

Guidelines For
Financial Assistance

Hurricane Irene – Tropical
Storm Lee
Business Flood Recovery
Grant Program



State of New York
Andrew M. Cuomo, Governor

Empire State Development

Guidelines for the
Hurricane Irene –Tropical Storm Lee Business Flood Recovery Grant Program
(Adopted January 20, 2012)

Program

The Hurricane Irene –Tropical Storm Lee Business Flood Recovery Grant Program (the "Program") is a program administered by the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") to provide assistance to eligible small business, not-for-profit organizations, farms or owners of multiple dwellings, that sustained direct physical flood-related damage as a result of Hurricane Irene or Tropical Storm Lee.

Program Assistance

New York State has allocated \$21 million to be used to provide grants for storm-related repairs and restoration of structures, and for other storm-related costs, which either have not or will not be compensated by any other federal, state or local recovery program or any third-party payors. Eligible Losses (as defined below) are actual and direct physical losses to structures or items used in an Eligible Entity's (as defined below) operation. The losses must have occurred on or after August 28, 2011, with respect to damages caused by Hurricane Irene or on or after September 7, 2011, with respect to damages caused by Tropical Storm Lee, hereinafter referred to as the "Recovery Period." ESD shall give preference to applicants that demonstrate the greatest need, based on available flood damage data provided by applicable federal agencies. Program Assistance will be calculated at fifty percent (50%) of the Net Eligible Loss, not to exceed \$20,000. The "Net Eligible Loss" shall be determined by reducing the Eligible Loss by the amount of any Reimbursed Loss.

Eligible Area

To be eligible for assistance under the Program, at the time it sustained loss related to Hurricane Irene or Tropical Storm Lee, an Eligible Entity must have been located within New York State.

Eligible Entities

An "Eligible Entity" shall mean an Eligible Business, Eligible Not-for-Profit Organization, Eligible Farm or an Eligible Multiple Dwelling, as described below.

- Eligible Businesses and Eligible Not-For-Profit Organizations: A business or a not-for-profit organization shall be eligible for Program funding if it meets the following criteria:
 - (i) it is a for profit business entity or a not-for-profit organization established under Sections 501(c), 501(e), 501(f), 501(k), 501(n) or 521(a) of the Federal Tax Code that is not involved in religious or political activities;
 - (ii) its operation is located within New York State, as of the Recovery Period;
 - (iii) it is resident in New York State, independently owned and operated, not dominant in its field and employs one hundred or less persons; and
 - (iv) it is not a casino or other gambling establishment or an adult entertainment facility.

A businesses operated from a residence may be an Eligible Business; however only damage sustained in the portion of the residence occupied and used exclusively for business purposes will be treated as Eligible Losses.

Such an eligible business and such an eligible not-for-profit organization is referred to in these guidelines, respectively as an "Eligible Business" or "Eligible Not-for-Profit Organization."

- Eligible Farm

A farm shall be eligible for Program Assistance if it is or is part of, the land and on-farm buildings, equipment, manure processing and handling facilities, and practices, which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation," a timber operation, "compost, mulch or other biomass crops" and "commercial equine operation," as such terms are defined in Section 301(11) of the New York Agriculture and Markets Law. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other, and it meets the following criteria:

- (i) it is used for raising, cultivating, propagating, fattening, grazing, or any other farming or livestock operations (collectively "Farming Operations") and the land, improvements, structures, and buildings (excluding buildings used for residential purposes that are not Eligible Multiple Dwellings) are used or occupied to carry out such operations, including land set aside or retired under a federal supply management or soil conservation program;
- (ii) it is located within New York State; and
- (iii) it is a property upon or within which Farming Operations were conducted, as of the Recovery Period.

Such an eligible farm is referred to in these guidelines as an "Eligible Farm."

- Eligible Multiple Dwelling

For purposes of this Program a "Multiple Dwelling" shall mean a dwelling that is occupied as a permanent residence and which is either, sold, rented, leased, let, or hired out, for occupancy as the residence or home of three or more families living independently of each other. A Multiple Dwelling shall not include a hospital, convent, monastery, asylum or public institution, or a fireproof building used wholly for commercial purposes except for not more than one janitor's apartment and not more than one penthouse occupied by not more than two families.

A Multiple Dwelling shall be eligible for funding under the Program if:

- (i) it is located within New York State; and
- (ii) it operated as a Multiple Dwelling as of the Recovery Period.

Such a Multiple Dwelling is referred to in these guidelines as an "Eligible Multiple Dwelling."

ESD may require owners of Multiple Dwellings to certify that no families are to be displaced by the repair or restoration of an Eligible Loss to a Multiple Dwelling or that there is a feasible method for the relocation of families and individuals displaced from the Multiple Dwelling into decent, safe and sanitary dwellings, which are or will be provided in the same area or in other areas not generally less desirable in regard to public utilities and public commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places or employment.

Ineligible Entities

- Casinos or other gambling establishments, or adult entertainment facilities; and
- Organizations involved in religious or political activities.

Eligible Loss

An Eligible Loss shall mean a loss suffered on or after August 28, 2011, with respect to direct physical flood-related damage resulting from Hurricane Irene or on or after September 7, 2011, with respect to direct physical flood-related damage resulting from Tropical Storm Lee, including but not limited to, repair or replacement of damaged or destroyed real property and other tangible assets of the above listed Eligible Entities, including equipment, furniture, fixtures, supplies, inventory, chattel property and products of and materials for Farm Operations, including, feed, and orchard and vineyard root stock, but not the crops grown thereon. Losses must be for property and items used or created in the normal and customary course of operations of the Eligible Entity. Financial and operating losses and relocation expenses are not eligible for reimbursement through this Program. Similarly, payment of employee benefit and tax arrearages

and losses related to any residential purpose, other than the repair or restoration of an Eligible Multiple Dwelling building shall not constitute items of Eligible Loss under the Program.

Reimbursed Loss

Reimbursed Loss shall mean an Eligible Loss that has been reimbursed or covered by grants or other assistance received from the local, state or federal governments, third-party private assistance, or insurance proceeds received by the Eligible Entity, or for its benefit, as a result of such Eligible Loss. A loan that an Eligible Entity obtained and used to pay the cost of replacement or repair of an Eligible Loss is not considered a Reimbursed Loss.

Application

An Eligible Entity must file a completed application for Program Assistance. A completed application includes:

- (i) an original completed and signed application form;
- (ii) a photocopy of the lease, deed, or permit for the premises as of the Recovery Period. NOTE: this document must contain the same address of the building or premises as stated in Section A of the application;
- (iii) photocopies of both sides of cancelled checks for rent or mortgage payment or a photocopy of a utility bill for the premises located within New York State, which shows service provided at the premises on or after the Recovery Period for which the Eligible Entity seeks Program Assistance;
- (iv) An original voided check for the Eligible Entity's bank account imprinted with the Entity's name and address. NOTE: This is only required from Eligible Entities choosing to have funds deposited electronically into this account;
- (v) an original completed Internal Revenue Service (IRS) Form W-9 (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>);
- (vi) an original completed and signed IRS Form 8821 (http://www.irs.gov/pub/irs-access/f8821_accessible.pdf), authorizing ESD to verify information on the Eligible Entity's application with federal tax returns filed with the IRS. Complete only Sections 1 and 7 of Form 8821;
- (vii) completed Certification of Eligible Entity in Section E of Program Application;
- (viii) documentation of Eligible Loss for which the Eligible Entity did not receive reimbursement from any other grant or assistance from local, state, or federal government, third party, private assistance or insurance proceeds, including, but not limited to, copies of contractor or manufacturer's quotes;
- (ix) documentation of compensation received from any other grant or other assistance from local, state, or federal governments, third party private assistance, or insurance;
- (x) documentation of proof of payment from those Eligible Entities that have completed the repairs and/or replaced damaged assets related to Hurricane Irene or Tropical Storm Lee, including but not limited to, copies of invoices, cancelled checks, or credit card receipts.

ESD may require additional or alternative documentation as ESD may deem necessary.

The Eligible Entity must include documentation of the actual Eligible Loss and all Reimbursed Loss. After approval of the application, ESD may disburse to the Eligible Entity the Program Assistance in an amount equivalent to fifty percent (50%) of the Net Eligible Loss, with the total amount not to exceed \$20,000. ESD will coordinate with the Small Business Development Centers or other governmental agencies providing flood recovery assistance to conduct site visits to assess and verify Eligible Losses and to meet with Eligible Entities and verify application information, as necessary.

Application Submissions

Applications for Program Assistance may be completed on line; however, an original signed application must be printed and mailed to:

Empire State Development
Attn: Hurricane Irene-Tropical Storm Lee Business Flood Recovery Program
30 South Pearl Street
Albany, NY 12245

All applications must be postmarked by March 16, 2012. Applications postmarked after such date may be rejected by ESD. Based on interest in the Program and the availability of Program funds, the deadline for submission of applications may be extended by ESD at its discretion.

Application Review

ESD shall give preference to applicants that demonstrate the greatest need, based on available flood damage data provided by applicable federal agencies. All payments will be made by electronic transfer or check to the Eligible Entity named in the application or to the U.S. Small Business Administration (SBA) to pay down on fully disbursed SBA loans. If Eligible Entities are deemed to be ineligible for Program Assistance ESD will endeavor to notify them promptly.

In accordance with IRS regulations all Program Assistance disbursed to Eligible Entities will be reported by ESD to the IRS and ESD shall mail a Form 1099 to the Program Assistance recipient, at the address provided in the application.

Methods of Disbursement

1. One payment of Program Assistance
Eligible Entities that sustained flood-related damage and have already incurred the expense of repair or replacement may be reimbursed for fifty percent (50%) of the Net Eligible Loss up to a total of \$20,000. Program Assistance may be disbursed in one payment.
2. Two equal payments of fifty percent (50%) each to total the eligible Program Assistance
Eligible Entities that sustained flood-related damages and have not completed the repairs to or replaced damaged assets may receive fifty percent (50%) of the Program Assistance up to \$10,000 to assist the Eligible Entity to complete the necessary repairs and/or replacements.

After the Eligible Entity completes the repairs and/or replacements and provides proof of payment, the Eligible Entity may receive the remaining balance of Program Assistance. In the event ESD advances payment of Program Assistance and the Eligible Entity does not complete the repairs and/or replacement of damaged assets, the Eligible Entity will not receive the balance of Program Assistance and will be required to reimburse ESD the full amount of the advanced payment of Program Assistance received.

3. Pay down on SBA loan or SBA loan reduction

Eligible Entities that obtained a loan through the SBA to pay the cost of replacement or repair of flood-related damages are eligible for assistance. In such cases, per SBA loan requirements, if the Eligible Entity has drawn down the full amount of the SBA loan, the Program Assistance will be paid directly to SBA to pay down any part of the SBA loan used to pay for Eligible Losses. If the Eligible Entity has not drawn down the full amount of the SBA loan, the Program Assistance will be disbursed to the Eligible Entity and ESD will notify SBA of the grant amount received through this Program. ESD may adjust the Program Assistance based upon information it receives from SBA regarding the remaining balance of the SBA loan that has not been drawn down.

Appeal Process

If an entity submits an application for Program Assistance and believes that its application was unfairly denied, it may appeal such decision within twenty (20) business days of receipt of notification that its application has been denied. Such appeal must be made to ESD in writing and include all information the Eligible Entity would like considered. A three member appeal committee, consisting of the Senior Vice President for Community Economic Development, the General Counsel or Deputy General Counsel and the Chief Financial Officer of ESD, or their respective designees, will consider all appeals. All decisions by the appeal committee shall be final. The appeal committee will be the sole arbiter in interpreting the intent and implementation of the Program and these Guidelines.

Program Assistance Recapture

ESD may require the Eligible Entity to repay any Program Assistance received under this program in the following events:

- (i) if its application, including any information provided therewith or thereafter, contains any material misrepresentations or is incomplete;
- (ii) if the Program Assistance was awarded or disbursed in error and the Eligible Entity is not entitled to assistance under these Guidelines;
- (iii) if the Eligible Entity received an advanced payment of Program Assistance and did not complete the repairs and/or replacement of damaged assets; or
- (iv) if supporting documentation for actual Eligible Loss incurred and Reimbursed Loss is not true and complete.

In the event the Eligible Entity receives insurance payments and/or additional grants or assistance for an item of Eligible Loss that has been reimbursed with Program Assistance, the

Eligible Entity shall immediately repay to ESD the Program Assistance proceeds corresponding to such item.

In the event of any fraudulent misrepresentations by the Eligible Entity, in addition to the recapture of Program Assistance, ESD may pursue other legal remedies and refer the matter to the appropriate governmental authorities for investigation and prosecution.

Audit and Control

ESD may conduct site visits and audit applications on a random or specified basis for a period extending to six years after the final disbursement of the Program Assistance to the Eligible Entity. ESD reserves the right to contact insurance companies and other federal, state and local governmental agencies to confirm information included, or that should have been included, in the applications.

Disclosure of Information

Each Eligible Entity must agree to allow:

- (a) the Department of Taxation and Finance to share its tax information with ESD. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;
- (b) the Department of Labor to share its tax, employer or other information with ESD relevant to flood recovery funding. However, any tax information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;
- (c) any federal, state, local governmental agency or authority that has or is providing emergency flood recovery funding for damage sustained as a result of Hurricane Irene or Tropical Storm Lee to share its information with ESD relevant to flood recovery funding. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law; and
- (d) ESD and its agents access to any and all books and records ESD may require to monitor compliance.

Except as required by applicable law or regulations, ESD will endeavor to maintain the confidentiality of tax and rent information submitted as part of the application. Notwithstanding the foregoing, such information may be made available to ESD staff and designated individuals that are processing the application and to federal, state or local officials and to auditors evaluating the Program and others as ESD may deem to be required in accordance with applicable law and regulations, including judicial orders and subpoenas.

Availability of Funds

The disbursement of any Program Assistance is explicitly subject to the approval of ESD and the receipt by ESD of a sufficient amount of Program funds from the State of New York acting by and through the New York State Division of the Budget.

Non-Discrimination

ESD's non-discrimination policy will apply. The Eligible Entity shall not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.

Amendments to Guidelines

ESD may amend these guidelines from time to time.

Additional Information

The Eligible Entity can access the application form and instructions, these Guidelines, any amendments to these Guidelines and additional information about the Program at the ESD web site at www.esd.ny.gov. Information can also be obtained by calling 518/292-5340 or emailed to floodrecovery@esd.ny.gov