's office will then determine which state agency will manage disaster recovery funds for specific programs (e.g. HUD's Community Development Block Grant for Disaster Recovery (CDBG-DR)).

Federal Agencies and Programs for Economic Recovery

The following section provides a list of commonly used federal funding sources for post-disaster economic recovery. While this list is not exhaustive, it highlights many of the most important federal agencies and programs responsible for providing federal economic recovery resources.

Economic development professionals are encouraged to use the information in this section as a starting point on which to build a more comprehensive knowledge base about federal economic recovery funding mechanisms.

U.S. Department of Housing and Urban Development's Community Development Block Grants for Disaster Recovery

HUD's Office of Community Planning and Development (CPD) administers the agency's Community Development Block Grant for Disaster Recovery (CDBG-DR) program. This program has served as the major source of recovery funds for most presidentially-declared disasters over the past 25 years. In addition to helping supplement other federal disaster recovery funding resources such as the U.S. Small Business Administration's (SBA) Disaster Loan program, CDBG-DR's main purpose is to rebuild disaster-impacted areas and provide communities with vital seed funding to begin the recovery process.⁴

CDBG-DR funds can only be used for "necessary expenses related to disaster-relief, long-term recovery, and the restoration of infrastructure, housing, and

Federal Recovery Assistance

U.S. Department of Housing and Urban Development

- Community Development Block Grants for Disaster Recovery

U.S. Small Business Administration

- Disaster Recovery Loans
 - Home/Personal Property Loan
 - Business Physical Disaster Loan
 - Economic Injury Disaster Loan

U.S. Economic Development Administration

- Strategic Planning and Technical Assistance
- Infrastructure Design and Development
- Capital for Alternative Financing

U.S. Employment and Training Administration

- National Emergency Grants (NEGs)
 - Disaster

U.S. Department of Agriculture Rural Development

- Rural Business Enterprise Grants
- Rural Business Opportunity Grants
- Intermediary Relending Program
- Rural Economic Development Loans and Grants
- Community Facilities Loans and Grants
- Water and Waste Direct Loans
- Business and Industry Guaranteed Loan Program
- Biomass Crop Assistance Program
- Biorefinery Assistance Program
- Bioenergy Program for Advanced Biofuels
- Rural Energy for America Program
- Biomass Research and Development Initiative

⁴ "CDBG Disaster Recovery Assistance." U.S. Department of Housing and Urban Development (HUD) website. Accessed at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi

economic revitalization.”⁵ It is worth noting that there is no set formula or process for documenting how a project is related the aforementioned criteria. A grantee in discussions with a federal program officer has some discretion in determining what type of documentation is sufficient. When submitting an application, grantees must also demonstrate that a project or program (1) addresses a disaster-related impact for a county in a presidentially-declared disaster area; (2) is a legitimate CDBG-eligible activity according to federal regulations; and (3) meets one of HUD’s “national objectives.”⁶ HUD’s three “national objectives” include: (1) benefiting people of low and moderate income (LMI); (2) aiding the prevention or elimination of slums or blight; or (3) meeting other urgent community development needs due to an immediate threat of community health and welfare.⁷

In interviews with economic development professionals that have used CDBG-DR grants after a disaster, the most frequently cited concerns are difficulties with meeting one of the three national objectives, particularly the LMI requirement, and the significant amount of compliance paperwork that the program requires.

U.S. Department of Commerce's Economic Development Administration

EDA’s role in disaster recovery is “to facilitate delivery of federal economic development assistance to local governments for long-term community economic recovery planning, reconstruction, redevelopment, and resiliency.”⁸ EDA offers this assistance directly to impacted communities in the form of grants for strategic planning, infrastructure, capital for alternative financing (i.e. revolving loan funds), economic development and redevelopment projects, and funding for disaster recovery coordinators.

EDA regional offices work directly with local communities through an established network of economic development districts (EDDs). The full list of eligible EDA grant recipients includes: (1) states and political subdivisions of states (i.e., towns and counties); (2) public or private nonprofit associations; (3) economic development districts (or regional planning agencies); (4) institutions of higher education; (5) tribal governments; and (6) applicants located in, or applying on behalf of, a county that received a major disaster declaration.

While EDA is a smaller source of disaster recovery funding compared to programs like HUD’s CDBG-DR, IEDC interviewees noted that EDA grants were more flexible sources of economic recovery funding because of the comparatively more limited amount of federal requirements and ease of grant compliance.

⁵ Ibid.

⁶ Guide to National Objectives and Eligible Activities for State CDBG Programs. U.S. Department of Housing and Urban Development Website. http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/library/stateguide

⁷ “CDBG Disaster Recovery Assistance.” U.S. Department of Housing and Urban Development (HUD) website. Accessed at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi

⁸ Disaster Recovery. U.S. Economic Development Administration website. Accessed at: www.eda.gov/disasterrecovery.htm

U.S. Small Business Administration's Disaster Loan Program

The U.S. Small Business Administration (SBA) offers disaster recovery assistance in the form of Disaster Loans for businesses and most private nonprofit organizations. These loans are offered to disaster-impacted businesses of all sizes for repairing or replacing real estate, personal property, equipment, and business assets damaged in a disaster. SBA Disaster Loans provide low-interest, long-term loans for physical and economic damage caused by a presidentially-declared disaster through the SBA Office of Disaster Assistance. SBA's Economic Injury Disaster Loans are working capital loans for disaster-impacted businesses. These loans help businesses with regular and necessary financial obligations that they cannot meet because of disaster impacts. SBA's Economic Injury Disaster Loans are intended to help businesses through a disaster recovery period and are available for businesses and business owners who cannot cover the full costs of their own recovery without financial assistance from government sources.⁹

U.S. Department of Labor's Employment and Training Administration's National Emergency Grants (NEGs) for Disaster

The purpose of National Emergency Grants (NEGs) is to fund "innovative strategies that assist dislocated workers, and the communities in which they live and work, recover economically from the effects of plant closures and mass layoffs."¹⁰ The NEG program funds one of four eligible layoff events: (1) a single company layoff of 50 or more workers; (2) multiple company layoffs, where 50 or more workers from each company are dislocated; (3) industry-wide layoffs; or (4) layoffs affecting an entire community (Community Impact), where there are multiple small dislocations (50 workers or less from each company).¹¹

The Disaster NEG program provides funding specifically for the creation of temporary employment to assist directly with disaster cleanup activities for the first six months from the date the grant is awarded. A state can include a component for employment-related services in its fully documented plan or modification request. Disaster NEGs are only available to state governments and require that FEMA has declared a disaster area eligible for public assistance.

U.S. Department of Agriculture's Rural Development Disaster Assistance

USDA Rural Development offers federal funding resources for post-disaster community economic recovery purposes that fall within three categories of business programs: (1) revolving loan funds and technical assistance; (2) commercial lending; and (3) energy programs. USDA Rural Development's assistance programs provide financing and technical assistance for setting up revolving loan fund programs, working capital loans, real estate, financing programs, economic development planning, business development, real estate feasibility analyses, construction, capital improvement, and machinery or equipment purchases. USDA Rural Development also

⁹ As determined by SBA.

¹⁰ "National Emergency Grants." Eligible Events for National Grant Funding webpage. U.S. Department of Labor, Employment and Training Administration. Accessed at: www.doleta.gov/neg/dislocation.cfm.

¹¹ Ibid.

provides guaranteed loans to enhance the “economic climate” of rural communities by generating or maintaining employment. USDA Rural Development’s energy programs focus on renewable energy, energy efficiency, biomass, biorefinery, and bioenergy projects.

U.S. Treasury Department’s Community Development Financial Institutions (CDFI) Fund

The purpose of the U.S. Treasury Department’s CDFI Fund is to invest federal funds into Community Development Financial Institutions (CDFIs), which serve lower-income communities that lack sufficient access to affordable financial services. The CDFI Fund offers two funding options to CDFIs: Technical Assistance awards and Financial Assistance awards.¹² These financial institutions work toward the following objectives:¹³

- Promoting economic development, job creation, and develop businesses and commercial real estate;
- Promoting home ownership and affordable housing development; and
- Providing financial services for community development (e.g., financial literacy programs, alternatives to predatory lending, and basic banking services).

After a disaster, CDFIs can offer crucial alternative financing and technical assistance to local small businesses. CDFIs have become increasingly important contributors to the economic recovery process, as their financial terms generally offer greater flexibility to suit small business needs. Following Hurricane Sandy, local CDFIs were able to provide bridge (or “gap”) financing in the form of modified renovation loans to disaster-impacted businesses. This alternative financing source was critical for quickly getting funds to small businesses while these businesses waited for traditional sources of disaster financing such as insurance settlements.¹⁴

¹² “Community Development Financial Institutions Fund.” CDFI Fund website. U.S. Treasury Department. Accessed at: www.cdfifund.gov/what_we_do/programs_id.asp?programid=3

¹³ Ibid.

¹⁴ “CDFIs and Hurricane Sandy - A Key Partner in Disaster Recovery Efforts.” Fund Consulting, LLC. January 31, 2013. Accessed at: <http://fundconsulting.wordpress.com/2013/01/31/cdfis-and-hurricane-sandy-a-key-partner-in-disaster-recovery-efforts/>

Overview of Federal Requirements

Federal requirements ensure the financial integrity of public tax dollars. Under normal, non-disaster conditions, these requirements set performance and compliance standards for state and local recipients of federal funds. Yet, these requirements do not often reflect the realities of post-disaster environments. Disasters can strike with little or no warning, and damages to communities and states can total billions of dollars. Disasters often force local communities and states to face dramatic social, humanitarian, and economic consequences in an extremely short period of time, and these impacts can severely inhibit a community or state's capacity to recover from catastrophic damages.

Speed is essential for assisting a community or state's economic recovery after a major disaster. According to industry experts, approximately 25 to 40 percent of impacted small businesses never reopen or are likely to close within two years of an event. Every day a business remains closed spells lost revenue for both the individual business and the community. Moreover, businesses often depend on local suppliers and customer bases that are also likely to have been impacted. It is vital that community economy recovery efforts move quickly and with full coordination among community local, state and federal recovery officials.

As partners in the disaster recovery process, the federal government has put forth great effort to streamline and accelerate the economic recovery process for communities and states. Certain federal requirements can, however, impede or halt recovery assistance efforts and slow recovery processes for months or years. In interviews with IEDC, one state-level disaster recovery official characterized many of the requirements on federal recovery assistance as unnecessarily "cumbersome." The official urged other disaster-impacted communities to carefully scrutinize the regulations of federal recovery programs and consider requesting waivers of any and all requirements that could impact a community's future recovery process.

Following a disaster, funding delays carry huge opportunity costs, as local businesses that cannot quickly access vital funds often face grim survival prospects. In this context, the value of waivers is clear. Local communities that are able to temporarily repeal certain federal funding requirements can accelerate the process of getting necessary funds to the businesses and organizations that desperately need them.

Definitions of Federal Requirements

To better understand what federal requirements may or may not be waived, it is important to note the distinction between *statutory* requirements and *regulatory* requirements. Federal requirements are created when the U.S. Congress enacts legislation that defines federal *statutes* that govern U.S. government agencies and associated programs. These statutes are then codified in what is known as the U.S. Code. These statutory requirements are considered official federal law and can only be changed or waived by subsequent acts of Congress.

After Congress creates federal statutes, federal agencies then interpret these statutes to develop specific agency *regulations* and rules for their funding programs. These resulting regulations are published in the Code of Federal Regulations (CFR) and can be considered the "normal" (i.e., non-disaster) regulations under which federal

agencies operate programs and disburse federal funds. Federal agencies generally have broader discretion to modify or waive these regulatory requirements.

By comparison, after a disaster strikes and the U.S. President has issued a federal disaster declaration, Congress can then authorize supplemental disaster-related legislation that adjusts the requirements of a federal agency's "normal" funding programs (e.g., HUD's CDBG program). This supplemental legislation specifies alternative requirements for these programs and effectively creates a disaster recovery version of a "normal" federal agency funding programs (e.g., HUD's CDBG-DR).

A significant amount of disaster assistance funding comes through these emergency supplemental appropriations, which are more commonly referred to as "disaster supplementals." These supplemental funding appropriations go beyond the regular agency budgets authorized in annual appropriation bills and may also be subject to additional federal requirements.

Definitions of Waivers

HUD defines waivers as "relief from strict regulatory compliance upon a finding of good cause, subject to statutory limitations and waiver procedures" pursuant to certain federal regulations codified in the Code of Federal Regulations (CFR).¹⁵ A federal agency may choose to waive a regulatory requirement but in most cases an alternative requirement will be specified. For example, under normal circumstances EDA may require communities to provide a 50

¹⁵ U.S. Department of Housing and Urban Development Office of Public and Indian Housing. *Processing Requests for Regulatory Waivers*. Available at: www.prrac.org/pdf/Expanding_Choice_Appendix_A_Guidance_on_Reg_Waiver.pdf

Commonly Requested Waivers

U.S. Dept. of Housing and Urban Development

- CDBG Action Plan Requirement
- Annual Performance Review Reporting Requirement
- Citizen Participation Requirement
- Expanded Distribution and Direct Action Consistency with Consolidated Plan Requirement
- Overall Benefit to Low-to-Moderate (LMI) Persons
- General Administration Limitation/Cap
- Use of Sub-Recipients
- Program Income Requirements
- Eligibility — Housing Related
- Buildings for General Conduct of Government
- Job Relocation/Anti-Pirating Requirements
- Standard Certifications Requirements
- Application Requirements for Allocations Under Supplemental Appropriations Act

U.S. Economic Development Administration

- Matching Share Requirements and Investment Rates
- Comprehensive Economic Development Strategy (CEDS) Requirement
- EDA Procedures in Disaster Areas

U.S. Small Business Administration

- Timeline Requirement for SBA Loan Increase
- Maximum Amount Requirement for Physical Disaster and Economic Injury Business Loans
- Federal Debt Collection Requirement

U.S. Employment and Training Administration

- 6-month Limit on Employment for Disaster NEG Participants

U.S. Department of Agriculture Rural Development

- Rural Area Definition Requirement
- Limitation on Grant Amounts
- Matching Funds Requirement for Community Facilities Program
- Requirements for Renewable Energy Systems/Energy Efficiency Improvements
- Requirements for Value-Added Producer Grants

percent local funding match to receive an EDA grant award. However, EDA may waive this requirement and only impose a 20 percent funding match requirement.

It is important to note that some federal agencies may not explicitly refer to removing a federal requirement as a “waiver.” Because some agencies have greater flexibility to waive requirements, program officers at these agencies may repeal a particular requirement without necessarily explaining to a grantee it has been officially waived. It should also be noted that some federal agency headquarters and regional offices may have more flexible interpretations of some statutory and regulatory requirements listed in federal legislation.

Issues Impacting Federal Support for Economic Recovery

Different communities face many common challenges using federal funding for economic recovery purposes. Based on interviews with local- and state-level recovery practitioners, some of the most frequently cited challenges that hinder swift and efficient use of federal funding include:

- Lack of knowledge about federal programs for disaster recovery
- Different performance, compliance and reporting requirements of various federal agencies and programs
- Variation and ambiguity of statutory and regulatory requirement interpretations across local, state, and federal officials
- Onerous requirements such as federal funding matches
- Timeliness in clarifying and interpreting federal requirements, which can substantially delay disbursement of funds

Lack of Knowledge of Federal Programs

One of the most obvious challenges for communities seeking to obtain federal waivers is a sheer lack of knowledge about the various federal programs available. It is critical to build an understanding of the various federal disaster recovery programs — ideally before a disaster strikes — so that communities are better prepared to navigate the application and waiver request process. Eligibility requirements can vary widely across different federal programs and can be confusing for communities without prior experience.

Different Reporting Requirements for Grant Compliance

Requirements can vary significantly across different federal agencies and funding programs. Different federal agency requirements are imposed to encourage grantees to achieve specific objectives and program outcomes. For example, interpretations of environmental requirements for HUD-funded projects can vary significantly from the environmental requirements that the U.S. Army Corp of Engineers imposes on the same post-disaster redevelopment project.

In interviews with IEDC, an official involved in the economic recovery efforts of the state of Mississippi referenced an example of a HUD environmental regulation that disallows any HUD-funded project to be within a mile of any above-ground explosive or flammable storage tanks of 100 gallons or more. The issue became a significant barrier to addressing the urgent need for rental property construction and reconstruction, as the area in which HUD-funded disaster recovery projects were to take place was populated with propane tanks used for residential home and water heating.

Interpreting Requirements between Levels of Government

While this paper focuses on federal requirements, it is important to understand that each state also has legal requirements that govern and impact the economic recovery process. The federal government generally takes these state requirements into account by noting in various federal legislation that all actions related to federal disaster and economic recovery funds must comply with state laws as well. Yet, federal legislation and state legislation may not always align. One example mentioned by recovery officials in IEDC interviews was a case in which a state's legislation had a comparatively more restrictive definition and interpretation of housing regulations than federal requirements. This led to confusion and delays in administering federal funding for housing-related recovery efforts in the state.

Funding Match Requirements: Asking Too Much from Impacted Communities?

Disaster officials often note the challenge that impacted communities encounter when trying to meet federal matching requirements for disaster recovery projects. On one hand, many federal funding programs require that all other financial resources be exhausted prior to awarding federal funds. On the other hand, other federal disaster recovery funding programs require a disaster-impacted community to generate a portion of the costs of certain projects to show that the community has “skin in the game” (i.e., match-share requirement).

Disaster recovery practitioners noted in interviews that local disaster-impacted communities are often cash-strapped after suffering a disaster and have extremely limited capacities to generate funding for a match-share requirement. They expressed some degree of exasperation that disaster-impacted communities are asked to simultaneously meet two competing requirements (i.e. exhaust all funding while generating match-share funds) in order to access critical sources of federal funding.

Timeliness in Interpreting Federal Requirements

Another common concern among experienced community disaster recovery professionals is the speed with which federal disaster recovery funding programs are able to disburse funding to disaster-impacted communities. There are many factors that affect the timeliness of disbursing federal disaster recovery funding, most of which are beyond the scope of this report. However, it is sufficient to say that the more prepared a disaster-impacted community is with regard to understanding the process of applying for waivers of funding requirements, the more likely the chances that federal disaster recovery funds will be disbursed more quickly.

Section II General Guidelines for Requesting Waivers

Federal agencies often differ with regard to the specific requirements for states and local communities using federal disaster recovery funds. Still, there are general principles that states and disaster-impacted communities can follow when requesting waivers of funding requirements from federal government agencies. The following section provides guidance on applying for waivers and highlights ways communities have successfully obtained those waivers.

Making a Case to Justify a Waiver

The ability to obtain a waiver depends partly on the type of waiver requested and how well a disaster-impacted community can justify the need to alter a requirement in order to meet unique local recovery needs. As a first step, it is recommended that the grant applicant conduct some research to increase awareness of both federal agency funding programs and the requirements that restrict the use of funds thereof. This plays an important part in making a case for waiving specific requirements or obtaining alternative requirements that allow grant recipients maximum flexibility for responding to a community's unique economic recovery needs.

Know Federal Agency Objectives

To better justify the need to temporarily repeal federal requirements of specific federal agencies, communities should be well informed of the investment priorities and objectives of the programs these agencies use to provide disaster recovery assistance. Reviewing these objectives and priorities will shed light on what these federal agencies look for when evaluating funding applications and waiver requests.

Most federal programs used for post-disaster economic recovery are programs that were not specifically created or designed to address post-disaster situations. This is reflected in the requirements that restrict funding uses in ways that may appear to impede the economic recovery process. Additionally, some federal programs used for disaster recovery funding are not focused exclusively on economic development or economic recovery. Understanding the goals, motivations and the broad restrictions under which these federal agencies operate can provide communities insight on how to negotiate particular requirement waivers.

Objectives of EDA's Economic Adjustment Assistance (EAA) *(Disaster Recovery Supplemental Version)*

- EAA offers flexible tools to develop *regionally based long-term* economic development strategies in response to major federally declared disasters.
- EDA encourages applications based on *long-term, regionally oriented and collaborative* economic development strategies to foster economic growth and resilience.

Federal Funding Opportunities (FFO) and Notices of Funding Availability (NOFA) are good starting points for identifying important investment priorities and objectives of federal funding programs. IEDC interviews with an EDA program officer revealed the officer's surprise at the number of grant applicants that fail to provide information on how proposed projects directly link to job creation and private-sector investment goals that are explicitly stated requirements in FFOs.

It is recommended that applicants carefully review all documents relevant to a federal agency program's investment priorities and requirements. This allows communities to be better prepared to justify exceptions to any requirements that may become obstacles to fully utilizing an agency's recovery funds. One local agency official achieved this by asking a capable staff member to dedicate three full days exclusively to combing through the Code of Federal Regulations and identifying all applicable requirements of the federal agency providing recovery funds to the community. This proved to be wisely invested time, as the local agency was able to accelerate the recovery process by being able to better communicate with federal agency officials about certain federal requirements and by better understanding which requirements could be waived.

Review Previous Waivers

Communities should review and research successful waivers from previous disaster recovery efforts to get a sense of the variety of available waivers of each federal agency. While some specific federal program requirements authorized in supplemental disaster legislation may change over the years, the majority of a federal agency's requirements remain the same from year to year. Federal Register notices will contain information on any new or alternate requirements. Reviewing these waiver requests also provides insight into the process and how justifications were presented to a specific federal agency.

Some communities have had to pioneer new requests for specific waivers, but there is ample precedent for the most common waivers. Gleaning insights on how other communities were able to justify certain waivers will enhance a community's ability to justify its own waivers. While it is important to review examples of successful waiver requests of other communities, one federal program officer cautioned that a community needs to make a unique case for why and how a federal requirement would be detrimental to a community's economic recovery activities.

All waiver requirements for federally-funded, presidentially-declared disasters are required to be published in the Federal Register, which serves as a good starting point for waiver research (see www.federalregister.gov). Some federal agencies list previous waiver requests on their websites. For example, waivers for HUD funding regarding Hurricane Katrina can be accessed at www.hud.gov/offices/cpd/library/katrina. Examples of past waiver requests can be accessed on several different state agencies' websites.

- **State of Vermont CDBG Disaster Recovery Waiver Requests**
<http://accd.vermont.gov/sites/accd/files/Documents/strongcommunities/cd/vcdp/Waiver%20Request%20Form%20Feb%206%202012.pdf>
- **State of Louisiana (Division of Administration, Disaster Recovery Unit) Disaster Recovery Waivers — From Plan to Implementation: Lessons Learned**
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_22564.pdf

To underscore the importance of precedent as applied to waiving federal requirements on recovery funding, in recent negotiations of HUD CDBG-DR funding for victims of Hurricane Sandy, HUD's Secretary "pre-waived" 95 percent of the most commonly requested regulatory waivers. While this is not a formal precedent for future HUD CDBG-DR funding, this highlights that the federal government recognizes the importance of waivers to economic recovery.

Present Unique Community Recovery Needs in Waiver Requests

When applying for waivers or alternative requirements, federal agencies will be looking for an impacted community to justify waiver requests with compelling information on a community's unique recovery needs. One federal official commented that federal grant recipients should not expect a federal agency to waive all of a community's requested waivers without first understanding and describing how each requirement would detrimentally impact a community's recovery process. Rather, local community leadership must make efforts to educate federal program officers on how a community's unique post-disaster circumstances necessitate the use of specific waivers. Where possible, it is recommended that compelling data be provided to reinforce and strengthen arguments for waiver justifications.

An appendix in the State of Vermont's Action Plan for 2012 HUD CDBG-DR funding provides advice to impacted communities on how to justify waiver requests for specific requirements (see to the right). The appendix also includes sample language that communities can use as a basic starting point when justifying their own waiver applications. Sample excerpts are provided below to illustrate the type of basic information contained in waiver requests, including descriptions of how a waiver will impact recovery efforts, references to precedent of previous waiver use, and applicable data. For all waiver requests, it is highly recommended that local communities include language that reflects local conditions and challenges in their applications.

Sample Waiver Justification Process *(Vermont HUD CDBG-DR example)*

- Research and review sample waiver justifications using examples provided for reference
- Modify sample justifications to address a community's specific economic recovery needs
- Complete a justification for each requested waiver
- Provide citations and integrate relevant data (if possible)
- Understand the scope of each waiver (i.e., whether it applies to local communities, states, or both)

Sample Waiver Requests: Excerpts from State of Vermont's 2012 HUD CDBG-DR Action Plan

WAIVER REQUEST

- Waive requirement to distribute all funds to local governments.
- Replace with permission for the state to carry out activities directly.

JUSTIFICATION

- As the 2011 disaster affected a large portion of the state, a state agency is best able to orchestrate a coordinated and streamlined disaster response by carrying out activities directly, it can distribute assistance via one or more programs to applicants located in communities across the entire state. Furthermore, the State of Vermont 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.

WAIVER REQUEST

Waive provisions necessary to allow:

- Homeownership assistance to persons whose incomes are up to 120 percent of median income (supports mixed income housing),
- New construction of housing, and
- Down payment assistance for up to 100 percent of a down payment.

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 2011 disaster, the State of Vermont's housing stock has been significantly affected. More than 3,500 residences were damaged or completely destroyed. These modifications will allow the State to implement housing recovery programs to reach a broader range of households from an income perspective that were severely impacted from Tropical Storm Irene.

For additional information, resources, and examples of sample waiver requests, visit http://accd.vermont.gov/strong_communities/opportunities/funding/cdbgdr.

Communicate with Federal and State Officials Early and Often

In a post-disaster environment, communication lines may be severely damaged at a time when they are most needed. While local communities have relationships and often communicate with their state counterparts, the added layer of the federal government's deep involvement in disaster response and recovery adds a certain level of complexity to post-disaster situations.

Most federal programs are required to communicate directly with a state governor's office and the state's lead recovery agencies following a presidentially-declared disaster. One exception is the U.S. Economic Development Administration (EDA), which has regional offices that can communicate directly with the impacted communities. For major disasters that have impacted multiple states, such as Hurricanes Katrina and Sandy, the process of identifying response and recovery needs and determining the amount of recovery funding to provide to impacted states can be particularly challenging and sometimes highly political.

The lead state-level organizations that coordinate and negotiate this process with different federal agencies must represent the needs of disaster-impacted communities to FEMA and the various federal departments and agencies involved in the recovery process. While the NDRF is helping to improve the ways by which federal, state, and local governments communicate with one another and with other recovery stakeholders, the process is still very complicated.

An impacted community needs to actively communicate with both state and federal officials at an early stage to describe and emphasize the community's unique business and economic recovery needs. This should include discussions on the sources of federal funding to best assist those recovery efforts, including requirements that restrict the use of such funds. Impacted communities need to clearly understand their capacity to meet those requirements early in the process, as there is a short window of opportunity for initial requests of waivers or alternative requirements. Requests may also need to be made repeatedly during the application process for federal funds. Communication plays a vital role in this process. Below are some recommended actions to facilitate optimal communication.

Establish a Local Economic Recovery Team

After a disaster strikes, it is common for a community to establish an Economic Recovery Team, which is generally comprised of leaders from local economic development organizations, chambers of commerce, government, and prominent business leaders. Part of the role of this team is to communicate with local governments and respective counterparts at the state and federal level about their specific economic recovery needs. In many communities, the local EDO or chamber is involved in utilizing federal dollars for economic recovery initiatives but is not always involved in the original application process with federal agencies. It is in the best interest of the Economic Recovery Team to fully understand the federal requirements attached to utilizing specific funds and to inform local governments of particular waivers that are needed to ensure full grant compliance and the greatest amount of flexibility when using funds.

Identify Lead Organizations

It is important to identify the lead organizations responsible for communicating and coordinating major recovery initiatives. It is suggested that these lead organizations also be involved in the application and waiver request process for federal economic recovery funding.

The timeline for applying for federal funds varies by federal agency. HUD's CDBG-DR assistance, for example, requires that an action plan be submitted within 45 days of the initial governor's request for funding. HUD also requires that waiver requests be submitted prior to submission of an action plan. EDA requires the waivers or alternative requirements be included in the grant application, and reviews these applications on a quarterly basis. If additional funds have been appropriated to EDA in a disaster supplemental, there may be a certain

time window (sometimes six to nine months) to apply for these funds. Early and frequent communication between the lead organization and the EDA regional office staff is suggested. One EDA regional office suggested the disaster-impacted community reach out to their office as early as two weeks following the disaster to discuss community impacts and critical recovery projects and initiatives.

Engage State Agency Recovery Leaders

In the early stages following a presidentially-declared disaster, a state governor will determine the lead state-level organizations to serve as the primary agencies for coordinating and implementing disaster recovery initiatives. Some governors have established a separate authority to manage these federal funds, such as the Louisiana Recovery Authority (LRA) following Hurricane Katrina. Those involved in economic recovery at the local level, should become intimately knowledgeable about this lead agency, including their capacity and resources. The state agency may or may not be astute at the economic recovery issues and needs that commonly arise following a major disaster.

Example Lead Recovery Organizations

Federal

- Federal Agencies
 - Agency Headquarters
 - Regional Agency Offices or Divisions

State

- State Governor or Governor's Office
- State Government Agencies
 - Recovery Agencies or Authorities
 - Redevelopment Agencies or Authorities
 - State Departments of Commerce

Local / Regional

- Chambers of Commerce
- Regional Councils of Government
- Local or Regional Planning Councils
- Economic Development Districts (EDDs)
- Municipal Economic Development Organizations
- County Economic Development Organizations

Frequent and effective communication with this state agency is critical over the long process of recovery. State agency representatives can serve as valuable conduits of information that will aid disaster-impacted communities. They play a role in negotiating federal waivers or alternatives with the appropriate federal agencies. Additionally, state agencies also may have their own set of requirements in addition to the federal requirements, which will add a layer of complexity that might drastically affect the use of those funds. It is important for local communities to keep an open line of communication with the appropriate state agency representative that has the authority to help remove red tape and serve as an advocate for those impacted communities.

Waiver Requests for the Greater Houston Region

After Hurricane Ike in 2008, the Houston-Galveston region required waivers of certain HUD CDBG-DR requirements in order to speed the rebuilding of housing and the use of funds for economic recovery purposes. Local community and economic recovery leaders in Greater Houston were left out of the application process between the Texas Department of Rural Affairs, the lead state agency for CDBG-DR funds (now defunct), and HUD. The state's interpretation of HUD requirements for CDBG provided an additional layer of complexity. Because the state agency did not fully consider many of the available waivers that the region needed during the state's negotiation with HUD, localities had a very difficult time meeting federal requirements. By 2011, most of the counties still had not utilized the vast majority of CDBG-DR funding.

When talking with a local official about the lessons learned from Hurricane Ike, they provided the following advice.

- 1) Local and regional government should inform themselves of the types of waivers their impacted community needs.
- 2) These officials should seek to educate appropriate state officials and congressional staff about the need for waivers of federal requirements on disaster recovery funding.
- 3) Communities need to prepare examples that reveal the impacts that certain requirements will have on their local communities so that state and federal officials can easily understand the value of the waiver.

As noted in this paper, the State of Vermont, following Hurricane Irene in 2011, prepared their state action plan for HUD funds to include a suggested process for communities making waiver requests and provided sample language for various waivers. This type of guidance provides the critical leadership and support that disaster-impacted communities need from their state governments.

State of Mississippi

In another example related to Hurricane Katrina, the State of Mississippi governor's office determined that the most effective lead organization for working with HUD's CDBG-DR program would be the Mississippi Development Authority (MDA). MDA was responsible for administering \$5,058,185,000 in HUD CDBG-DR funding to

communities across the state.¹⁶ MDA developed a streamlined method for determining projects to fund in each disaster-impacted community. MDA asked each disaster-impacted community to send prioritized lists of local project requests, with the agreement that MDA would work closely with HUD on behalf of each community to qualify projects and request any specific waivers that would be needed. In order to set realistic expectations and manage the process, MDA also requested that each community assess and prioritize project suggestions at the local level based on which projects the local community believed were the most important.

The purpose of highlighting these examples is to illustrate that state-level lead organizations of economic recovery processes vary in type and capabilities depending on the nature, scope, and scale of a disaster. As noted previously in this report, shortly after a presidential disaster declaration (following a request from the governor), the state governor's office will be responsible for designating the state's lead organizations for working with different federal agencies involved in the economic recovery effort.

The broader lesson is that each state will determine the entity that is best suited for administering certain federal disaster recovery funding programs, and that disaster-impacted communities need to identify as quickly as possible which state-level lead organizations can best negotiate the appropriate waivers with the various federal agencies involved in the economic recovery process. Though it is presumed that these state-level lead organizations will have effective knowledge and negotiation skills to work with federal agencies in the waiver request process, it is not enough for individual disaster-impacted communities to simply sit back and wait for the state make decisions about waiver requests on behalf of the community.

Communicate Frequently with State and Federal Agencies

The process for requesting waivers of federal funding requirements demands frequent communication between local government and both state and federal officials. Local communities should expect to initiate communication with appropriate state agency officials early and often, as the process for negotiating waiver requests can move rather quickly following a presidential disaster declaration. According to officials interviewed for this report, it is not only critical to regularly communicate with the appropriate state and federal officials but to also document all communication and decision making on waiver requests.

Co-Locating Agencies in Louisiana Following Hurricane Katrina

After Hurricane Katrina wrought havoc on the many communities in and around New Orleans, Jefferson Parish's economic development agency (JEDCO) — along with many other local agencies — was offered temporary space at Louisiana Economic Development (LED) in Baton Rouge. This co-location of local and state organizations enabled early and frequent communication between grant manager and grant recipient. Those local agencies operating out of the LED were often more informed of the federal grant requirements and compliance issues, and were able to make better use of those funds for economic recovery purposes.

¹⁶ Sullivan, Brian. "Jackson Announces Distribution of \$11.5 Billion in Disaster Assistance to Five Gulf Coast States Impacted by Hurricanes." HUD Archives: News Releases. HUD No. 06-011. January 25, 2006. Accessed at: <http://archives.hud.gov/news/2006/pr06-011.cfm>

However, each federal agency or department varies in the type of communication they want to receive from potential grantees. The U.S. Economic Development Administration (EDA) has six regional offices (Atlanta, Austin, Chicago, Denver, Philadelphia, and Seattle) that work directly with local and regional governments on economic recovery efforts. An EDA grant manager shared that EDA encourages community leaders in disaster-impacted areas to visit their regional office following a major event to discuss their funding needs. EDA values these face-to-face meetings with grantees, as they provide an opportunity to better explain federal requirements and address potential barriers in utilizing the funds.

In IEDC interviews, local recovery officials also noted the challenge presented by not being able to directly communicate with some federal agencies or departments on waiver requests, and they expressed a desire for improved organizational structures to facilitate that communication. For example, only 15 percent of the HUD CDBG-DR grantees are local governments in which local officials work directly with HUD field offices. For the remaining 85 percent of HUD CDBG-DR grantees, the appointed state agency is responsible for distributing and administering funds as well as making those waiver requests. The ability of the state agency to understand how the funding requirements might impact the local level depends in part on open communication lines between state and local agencies and whether state agency resources have been exhausted due to the disaster.

Following through with Agency Officials

Persevering

A number of interviewed economic recovery practitioners pointed to their persistence as one of the main reasons they were able to acquire a waiver or alternative requirement and achieve greater flexibility on how they could use federal funds. They presented strong arguments as to how a specific federal requirement would impose an undue burden on their disaster-impacted communities or states. They also requested additional information to help them refine their interpretations of these requirements and enhance their arguments for waiving these requirements. Local and state officials also worked to garner support from high-level political figures. When necessary, they elevated issues to the governor's office or congressional representatives to help ensure bureaucratic obstacles were minimized.

Attitude was another determining factor for successfully obtaining greater flexibility in federal requirements. A state disaster recovery official said they approached each waiver request pragmatically and explored ways to best secure federal approval. This included questions about what would be the most compelling information to provide to federal authorities to persuade them that a requirement should not apply to their state's particular situation. The official commented that federal agencies may themselves be the best source of information and assistance for finding answers to these questions and ultimately resolving waiver request issues. By approaching each waiver request in this manner, the official's state received approval from a federal agency for 29 of its 33 waiver requests.

Requesting Extensions When Waivers Expire

Persistence is particularly important when requesting an extension for expiring federal waivers. Federal agencies provide the majority of federal requirement waivers for a defined period of time; however, it is common for delays to occur in the implementation of community and economic recovery projects after a disaster. If the waiver expires, the community must reapply for the requirement waiver, which includes providing justification to the federal agency. Local conditions might have changed since the original waiver justification, thereby making it more difficult to make the appropriate argument. Still, a case needs to be made as to why waiving the federal requirement is still necessary for the success of the recovery project.

Document All Communication and Waiver Approvals

A number of economic recovery practitioners emphasized the importance of supporting all waiver requests with appropriate data and descriptive information. Communities should seek out advice from state and federal officials to better understand what type of information needs to be documented in order to make an effective argument. If a state and federal agency verbally approves a federal waiver, communities should make sure to follow up and confirm this in writing. Many economic recovery projects take years to complete and staff is likely to experience turnover. It will be important to provide this documentation in future audits and compliance reviews in order to comply with federal regulations and requirements.

Pushing through Major Regulatory Barriers

Many disaster-impacted communities are unprepared for the volume of communication required to justify and negotiate waiver requests with state and federal officials. In IEDC interviews, local recovery officials noted an incredibly long and frustrating process in some cases. One state government official shared that funding for a number of recovery projects in the official's state came to a halt for six months until they could clarify with HUD an environmental requirement related to the restriction of the number of above-ground kerosene tanks within a one-mile radius of intended projects. The state pursued the removal of this federal requirement and succeeded in their effort.

While complying with numerous federal regulations can be daunting to disaster-impacted communities, there is no substitute for persevering and utilizing appropriate state resources to minimize regulatory obstacles. In the event that a state agency does not provide the needed support or poses additional constraints, impacted communities need to find appropriate support for waiver requests at the regional or national level. Impacted communities need to educate key state officials on the outcomes of *not* pursuing specific waiver requests and how the inability to secure a waiver will impede or halt the development of major recovery projects. It is important to articulate expectations and the need for state support in order to successfully obtain requests from appropriate federal agencies.

Preparations for the Next Disaster

Often local and state economic development organizations (EDOs) are not involved in local and state emergency preparedness efforts, which makes them further unprepared for the economic recovery work after a disaster strikes. It is extremely valuable for a state or regional organization to consider producing a disaster recovery guide to assist local communities in the event of a major emergency. This guide should list the resources and responsibilities of various stakeholder groups in all aspects of recovery, including economic recovery. The publication would also discuss the federal funding sources for recovery, federal requirements attached to those sources, and the potential waiver requests that could be made.

Section III

Guidelines for Waiving Requirements by Federal Agency

The following section provides information on the major federal agencies and programs that offer federal funding for post-disaster economic recovery efforts. Each sub-section provides details on a particular federal agency, major funding programs administered by each agency for disaster recovery purposes, and details on the most commonly requested waivers of specific agency federal requirements.

U.S. Department of Housing and Urban Development

CDBG-DR Overview

HUD's Office of Community Planning and Development (CPD) administers HUD's Community Development Block Grant Program for Disaster Recovery (CDBG-DR). CPD's underlying mission is to create jobs, expand employment for low- to moderate-income persons, and develop safe and affordable housing. Appropriations laws dictate that CDBG-DR grant funding must be used for expenses associated with disaster relief and long-term recovery, infrastructure restoration, housing, and economic revitalization. Grant activities must meet one of HUD's three national objectives: (1) benefit low and moderate income (LMI) persons, (2) prevent or eliminate slums or blight, or (3) meet an urgent need.

A CDBG-DR grantee must demonstrate ties between its funding-related activities and a disaster. A grantee must also document how each activity addresses disaster-related impacts and rehabilitates or restores housing, infrastructure, or the economy. It is worth noting that there is no set formula or process for documenting the relationship between CDBG-DR grantee activities and how they address a disaster, and CDBG-DR funding recipients have some flexibility to determine the most appropriate form of documentation.

How CDBG-DR Works

- **Congress:** Appropriates Recovery Funds
- **HUD: (a)** Contacts Grantees **(b)** Discusses Recovery Plan **(c)** Identifies Necessary Waivers
- **HUD:** Publishes Waivers and Alt. Requirements (in Federal Register Notices)
- **Grantee:** Applies / **HUD:** Issues Grant
- **State/Local Government:** Manages Programs (funds may be sub-granted and projects sub-contracted)
- **Grantee:** Selects Activities
- **Grantee:** Submits Action Plan (every activity eligible and meets national objective)
- **Grantee:** Devises Management Procedures (includes internal auditing and monitoring procedures)
- **Grantee:** Funds Drawn from U.S. Treasury Credit Line
- **HUD:** Monitors Compliance with Action Plan and Rules

According to a Gulf Coast Economic Development District presentation (GCEDD), CDBG-DR grants can be used to (among other activities):

1. Fund the construction, repair, or rehabilitation of damaged businesses and commercial structures to return them to their original pre-storm state if certain conditions are met;
2. Make repairs to an industrial park or commercial area that experienced damage; and
3. Assist a business that closed or relocated to another state due to a disaster that wishes to return to the jurisdiction.

According to the GCEDD presentations, local governments cannot apply for funds to build speculative industrial parks or commercial areas, and prospective businesses or tenants need to be identified before a funding application is submitted.

Requirements That Cannot Be Waived

It is important for communities to know which federal requirements cannot be waived for HUD's CDBG-DR funding. The rules that govern the activities of CPD funding are divided into three categories: (1) congressionally-authorized laws (statutory requirements), (2) HUD-created regulations to achieve the result of the law (regulatory requirements), and (3) policy memoranda which are created to address specific instances.

The following CDBG-DR funding requirements cannot be waived by HUD. Securing a waiver for any of these requirements requires Congressional action.¹⁷

HUD CDBG-DR Requirements That Cannot Be Waived

(per appropriation laws)

"...Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds or guarantees (except for requirements related to fair housing, non-discrimination, labor standards, and the environment)..."

- **Non-Discrimination Requirement**
Fair Housing Act (FHA)
- **Fair and Prevailing Wages Requirement**
Fair Labor Standards Act (FLSA) and Davis-Bacon Act (DBA)
- **Environmental Review Requirement**
National Environmental Policy Act (NEPA)
- **Public Notice of Funding Availability Requirement**

¹⁷ CDBG Disaster Recovery Overview. U.S. Department of Housing and Urban Development, Office of Community Planning and Development. Accessed at: http://portal.HUD.gov/HUDportal/documents/HUDdoc?id=CDBG_DR_Overview.pdf.

Non-Discrimination Provision — Fair Housing Act (FHA)

The federal Fair Housing Act prohibits discrimination based on race, color, religion, national origin, sex, familial status, or disability.¹⁸

Fair and Prevailing Wages — Fair Labor Standards Act (FLSA) and Davis-Bacon Act (DBA)

Federal legislation requires that any projects or activities that involve federal funds, including disaster-related funding, must comply with federal wage and labor standards outlined in the Fair Labor Standards Act (FLSA) and three legislative acts requiring prevailing wages, including the Davis-Bacon Act.

FLSA establishes minimum wages among a multitude of wage and labor related requirements.¹⁹ The Davis-Bacon Act requires prevailing wages be paid for construction work, including mechanics and laborers.²⁰ Another prevailing wage requirement relates to maintenance activities (including non-routine maintenance), which covers laborers, mechanics, technicians, technical engineers, draftsmen, and architects working in public housing developments.²¹ The final prevailing wage legislation, the Service Contract Act, requires prevailing wages be paid to maintenance and other service contracts for direct HUD contracts.²²

In IEDC interviews, several economic recovery practitioners noted that, for reconstruction projects, the prevailing wage requirement is particularly difficult to meet. One local official commented that meeting this requirement can result in an estimated 30 percent additional costs for a construction project. Another official noted the local businesses may view this requirement as a “deal killer” with regard to funding reconstruction projects.

Environmental Review — National Environmental Policy Act (NEPA)

The National Environmental Policy Act requires environmental reviews and environmental assessments for many types of federally-funded disaster recovery projects and activities. While the details of these environmental reviews and assessments are beyond the scope of this report, it is sufficient to say that these processes are generally complex, time-consuming, and in many cases difficult to interpret.

In interviews with IEDC, some government officials involved in recovery initiatives noted concern regarding the timeliness of the compliance process for NEPA requirements, describing it as “very long.” Local and state officials also discussed

¹⁸ Fair Housing Month Video 2013. Accessed at: www.youtube.com/watch?feature=player_embedded&v=9K2w_E30HVI

¹⁹ Fact Sheet #72 — Employment + Wages Under Federal Law During Natural Disasters + Recovery. U.S. Department of Labor (DOL) Wage + Hour Division (WHD). May 2010. Accessed at <www.dol.gov/whd/regs/compliance/whdfs72English.htm>.

²⁰ Davis-Bacon Act wage requirements apply to HUD programs via statutory provisions of the Davis-Bacon Act (*only* for direct HUD contracts).

²¹ HUD-determined wage rates apply to Public, Indian, and Hawaiian housing activities in accordance with the U.S. Housing Act of 1937 (as amended) and the Native American Housing Assistance and Self-determination Act of 1996 (as amended).

²² Service Contract Act wage requirements are applicable by statutory provisions of the Service Contract Act (*only* for direct HUD contracts).

examples of varying requirements for NEPA compliance across different federal agencies, including HUD, the Corps of Engineers, EPA, and EDA. While NEPA regulations are universal across all federal agencies, each agency may have a different interpretation of these requirements, which can lead to confusion at the local and state levels. As an example, a state agency discussed a major infrastructure redevelopment that was being funded by two federal agencies, HUD and the Corps of Engineers. The agency had to prepare two separate environmental assessments for the same project in order to meet all of the environmental requirements for each agency. The state agency emphasized the need to streamline the NEPA compliance process, timing, and interpretation of environmental requirements as a critical priority area for the federal government.

For more specifics on the statutory laws, regulations, and policy memoranda governing CDBG-DR funding, visit http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/rulesandregs.

Public Notice of Funding Availability

Federal law dictates that a Notice of Funding Availability must be periodically published in the Federal Register with information on available funding amounts, funding criteria, where funding applications can be obtained and submitted, and application submission timelines.

Allowable Waivers for HUD's CDBG-DR Program

The following is a list of commonly requested waivers for the CDBG-DR program. It is important to note that this is not an exhaustive list of all waivers or alternative requirements for CDBG-DR. Instead, these are the waivers that are considered the most relevant for post-disaster economic recovery activities. These waivers apply only to CDBG-DR grants and **not** to funds authorized under the normal CDBG program.

- o **Alternative Requirements for CDBG Action Plan**

This waiver specifies alternative requirements for a disaster recovery-specific action plan that substitute for the standard CDBG program's action plan requirements. The streamlined action plan for disaster recovery allows funding recipients to implement economic recovery programs more efficiently and swiftly while still complying with statutory requirements.

- o **Annual Performance Review Reporting Requirement**

This waiver repeals normal CDBG annual performance reporting requirements and specifies the alternative requirement that grantees must submit quarterly reports using the Disaster Recovery Grant Reporting (DRGR) system.

- o **Overall Benefit to Low-to-Moderate (LMI) Persons**

Under the normal state CDBG program grantees must use 70 percent of CDBG funds to benefit people of low- to moderate-income. This waiver adjusts the overall LMI benefit threshold to allow a state to use 50 percent of CDBG-DR funding to benefit people of low- to moderate-income, with the other 50 percent used for activities addressing "urgent need" and "prevention or elimination of slum or blight."

- **Requirement for Citizen Participation**

This waiver removes the requirement for public hearings (at state, entitlement, or local government level) to disseminate information and collect citizen comments. Grantees must still provide “reasonable opportunity” (i.e. at least seven days) for public comment and ongoing access to information on the use of CDBG-DR funds.
- **Expanded Distribution and Direct Action**

This waiver removes the requirement that states must distribute HUD funds to local governments, thereby allowing states to directly carry out CDBG-DR funded disaster recovery activities.
- **Consistency with Consolidated Plan Requirement**

This waiver removes the normal CDBG restriction requiring a state’s activities to be consistent with its HUD-approved consolidated plan — the primary strategic planning document HUD requires for normal CDBG formula funding. The waiver of this requirement allows CDBG grantees more time and flexibility to undertake activities that are not consistent with its consolidated plan until the grantee is able to update the priorities of the plan.
- **General Administration Limitation/Cap**

This waiver removes the dollar-for-dollar state funding match requirement for administration costs (above \$100,000).
- **Use of Sub-Recipients**

States using the Expanded Distribution and Direct Action waiver must follow the alternative CDBG entitlement rules and requirements specified in the disaster-specific Federal Register Notice when using sub-recipients.
- **Program Income Requirements**

Waives certain standard CDBG income requirements and specifies alternative CDBG-DR program income requirements that are considered more flexible.
- **Eligibility—Housing Related**

This waiver removes certain requirements to allow (a) homeownership assistance to households with up to 120 percent of an area’s median income, (b) up to 100 percent of down payment assistance, and (c) new housing construction.²³
- **Buildings for General Conduct of Government**

This waiver removes certain requirements to permit CDBG-DR funding recipients to pay for reconstruction or rehabilitation of otherwise ineligible public buildings.
- **Job Relocation/Anti-Pirating Requirements**

This waiver removes job relocation restrictions to let grantees assist businesses that operated in a disaster-declared area prior to a disaster that moved — in order to continue business operations — from a disaster-impacted area to a

²³ Homeownership assistance can be offered to households with up to 120 percent of area’s median income, but only funds used for households 80 percent or less of an area’s median income qualify to meet HUD’s *low/moderate-income person benefit* national objective.

different state or labor market in the same state.²⁴ This waiver is considered necessary in some instances to allow a grantee affected by major disaster to rebuild its employment base.

- **Standard Certifications Requirements**

This waiver removes the standard CDBG certifications requirement and substitutes alternative certifications tailored to CDBG-DR grants.

- **Application Requirements for Allocations Under Supplemental Appropriations Act**

This waiver removes, or offers alternative requirements, to streamline the pre-grant process and set guidelines for states' applications for funding allocations.

The following section provides guidance to local economic recovery stakeholders, economic development organizations (EDOs) and chambers of commerce, for interacting with local and state government agencies working directly with HUD on CDBG-DR funding.

Identify and Communicate with Agencies Authorized to Request Waivers

While community recovery is indeed a local issue, state and federal organizations certainly play critical roles in helping disaster-impacted communities recover. These roles include requesting appropriate levels of federal funding and making sure those funding resources are aligned to meet an impacted community's recovery needs, which may include removing onerous requirements. HUD generally works with a centralized authority (mostly at the state level) to manage CDBG-BR funds for disaster recovery. As discussed above, approximately 85 percent of HUD's CDBG-DR funding is granted to state agencies that are appointed by a state governor's office, while 15 percent is granted directly to local areas (mostly entitlement communities).

This same state or local government agency will be responsible for submitting a disaster recovery action plan. HUD must review a formal action plan for community recovery in order to better understand the intended path towards recovery and ensure federal dollars are committed and will be appropriately spent. This action plan describes recovery needs, strategies, anticipated uses of recovery funds, eligible activities, and the case for removing or altering federal requirements associated with the funding. Depending on the disaster's magnitude and the geographic coverage of damage, these appointed state agencies will work directly with HUD field offices on their use of CDBG-DR funding.

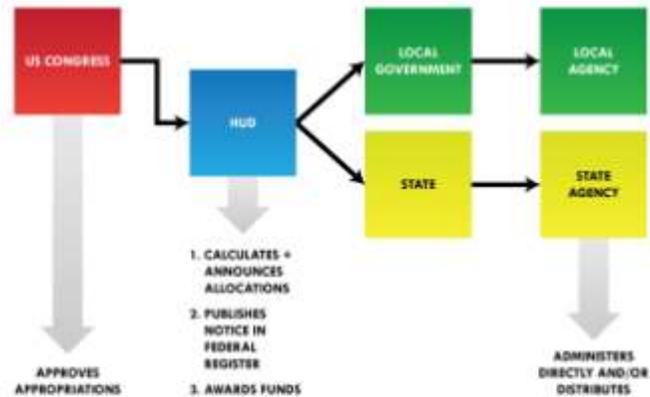
Given the chaotic environment that often follows a major disaster, local recovery stakeholders should early on seek to identify the individual(s) at the state agency who are responsible for making waiver requests on behalf of impacted communities. While state agencies will reach out to garner local input on recovery needs and an action plan, local communities should not rely exclusively on these communication efforts. Local communities should actively reach out to appropriate state officials to ensure

²⁴ Normal CDBG requirements bar grantees from assisting businesses in relocating from one labor market area to another if the result is significant job loss in the labor market from which a business moved. This restriction, however, may pose significant barriers to communities seeking to reestablish/rebuild displaced employment bases following a disaster.

their interests and recovery needs are represented during the negotiation process for HUD CDBG-DR funding and waiver requests.

The process for creating an action plan can move quickly. HUD determines CDBG-DR funding grantees within 45 to 60 days following a disaster. Additional funding resources may be added at a later date. The appropriate state agency will need to submit its initial disaster recovery action plan within 90 days of HUD publishing its notice of CDBG-DR funding in the Federal Register (see figure “HUD CDBG-DR Funding Process” to the right for

HUD CDBG-DR FUNDING PROCESS (FOLLOWING PRESIDENTIAL DISASTER DECLARATION)



SOURCE: “CDBG Disaster Recovery Overview” presentation,
U.S. Department of Housing and Urban Development, Office of Community Planning and Development.
Accessed at http://portal.hud.gov/hudportal/documents/huddoc?id=CDBG_DR_Overview.pdf

an illustration of the HUD CDBG-DR funding process). The state agency begins discussing the possibility of removing or altering federal requirements with federal officials before the action plan is submitted, and waiver requests are included in a final action plan. An action plan should be viewed as a “living document.” The local governments of impacted communities must review a state’s disaster recovery action plan to learn of funds’ intended use and provide comments during a review process before a plan is submitted. Also, minor or major amendments of an action plan can be made when deemed necessary.

Given the complexity of federal requirements for CDBG-DR funding, it is important to maintain open lines of communication with many of the different state and federal officials involved in the funding process. One HUD official recommended frequent communication between impacted communities and their state and federal counterparts to clarify and resolve issues of grant compliance, including identifying any possible workarounds for requirements that cannot be waived.

Grand Forks, ND provides an illustration of how frequent communication between local and federal officials can help to quickly resolve regulatory obstacles and increase flexibility of CDBG-DR dollars for recovery activities. In the Great Flood of 1997, the city of Grand Forks — including major parts of the downtown — and surrounding areas experienced extreme flooding. Grand Forks was an existing CDBG entitlement community, which allowed it to develop its own action plan and work directly with HUD field staff on recovery efforts. HUD staff members were temporarily housed within the same facility, dubbed the “War Room,” alongside city officials. This co-location greatly enhanced communication between federal and local officials, particularly with regard to navigating the funding process and complying with federal requirements. Due to their close proximity, HUD staff members were constantly advising the city of compliance issues, and as a result, the city indicated it had significantly fewer issues during its grant compliance and monitoring efforts.

Learn About Requirements and Waivers Needed in a Community

Once a community knows which federal agencies can provide funding for its recovery needs, it is critical to understand any requirements associated with a specific federal agency's programs. While this report serves as a starting point to highlight a number of federal requirements that can be altered or waived, impacted communities and states will need to conduct further research specific to their needs. As discussed above, HUD requires that disaster recovery action plans include requested waivers.

Below are several examples of state CDBG-DR action plans from previous disasters. These documents outline how CDBG-DR funds are channeled into separate recovery programs, describe eligible activities, and contain waiver requests from each state. Most action plans include a section detailing the federal requirements that grantees believe they need to have waived or altered alongside justifications for waiver requests. The action plan from the State of Vermont provides a longer list of waivers including suggested language for justifying waivers.

- **State of Vermont | CDGB Disaster Recovery Action Plan, 2012 (Hurricane Irene)**
<http://accd.vermont.gov/sites/accd/files/Documents/strongcommunities/cd/vcdp/Action%20Plan%20for%20Disaster%20Recovery%202012%20-%20FinalJG.pdf>
- **State of Iowa | Action Plan #1: Utilizing Supplemental CDBG Disaster Recovery Funding from the Supplemental Appropriations Act (Public Law 110-252), 2008 (Hurricane Ike)**
<http://www.iowaeconomicdevelopment.com/userdocs/documents/ieda/actionplan1.pdf>
- **State of Texas | Action Plan for CDBG Disaster Recovery Grantees under the Department of Defense Appropriations Act, 2006 (Hurricane Katrina)**
<http://archives.hud.gov/news/2006/pr06-054.pdf>

Impacted states and communities should review these action plans when considering future waiver requests. States and communities should look for waivers that have precedent and review sample waiver request language to better understand what type of information HUD officials expect to see from communities in their own waiver requests. This can help communities create stronger justifications for future waiver requests.

Demonstrate Need for Waivers and How Requirements Negatively Impact a Community

One HUD official noted that many communities ask why their federal agency cannot automatically waive all requirements in the case of a major disaster. The response is that the federal agency cannot easily alter its mission and the policy goals that it is trying to achieve through its program requirements. If one of these policies and its requirements poses a significant impediment to funding recovery projects in disaster-impacted communities, then it is reasonable for the federal department or agency to consider altering or eliminating the requirement (if it has authority to do so). In this case, a grantee should thoroughly explain the unique local conditions in impacted communities and why certain regulations may hinder the recovery process. This justification helps support official waiver requests.

In order to make a compelling case for using waivers, an impacted community needs to have a deep understanding of how the community was impacted with regard to property damage and infrastructure, how money from insurance claims might cover some of the costs of rebuilding efforts, and how federal funds might be used to address funding gaps. CDBG-DR has been a major source of recovery funding for the last two decades; yet, there are a significant number of federal requirements, many of which have been highlighted in this paper, that limit its flexibility as a funding source.

It is important to understand how meeting certain federal requirements might negatively impact the ability of local communities to use disaster recovery funds for recovery programs and projects. Local and state officials tend to have a better understanding of limitations that may hinder fulfillment of these requirements. This information should be articulated by the appointed state or local government agency to help persuade HUD to grant any relevant waivers.

As an example, Mississippi Development Authority (MDA), the appointed state agency for disaster recovery following Hurricane Katrina, made a request to remove a requirement that restricts CDBG-DR funds from being used in the reconstruction of public buildings. The hurricane destroyed most public buildings in many coastal communities. Since the state desperately needed CDBG-DR funds to help fund the redevelopment of these public facilities, MDA successfully used this information as justification for their waiver request to remove the funding restriction.

Retain Experienced Legal Personnel to Review Regulations

After a major disaster, states and local communities may be responsible for managing hundreds of millions, if not billions, of dollars in CDBG-DR funding. In such cases, the state or local agency managing these recovery funds has a fiduciary responsibility to ensure that taxpayer dollars are spent in compliance with the law. As noted above, the federal regulations concerning CDBG-DR funds are complex. For example, a recent Federal Register notice regarding CDBG-DR funding for Hurricane Sandy-impacted communities contained 16 pages of information on applicable laws and regulations.²⁵ In addition to studying such notices, a state or local government agency should also complete its own review of federal regulations associated with CDBG-DR while paying particular attention to potential problematic areas in terms of grant administration and compliance.

In an IEDC interview, one state disaster recovery official suggested that impacted states should seek the counsel of an experienced auditor or capable attorney to help interpret the complex legal issues and federal regulations associated with HUD CDBG-DR funding. When administering several millions or even billions of dollars in federal funds, seeking counsel from auditors and attorneys on applicable CDBG-DR funding regulations helps better prepare the state and its affected communities for securing necessary waivers and funding.

²⁵ Federal Register Notice. Volume 78. No. 43. March 5, 2013. Accessed at: http://portal.hud.gov/hudportal/documents/huddoc?id=CDBG-FR_Sandy_Notice.PDF

U.S. Department of Commerce's Economic Development Administration (EDA)

Overview of Disaster Recovery Assistance

The U.S. Department of Commerce's Economic Development Administration (EDA) is a federal agency that works to generate and retain employment and stimulate new commercial and industrial activity primarily in economically distressed communities. At its discretion, the U.S. Congress can appropriate supplemental funding to EDA in order to assist disaster-impacted areas in long-term economic recovery activities. EDA can also offer economic recovery assistance to disaster-impacted communities through its normal funding appropriations. In contrast to HUD, whose CDBG-DR program is designed for disaster recovery assistance, EDA uses its existing programs to fund disaster recovery projects. EDA-funded activities typically fall within one of the following three categories.

- **Strategic Planning:** The agency can offer technical assistance and financing for projects that help create or improve economic development plans after a disaster, via funding for disaster recovery plans and for disaster recovery coordinators.
- **Infrastructure Development:** EDA can provide grant funding for building new infrastructure (e.g., research facilities, business incubators, technology parks, and essential utilities) to promote economic development that attracts or retains jobs in a region.
- **Capital for Alternative Financing:** The agency's Revolving Loan Fund (RLF) program allows governments and nonprofits to establish an RLF to assist recovery through sub-market-rate loans to businesses.

Economic Adjustment Assistance

Purpose

EDA's Economic Adjustment Assistance is intended to help address the economic recovery needs of "distressed communities" — i.e. those that have incurred harmful economic impacts from natural disasters (among other reasons).

Objective

These grants are meant to improve the ability of a distressed community to become economically competitive and are intended to stimulate *private investment* in target areas.

Priorities

EAA's investment priorities are: global competitiveness, national strategic priorities, environmentally-sustainable development, collaborative regional innovation, public/ private partnerships, and economically distressed/underserved communities.

Restrictions

- Must be in areas that satisfy at least one economic distress criterion
- Investments need to be consistent with an EDA-approved CEDS or equivalent regional strategic economic development plan
- Must have required local match share funds "committed, available + unencumbered"
- Must complete projects in a "timely manner" consistent with award terms
- Recipients must award contracts according to appropriate procurement policy + ensure Davis-Bacon wage rates are paid by contractors
- Indirect costs not allowed

EDA strongly encourages potential applicants for financial assistance to contact the nearest EDA regional office to initiate a dialogue about qualifying projects and the application process.

Requirements That Cannot Be Waived

One EDA requirement that is difficult to waive is documenting a nexus between a project and a disaster. This is particularly important for a disaster supplemental appropriation, as it is one of the main reasons why an applicant would be eligible to receive funds. EDA grant managers will carefully evaluate this particular explanation in an application. This means that EDA funding applicants must provide a strong connection linking a proposed project's scope of work with a disaster. This includes showing how a project's outcomes will help address a disaster's impacts through post-disaster economic recovery, mitigation, or resiliency efforts.

The same requirements referenced in the previous HUD section — non-discrimination, fair and prevailing wages, environmental reviews, and public notices of funding availability — also apply to EDA grant funding and cannot be waived.

Allowable Waivers of EDA Disaster Assistance Requirements

- **Comprehensive Economic Development Strategy (CEDS) Requirement**
EDA can waive the CEDS requirements for Economic Adjustment projects in regions deemed to be “Special Impact Areas.”²⁶
- **Matching Share Requirements and Investment Rates**
In “compelling circumstances,” EDA may waive requirements for match sharing and investment rates for the most distressed county (or similar political unit) in a disaster impacted community/region. EDA reserves the discretion to award grants under supplemental appropriations for natural disasters at investment rates of up to 100 percent.²⁷
- **EDA Procedures In Disaster Areas**
This waiver removes non-statutory administrative/procedural conditions for EDA investment assistance awards if these conditions cannot be met by an eligible applicant on account of a disaster.²⁸

Working Effectively with EDA on Federal Requirements

The following section provides guidance to local economic recovery stakeholders, economic development organizations (EDOs) and chambers of commerce, for interacting with regional offices of the U.S. Economic Development Administration (EDA).

²⁶ If a project is located in a designated “Special Impact Area,” such designation will be specified in the grant award documents.

²⁷ Office of Management and Budget (OMB) Circular A-133.

²⁸ Defined under the Public Works and Economic Development Act (PWEDA) of 1965

Frequent Communication with Regional Office Staff

While HUD and USDA work primarily at the state-level to address disaster recovery, EDA works directly with local and regional economic recovery entities. EDA-eligible applicants include cities (or political subdivisions of a state), public or private nonprofit organizations acting in cooperation with a political subdivision of a state, higher education institutions, Native American Tribes, or nonprofit organizations involved in training or research and development activities. EDA encourages applicants to communicate directly with a designated Economic Development Representative (EDR) at the appropriate EDA regional office prior to submitting funding applications. The purpose of this communication is to learn about EDA investment opportunities and the application process, discuss or refine a proposed project's scope, and clarify issues regarding agency-specific or general federal requirements.

It is recommended that applicants review EDA's Federal Funding Opportunity (FFO) announcement prior to communicating with EDA regional staff. These federal notices are published at www.grants.gov and www.eda.gov/ffo.htm. An FFO provides additional details on criteria used to evaluate projects, outlines investment priorities, and includes specific requirements from the agency or the disaster supplemental legislation itself.

An important benefit of EDA's regional offices is that staff members will likely be more familiar with the needs of particular regions and will therefore be able to provide more detailed advice as to whether a project in a specific community may be eligible for EDA funding. EDA's regional staff can help guide a community through the application process and provide valuable feedback during an application review. It is important that communities initiate conversations directly with regional staff in order to receive guidance on acceptable requirement waivers or alternate requirements.

Meeting EDA's CEDS Requirement

In order to qualify for EDA funding, the agency requires applicants to operate in an area that has developed a Comprehensive Economic Development Strategy (CEDS) or a CEDS-equivalent document. CEDS' purpose is to create an economic roadmap that presents regional goals and is supported by both the public and private sectors. A CEDS document is an important agency requirement, which is reviewed before a

EDA Regional Offices

Atlanta

Alabama / Florida / Georgia / Kentucky /
Mississippi / North Carolina / South Carolina
/ Tennessee

Austin

Arkansas / Louisiana / New Mexico /
Oklahoma / Texas

Chicago

Illinois / Indiana / Michigan / Minnesota /
Ohio / Wisconsin

Denver

Colorado / Iowa / Kansas / Missouri /
Montana / North Dakota / Nebraska / South
Dakota / Utah / Wyoming

Philadelphia

Connecticut / Delaware / District of
Columbia / Maine / Maryland /
Massachusetts / New Hampshire / New
Jersey / New York / Pennsylvania / Rhode
Island / Vermont / Virginia / West Virginia
Puerto Rico / Virgin Islands

Seattle

Alaska / Arizona / California / Hawaii / Idaho
/ Nevada / Oregon / Washington / American
Samoa / Northern Mariana Islands / Guam
Federated States of Micronesia / Rep. of
Marshall Islands / Rep. of Palau

project is considered for funding. This allows EDA staff to review whether a project aligns with investment priorities outlined in a CEDS. In addition to a CEDS, applicants are encouraged to obtain letters of support for disaster recovery projects to show regional support for a project from community and regional stakeholders.

While a CEDS is required for EDA's normal funding appropriations, this requirement can be waived in regions deemed to be "Special Impact Areas." Communities lacking an established Economic Development District and CEDS should ask the appropriate EDA regional office if a CEDS requirement has been waived or if a waiver can be requested. Alternatively, a community can usually substitute a different type of economic development strategy for a local area in order to fulfill a CEDS requirement.

Obtaining a Lower Local Share Requirement

For most activities, EDA requires a "local share" or "matching share" of non-EDA funds in the form of either cash or in-kind contributions. According to EDA regulations, this match share should be "approved by EDA and provided by recipients or third parties as a condition of investment."²⁹ In non-disaster situations, EDA requires a 50 percent local match, unless the applicant jurisdiction can meet specific criteria that lowers the local match below 50 percent. In the event of a presidentially-declared disaster, an alternative requirement with a local match lower than 50 percent can be obtained if appropriate justification can be provided. For disaster supplemental appropriations, EDA may, at its discretion, increase a grant award at an investment rate of up to 100 percent. EDA will also consider a different match rate for entities that have exhausted their effective taxing and borrowing capacity.

In August 2012, IEDC and the National Association of Development Organizations (NADO) convened a group of economic recovery practitioners and federal government officials from across the country to discuss various disaster recovery topics, including best practices for meeting requirements for federally funded projects. Workshop practitioners shared that a community is more likely to obtain a waiver of a local match share requirement if the proposed EDA funding comes from a Congressionally approved disaster supplemental appropriation. It was also noted that obtaining alternative requirements, such as an 80/20 percent federal-local match share funding ratio, is typically easier to achieve than obtaining a 100 percent investment rate from EDA.

²⁹ 13 CFR Ch. III (1-1-11 Edition), Chapter 3: Economic Development Administration, Department of Commerce, http://www.eda.gov/pdf/EDAs_regs-13_CFR_Chapter_III.pdf, 06/13/2013

U.S. Small Business Administration

Overview of SBA Disaster Loans

The objective of SBA's Office of Disaster Assistance (ODA) is to provide post-disaster financial help — via long-term, low-interest loans — to renters, homeowners, and businesses. SBA disaster loans are the main type of federal recovery assistance for rebuilding and repairing non-farm business losses associated with a disaster. Disaster loans are the only type of assistance SBA offers for which businesses of all sizes are eligible.

Disaster-impacted businesses are eligible for SBA financial assistance in the form of business loans to repair or replace disaster-damaged business property, including machinery, equipment, supplies, inventories, and real estate. Other eligible groups include private nonprofits (e.g., churches, charities, and private universities). SBA's Economic Injury Disaster Loans are working capital loans provided to disaster-impacted businesses to help with regular and necessary financial obligations that these businesses may be unable to meet because of disaster impacts. Economic Injury Disaster Loans are meant to help businesses through a disaster recovery period and are available only to those businesses and owners who are not able to cover the costs of their own recovery via non-governmental financial resources.³⁰

SBA disaster loans are intended to help repair or restore properties to their pre-disaster form and cannot be used for expanding or upgrading businesses unless these actions are required to meet local building code standards.

SBA requires that a business submit a completed loan application and a signed and dated IRS form 8821. The IRS form 8821 authorizes permission for the U.S. Internal Revenue Service (IRS) to provide information from tax returns to SBA. SBA also requires *current* financial information — in the form of personal financial statements, profit/loss statements, balance sheets, and lists of debts — to process applications. SBA typically tries to make loan decisions within eighteen days.

SBA has collateral requirements for the physical-loss loans of greater than \$14,000 and all economic injury disaster loans of greater than \$5,000. SBA will often require real estate collateral (either first or second mortgage) over any form of other collateral such as machinery and equipment.

Requirements That Cannot Be Waived

The core federal requirements related to non-discrimination, fair and prevailing wages, environmental reviews, and public notices of funding availability apply to SBA loans and cannot be waived.

³⁰ As determined by SBA.

Allowable Waivers of SBA Disaster Loan Requirements

- **Timeline Requirement for SBA Physical Disaster/Economic Injury Loan Increase**

Under extraordinary and unforeseeable circumstances, SBA's Associate Administrator for Disaster Assistance (AA/DA) may waive the requirement that a borrower must request a loan increase no later than two years after SBA approval of a physical disaster/economic injury loan.

- **Maximum Amount Requirement for Physical Disaster and Economic Injury Business Loans**

If an SBA borrower's business is a "major source of employment," the SBA can opt to waive the \$1,500,000 loan limitation on disaster business loans (including both physical disaster and economic-injury loans). SBA defines "major source of employment" as a business with one or more locations in disaster area that (a) employed at least 10 percent of the entire workforce in a commuting area of geographically identifiable community (no larger than a county), provided that the commuting area does not extend more than 50 miles from such a community, or (b) employed 5 percent of the work force in an industry within a disaster area (If the business is in a non-manufacturing industry, it must have had at least 50 employees in the disaster area. If the business is in a manufacturing industry, it must have employed more than 150 employees in the disaster area), or (c) employed 250 or more employees in a disaster area. SBA considers waiving the \$1,500,000 loan limit only if (a) a borrower's damaged location(s) is/are out of business or in imminent danger of going out of business as result of a disaster and a loan of greater than \$1,500,000 is necessary to reopen or keep open the damaged locations to avoid large-scale unemployment in the disaster area, and (b) a borrower has used all reasonably available funds from his/her business, its affiliates and principal owners (defined as having an ownership interest of 20 percent or more) and all available credit elsewhere to alleviate physical damage and economic injury.

- **Waiver of Federal Debt Collection Requirement**

SBA's Associate Administrator for Disaster Assistance (or a designee) may waive the requirement that a debtor owning property subject to a judgment lien for debt owed to the federal government cannot apply or receive SBA physical and economic injury disaster loans.³¹

³¹ A judgment lien is a court ruling giving a creditor the right to take possession of a debtor's real property if the debtor fails to fulfill his or her contractual obligations. A judgment lien may be made against an individual or business and allows the creditor to access the debtor's business, personal property and real estate, among other assets, to pay the judgment.

Waiver-Related Recommendations for SBA Disaster Loans

SBA Disaster Loans are granted to individual businesses or business owners. They are not available to local governments, states, or similar entities. Whereas HUD CDBG-DR waiver requests are submitted as part of an action plan prior to funds being disbursed, waivers requests related to SBA Disaster Loan requirements are made *after* a loan has been granted. While, local EDOs do not have a direct role in making waiver requests for SBA Disaster Loans, they may still play a role in communicating to local businesses — of all sizes — about the availability of the agency's disaster loans after a disaster. Local EDOs can also play an educational role by communicating available waivers to local businesses that are considering applying for a disaster loan or local businesses that may already have a disaster loan, but are not aware that some requirements may be waived. This is particularly true for local businesses that are major sources of employment in a community as SBA can waive the upward limit of a disaster loan if a local business qualifies for this distinction.

U.S. Department of Labor's Employment and Training Administration (ETA)

Overview of National Emergency Grants (NEGs) for Disaster

National Emergency Grants (NEGs) from the Employment Training Administration (ETA) provide an important source of emergency funding to temporarily expand capacity for training and employment programs at the state and local levels. NEGs are often used to reemploy laid-off workers by offering training to increase occupational skills.

The NEG program funds one of four eligible layoff events:

1. A single company layoff of 50 or more workers;
2. Multiple company layoffs in which 50 or more workers from each company are dislocated;
3. Industry-wide layoffs; or
4. Layoffs affecting an entire community (Community Impact) with multiple small dislocations (50 workers or less from each company).

Local governments and economic development organizations have used NEGs to fund temporary staffing solutions for various economic recovery activities. During the aftermath of Hurricane Katrina, JEDCO – the economic development organization for Jefferson Parish, Louisiana – used a National Emergency Grant to fund temporary staff at two of its business recovery centers.³²

Disaster NEG

A Disaster NEG is a special NEG that provides funding to create temporary employment to assist with cleanup activities in the event of a disaster. A state can apply for a Disaster NEG only in the event that FEMA has declared a disaster area eligible for public assistance. Those eligible for a Disaster NEG differ from the regular NEG program. Disaster NEGs are available to permanently or temporarily dislocated individuals resulting from a disaster. Disaster NEGs restrict the period of funding for clean-up activities to six months from the time the grant is awarded.

Unlike standard NEGs, states are always considered to be both grantee and program operator for Disaster NEGs. Local communities are considered to be contractors and service providers. For cases in which a disaster impacts many local communities, a state's operational role is vital to quickly and efficiently move funds between areas. FEMA can authorize public assistance declarations to cover other additional areas.

A Disaster NEG grantee can receive additional funding when needed as long as there is appropriate justification for additional funds. Grant recipients are obligated to present a complete a project operating plan to an ETA regional office for review within 90 days of receiving a grant or within 60 days of the application approval.

³² Mulcaire, Carrie. International Economic Development Council (IEDC). Superstorm Sandy Highlights Six Priorities for Short-term Economic Recovery After a Disaster. Accessed at: <http://restoreyoureconomy.org/superstorm-sandy-highlights-six-priorities-for-short-term-economic-recovery-after-a-disaster/>.

Allowable Waivers **for ETA's Disaster NEGs** Program

- o **Six Month Limit on Employment for Disaster NEG Participants**

The U.S. Secretary of Labor may waive the six month time limit for employment related to Disaster National Emergency Grant participants.

State Action Is Necessary to Extend Six Month Limitation

At the request of the state, ETA can waive the six-month employment limitation for recipients of state Disaster NEGs. States should formally submit this request in writing to the ETA regional administrator for approval by the U.S. Secretary of Labor. This request needs to include appropriate justification for why this requirement should be waived. Examples of these types of requests and justifications can be found on the websites of the Kentucky Office of Employment and Training (<http://oet.ky.gov/waiverneg11182011.pdf>) and the Ohio Department of Job and Family Services (<http://jfs.ohio.gov/owd/WorkforceProf/Docs/NEG-Disaster-Waiver-Request-08102012.pdf>).

U.S. Department of Agriculture Rural Development

Overview of USDA Rural Development's Disaster Assistance

The U.S. Department of Agriculture Rural Development administers three “Mission Area” agencies — the Rural Housing Service (RHS), the Rural Utilities Service (RUS), and the Rural Business-Cooperative Service (RBS) — that can assist rural residents, communities and utility systems with an array of grant, loan, and loan guarantee programs. USDA Rural Development also offers federal funding resources for post-disaster economic recovery purposes. The most commonly used non-housing USDA Rural Development programs for this purpose fall within three categories.

Revolving Loan Funds and Technical Assistance

- Rural Business Enterprise Grants
- Rural Business Opportunity Grants
- Intermediary Relending Program
- Rural Economic Development Loans and Grants
- Community Facilities Loans and Grants
- Water and Waste Direct Loans

Commercial Lending Programs

- Business and Industry Guaranteed Loan Program

Renewable Energy/Energy Efficiency Programs

- Biomass Crop Assistance Program
- Biorefinery Assistance Program
- Bioenergy Program for Advanced Biofuels
- Rural Energy for America Program (REAP)
- Biomass Research and Development Initiative

Requirements That Can't Be Waived

As with other federal agencies, requirements related to non-discrimination, fair and prevailing wages, environmental reviews, and public notices of funding availability also apply to USDA Rural Development disaster assistance and cannot be waived.

Allowable Waivers of USDA Rural Development Requirements³³

Types of Waivers

The most common waivers authorized by the U.S. Secretary of Agriculture for USDA Rural Development disaster assistance-related programs fall into three main categories.

- Waivers of Limitations on Population Requirements
- Waivers of Limitations on Income Requirements
- Waivers of Limitations on Cost-Sharing Requirements

Specific Waivers

- **Rural Area Definition Requirement (Any Program)**

The U.S. Secretary of Agriculture can waive the application of the rural area definition or similar limitations under any program funded through an appropriations act and administered by the Rural Development Mission Area. For example, the secretary may increase the population limitation for rural areas to 50,000 (and to 75,000 for a limited number of communities).

- **Limitation of Grant Amounts**

This waiver allows the U.S. Secretary of Agriculture to make grants or increase grant amounts without regard to any grant amount limitation for programs under the Renewable Energy Systems and Energy Efficiency Improvements Program, Value-Added Producer Grants Program, Rural Cooperative Development Grant Program, and the Community Facilities Grant Program.

- **Matching Funds Requirement for Community Facilities Program**

This waiver allows USDA Rural Development to waive graduated funding or matching fund requirements for Community Facilities Grants in disaster areas.

- **Requirements for Renewable Energy Systems/Energy Efficiency Improvements**

This waiver allows USDA Rural Development to create Renewable Energy Systems/Energy Efficiency Improvements grants and loans in disaster areas with (a) cost share requirements not to exceed 50 percent, (b) no limitation of on grant amounts, and (c) inclusion of businesses processing un-segregated paper and solid waste.

- **Requirements for Value-Added Producer Grants**

This waiver allows USDA Rural Development to create Value-Added Producer Grants in disaster areas without matching fund requirements. The waiver decreases the matching fund requirements for grantees in disaster areas if proposed projects are still feasible with a decreased funding match requirement.

³³ The list of USDA Rural Development waivers referenced here does not include any waivers associated with USDA Rural Development housing programs.

Conclusion

With no shortage of disasters on the horizon, states and communities should develop a deep knowledge of the various federal funding requirements that need to be met when using federal funds for post-disaster recovery efforts. This begins with understanding the federal approach to disaster recovery, the core requirements that govern the use of federal funds, and waivers of any requirements that may be available to impacted communities. Understanding the experiences of other disaster-impacted communities (e.g., knowing the challenges these communities faced when using federal post-disaster funds, and knowing which federal requirements these communities were able to waive) greatly helps disaster-stricken communities understand the “dos and don'ts” of federal post-disaster recovery funding. There are several steps that impacted communities need to take in order to achieve all of this.

- **Understand the federal approach to post-disaster economic recovery**

Communities need to understand how the federal government approaches post-disaster economic recovery. This requires that communities and states become knowledgeable about:

- The basic process by which presidential disaster declarations are made;
- How this initial declaration activates the federal government's disaster and economic recovery resources through the coordinated response of the National Disaster Recovery Framework; and,
- Which federal agencies and funding programs are available to communities for economic recovery efforts.

- **Know what federal requirements and waivers are**

After developing a basic knowledge base about the core federal agencies and programs involved in post-disaster economic recovery, communities should build upon this by developing a more complete understanding of the requirements that restrict uses of each federal agency's funding. Some requirements are universal across all federal agencies (and tend to be far more difficult to waive), while most requirements are agency-specific and somehow tie into each agency's overall purpose and mission. After developing a firm understanding of these requirements, the next step for communities is to determine which of these requirements can be waived and the process for doing so.

- **Review challenges experienced by other communities' that have used federal funding for economic recovery efforts**

The best way to determine which federal agency requirements can be waived, is to research and review the economic recovery experiences of other disaster-impacted communities that been through the process. Knowing which federal agency's funding requirements posed the most significant roadblocks to other communities' economic recovery efforts helps disaster-impacted communities better target their own resources and energy to more efficient and productive uses. Communities and states should deploy experienced staff to:

- Review federal requirements that restrict federal recovery funding;
 - Understand the objectives of each federal agency's funding programs (i.e., know what each agency tries to accomplish with funds it disburses);
 - Research prior waiver requests from other communities or states; and,
 - Gather information on how federal program regulations might impact local communities, given local communities' distinct disaster needs.
- **Make a compelling case to justify waivers and design a win-win for all parties**

Knowing the waivers that other impacted communities were able to successfully obtain enhances a community's own ability to justify future waiver requests and avoid exerting significant amounts of energy trying to push for waivers that are highly unlikely to be granted. Researching and reviewing those waivers that have ample precedent of being waived in previous post-disaster situations helps communities understand what factors went into a federal agency's decision to grant certain waivers. Communities also need to develop creative and community-specific justifications when requesting waivers.

LMI requirements for HUD CDBG funds cannot be completely waived. Yet, one hurricane-impacted community that sought to maximize the flexibility of HUD CDBG-DR funds was able to justify a waiver to reduce the threshold of CDBG-DR's low- to moderate-income requirement (from 70 percent to 50 percent) by developing a win-win proposal for both the community and HUD. CDBG-DR funds were used to develop a local university-based facility that serves as both a technology commercialization center for advancing regional entrepreneurship and as a workforce and skills training program designed to train low- to moderate-income individuals impacted by the hurricane. One-half of the facility was designed to meet a unique community need (i.e., entrepreneurship development) and the other half was designed to meet the CDBG-DR requirement that 50 percent of funds be used to benefit people of low- to moderate-income.

- **Communicate frequently and follow through with agency officials**

The need for early and frequent communication between all levels of government — to ensure the recovery unique needs of impacted communities are being met — cannot be understated. Many economic recovery efforts fail from lack of communication and coordination with recovery officials, agencies, and decision makers. Communities must understand that many economic recovery funding decisions are frequently made by state-level officials that many federal agencies assume will accurately represent the interests of all of the disaster-impacted communities within a state. This point underscores the importance and need for communities to be in constant communication with those state-level agencies that will make decisions that substantially impact an individual community's economic recovery. Moreover, only through constant and informed communication can local and state officials provide appropriate justification as to why federal requirements need to be altered or waived.

- o **Know the details of the programs, processes and commonly requested waivers of the core federal agencies that offer recovery funding**

Information is ammunition in the battle to ensure that a community is able to fully recover from disaster, and understanding the nuances of how each agency handles waiver requests, what these agencies' look for, and which waivers are the most common and likely to obtain, is extremely important to a community's ability to access critical federal economic recovery funds.

Yet, even if all these steps are followed, there is no assurance that the requirements of federal agencies and their recovery funding programs will remain static for future recovery efforts. Federal agencies are constantly working to improve delivery of recovery funds and assistance following a disaster, and future adjustments to some requirements should be expected. This report should be seen as both a current snapshot and a living document, and readers should note that as changes to federal funding programs and policies evolve, IEDC will look to incorporate new information to inform disaster-impacted communities and states on how to best navigate the post-disaster federal funding and waiver request process. IEDC encourages readers of this report to periodically check www.iedconline.org/web-pages/resources-publications/disaster-preparedness-and-recovery/ for updates or amendments to this report and for related resources on navigating post-disaster economic recovery funding.