**Appendix E: Waiver Requests**

**Introduction**

This attachment provides instructions for seeking waivers of the program requirements applicable to funds under Public Law 113-2 and described in the Notice of Funding Availability for HUD’s Community Development Block Grant National Disaster Resilience (CDBG-NDR) Allocation and Attachment A to that Notice.

Waiver requests necessary to carry out an activity described in application must be submitted with that application (Phase 1 or Phase 2). When submitting a Phase 1 application, applicants should submit requests for any waivers anticipated to be necessary at the time of submission for any activity referenced in the application. However, HUD understands that many disaster recovery needs can be addressed through more than one CDBG eligible activity. Changes to a project’s funding structure or design may require a change in the proposed CDBG-eligible activity or a modification to a waiver or alternative requirement previously requested. Therefore, applicants may submit with Phase 2 applications (or Phase I Action Plans, when invited by HUD) both new waiver requests and requests to modify previous waiver requests.

HUD may, during review of an application or during the post-review negotiation process, determine that the Applicant would require an additional waiver for the proposed project, or find that additional information is needed to make a determination regarding a submitted waiver request. In these cases, HUD may contact any Applicant at any time prior to award announcement to explain the issue and request that the Applicant submit a waiver request for consideration or additional information to support a previous request.

**Waiver and Alternative Requirement Categories**

Public Law 113-2 authorizes the Secretary of HUD to “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 (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment)” if the Secretary finds that 1) good cause exists; and 2) the waiver is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).”

Generally, the good cause/not inconsistent standard described above applies to waivers regarding activity eligibility, most waivers related to national objective compliance, and waivers of administrative requirements. Public Law 113-2 imposes additional requirements for waivers that would reduce overall benefit to low- and moderate-income persons to less than 50 percent, which can be made only if the Secretary finds “compelling need.” Additionally, Public Law 113-2 permits OMB to grant waivers of the two-year expenditure requirement. OMB has granted HUD the authority to grant waivers under limited circumstances.

 The Secretary cannot grant waivers of requirements imposed by the Statute appropriating the CDBG disaster recovery funds. Waivers approved under the authority of Public Law 113-2 will be published in the Federal Register five days before taking effect. Grantees are cautioned that all waiver requests may not be approved, and that HUD may impose additional alternative requirements when granting a waiver. Additional instructions for submitting waivers under four major waiver categories are included below. Waivers requests shall be submitted to HUD at the following e-mail address: ResilientRecovery@hud.gov, with Waiver Request on the subject line of the email.

**Eligibility and Administrative Waivers**

All applicants must demonstrate that CDBG-NDR funds will be used for a CDBG-eligible activity (for States, the activities described at 42 U.S.C. § 5305(a); for local governments, the activities described in 24 CFR part 570, subpart C) or an activity eligible under a waiver and alternative requirement. For good cause, when not inconsistent with title I of the HCD Act, the Secretary may grant waivers to add a new eligible activity or to modify existing eligible activities. Waivers to add new eligible activities are rare, generally because the list of existing eligible activities is extensive and able to accommodate nearly all disaster-related needs. Examples of commonly granted waiver and alternative requirements include adding new construction of housing as an eligible activity, modifying the prohibition on income payments to permit project-based rental assistance, tenant-based rental assistance, or interim mortgage assistance for a limited period of time to meet affordable housing needs, and eliminating the public benefit requirement for special economic development activities.

Grantees may also request a waiver of other statutes or regulations that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). For example, a grantee may request a modification of the definition of subrecipient, or a limited modification of the anti-pirating requirements that allows the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state.

 To request a waiver of eligibility or administrative requirements, applicants must submit a written request that includes: the requirement to be waived and if applicable, alternative requirement to be added (meaning how the current requirement should be altered), a detailed statement of how the request is necessary to address unmet recovery needs, the demographics of the population to be assisted, and a statement of alternative approaches considered to eliminate the need for a waiver.

**Expenditure Deadline Waivers**

Section 904(c) under Title IX of Public Law 113-2 requires that all funds be expended within two years of the date HUD obligates funds to a grantee (funds are obligated to a grantee upon HUD’s signing of the grantee’s CDBG-DR grant agreement). This requirement, which must satisfy criteria established by OMB, is described more fully in Attachment A.

If an Applicant submits a schedule with its application that indicates time needed for completion of the proposal exceeds 24 months, the Applicant must also submit a waiver request for a time extension with its application. The extension request must justify the need for the extension, detail the compelling legal, policy, or operational challenges necessitating the waiver, and identify the date when the funds covered by the waiver will be expended. The Applicant must justify how, under the proposed schedule, the project will proceed in a timely manner. For example, large and complex infrastructure projects are likely to require more than 24 months to complete. An extension request for such a project should justify the new timeline for any proposed extension by comparing it to completion timelines for other, similarly sized projects.

**National Objective Waivers**

All CDBG-NDR activities are required to meet a national objective. HUD will not consider waiver requests that seek to waive a national objective entirely. Although exceedingly rare, HUD may consider a waiver request to impose an alternative requirement modifying an existing national objective requirement.

For example, for a rental rehabilitation project, HUD has waived the low- and moderate-income national objective criteria for housing activities in 570.208(a)(3), which requires at least 51 percent of units in a structure to be occupied by low- and moderate-income households when there are more than two units in a structure. In such cases, HUD imposed an alternative requirement that the percentage of units occupied by low- and moderate-income households be equal to the percentage of CDBG-funds contributing to the rehabilitation, but in no case less than 20 percent. Another previously granted waiver imposed an alternative requirement for the low- and moderate-income area benefit national objective for individual public infrastructure projects, permitting those projects to meet the area benefit national objective when repairs to disaster-damaged infrastructure were necessary to meet the needs of a significant portion of a low- and moderate-income community within the service area, even though less than 51 percent of the service area as a whole were low- and moderate-income residents.

To request a waiver of eligibility or administrative requirements, applicants must submit a written request that includes: the requirement to be waived and if applicable, alternative requirement to be added, a detailed statement of how the existing requirement is necessary to address unmet recovery needs, the demographics of population to be assisted, and a statement of alternatives approaches considered to eliminate the need for a waiver.

**Overall Benefit Waivers**

The primary objective of the HCD Act is the ‘‘development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.’’ 42 U.S.C. 5301(c). The HCD Act requires that not less than 70 percent of a grantee’s CDBG funds be used to support activities benefitting low- and moderate-income persons. However, the Secretary has waived this requirement and imposed an alternative overall benefit requirement applicable to CDBG-NDR grants. For each CDBG-NDR grant, at least 50 percent of the funds from each grant must be used to assist activities that benefit low- and moderate-income persons.

In rare circumstances, even the 50 percent target could be difficult or perhaps impossible for an applicant affected by a disaster in 2011, 2012, or 2013. This may be true for isolated disasters when the declaration is made for the entire county, but the most impacted and distressed areas of the declared county have relatively small populations of low- and moderate-income individuals.

When the 50 % overall benefit alternative requirement could prevent applicants from providing assistance to damaged areas of need, applicants may seek to reduce the overall benefit requirement below 50 percent of the total grant. The 50 percent overall benefit requirement will not be reduced unless the Secretary specifically finds that there is a compelling need to further reduce the threshold.

An overall benefit waiver request may be made by submitting a detailed justification that, at a minimum: (a) identifies how the disaster-related needs of the low and moderate-income population in the declared disaster area were sufficiently addressed by other means, or that the needs of non-low- and moderate-income persons are disproportionately greater by a significant margin, and that the jurisdiction lacks other resources to serve the needs of non-low- and moderate-income individuals; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee’s long-term disaster recovery plan; and (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 50 percent requirement.