



# **NY RISING RECAPTURE POLICY MANUAL**

**Andrew M. Cuomo, Governor of New York State  
RuthAnne Visnauskas, Commissioner/CEO,  
New York State Homes and Community Renewal  
Lisa Bova-Hiatt, Executive Director, Governor's Office of Storm  
Recovery of the Housing Trust Fund Corporation**

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Prepared by  
Governor's Office of Storm Recovery of the  
Housing Trust Fund Corporation  
Office of Community Renewal

The policies stated in this manual are current as of October 2018. This manual represents the current version of the Governor's Office of Storm Recovery's (GOSR) policy which shall provide general guidance for the operation of the GOSR program. All policy manuals will be reviewed periodically and will be updated. GOSR will use its best efforts to keep all of its Policy Manuals current. Therefore, you are strongly urged to visit our website [www.stormrecovery.ny.gov](http://www.stormrecovery.ny.gov) or to contact [info@stormrecovery.ny.gov](mailto:info@stormrecovery.ny.gov) to ensure that you have the latest version of GOSR's policies. There may be times, however, when a policy will change before the manual can be revised.

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## 1.0 Introduction

The Governor's Office of Storm Recovery (GOSR) will make every effort to ensure that all NY Rising grants are awarded and disbursed in accordance with the New York State Action Plan and subsequent amendments, the grant agreement executed by and between the State of New York and the Department of Housing and Urban Development (HUD), and applicable State and federal regulations. Applicants were awarded funding pursuant to policies and procedures outlined by the specific program from which funding was sought. However, situations may arise where an applicant needs to return all or part of the awarded funding to the respective program. This document sets forth the policies that will guide the NY Rising Recapture Program in its efforts to recapture funds that have been overpaid to applicants for any reason.

### 1.1 Regulatory Framework

CDBG regulations [24 CFR 570.502] governing grant administration and OMB cost principles [2 CFR 200.403 (a)] require that payment of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to beneficiaries be necessary and reasonable; and prohibit beneficiaries from retaining excess funds not used for eligible, approved costs. The provision of CDBG-DR funds in excess of what is needed for immediate use is also prohibited [2 CFR 200.305 (b) (1)].

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121–5207), as amended, (Stafford Act), and Federal Register Notice, Vol. 76, No. 221, Wednesday, November 16, 2011 provides that CDBG-DR funding may only be provided to the extent that it does not duplicate funding provided to a beneficiary for the same purpose. Common examples of duplicative funding include, but are not limited to:

- Payments under the National Flood Insurance Program (NFIP);
- Payments from private insurance;
- Funding from the United States Federal Emergency Management Agency (FEMA);
- Small Business Administration (SBA) loans; or
- Charitable donations or work performed by not-for-profits

## 2.0 Repayment Circumstances

NY Rising awards are based on a variety of factors. Below are the most common circumstances that may result in a revision to an award, which then may require repayment from an Applicant:

- **Duplication of Benefits (DOB)**: If an Applicant received additional benefits (FEMA, NFIP, SBA, ICC, private insurance, assistance from nonprofit or other disaster assistance provider) that are duplicative of CDBG-DR funds, the Applicant's award will receive a negative award adjustment to reflect the duplication in benefits. If the sum of the duplication of benefits and the NY Rising funds that the applicant has thus far received exceed the applicant's total NY Rising award, the applicant must repay the difference.
- **Scope of Work Change**: An Applicant's award is based on successfully performing an eligible, expected scope of work. If the Applicant does not perform some or all of the work identified in an approved scope of work on which the award is based, the amount of the work not performed by the Applicant will result in a negative award adjustment to account for the unperformed work. If this deduction leads to a negative balance due to payments already received, the applicant must repay the difference. This could result in full repayment if the Applicant did not perform the required project.
- **Ineligibility**: Federal law, program policies, and program procedures set forth mandatory eligibility requirements to receive NY Rising funds. If at any point in time it is determined that the Applicant does not meet the eligibility requirements for that program, the Applicant will be required to repay any assistance received from that program.
- **Substantial Program Non-Compliance**: Each NY Rising program has rules set forth in the programs' policy manuals, and rules set forth in the grant agreements signed by Applicants. If any Applicant fails to substantially comply with these rules, the Applicant must repay the funds. For example, failure to submit mandatory documentation, perform the required project, perform mandatory elevation, or to allow for mandatory inspections, may result in the requirement to repay the full award.
- **Awards from Multiple Programs**: Applicants cannot receive awards from different NY Rising programs for the same scope of work, or for inconsistent programmatic purposes. An example of receiving funds for inconsistent programmatic purposes is a circumstance where an Applicant receives funds for repairing their home and decides not to conduct any repairs, but instead sells the home through the NY Rising Buyout and Acquisition Program. In such circumstances, the Applicant must return funds for the repair of the home since the Applicant did not conduct the repair. Please note: Interim Mortgage Assistance is considered part of the Single Family Homeowner Program and it is handled in Recapture as one applicant in one program.
- **Voluntary Withdrawals**: Applicants may decide to withdraw from the NY Rising Program. If any Applicant withdraws after receiving NY Rising funds, the Applicant is required to repay any funds it received prior to Program withdrawal.

- **Fraud:** Applicants who receive awards based upon fraudulent information must repay these funds to the program. These cases will also be referred to the appropriate criminal agencies for investigation.

Any of these circumstances, or a combination of these circumstances, may require the Applicant to repay some or all of its NY Rising grant to New York State.

### 3.0 The Reconciliation Phase: File Reconciliation, Repayment Letter, and Appeal

Prior to issuance of a Repayment Letter, the NY Rising Reconciliation and Repayment Unit (Reconciliation Unit) will perform a full and complete reconciliation of the files for all Applicants who have been identified as having received a potential overpayment. The Reconciliation Unit will then document the amount and basis for the repayment in a written letter to the Applicant, as well as procedures for repaying the funds. The Reconciliation Unit will also assign the Applicant a Reconciliation Case Agent to verbally explain to the Applicant the basis for the repayment. If the Applicant disagrees with the amount owed or the basis for repayment, the Applicant will be afforded the opportunity to submit a written appeal of the repayment determination.

Appeals must be submitted in writing using the Appeals Form included with the Repayment Letter within sixty (60) calendar days from the date of the repayment letter to the NY Rising Reconciliation and Repayment Unit:

**By Mail:** NY Rising Reconciliation and Reconciliation Unit  
PO BOX 116  
64 Beaver Street  
New York, NY 10004

**By Email:** [NYRisingReconciliationUnit@nysandyhelp.ny.gov](mailto:NYRisingReconciliationUnit@nysandyhelp.ny.gov)

If the Applicant has filed a prior appeal with GOSR regarding its eligibility or award, the Applicant may not raise the same, already-decided arguments in the appeal to the Reconciliation Unit.

The Recapture Appeal Committee will review the written appeal and issue a final written determination of its decision. Appeals may be denied or granted in whole or in part. Nothing in the appeal determination shall obviate the Applicant from complying with all applicable program requirements. For instance, if the Applicant successfully appeals a DOB amount, the Applicant is still fully obligated to complete its construction.

The Recapture Appeal Committee will only review facts and information already included in an Applicants' file, unless the Applicant submits new documentation. NY Rising has discretion to accept or reject this new information based upon its relevance to the appeal.

If an Applicant fails to file an appeal to the Reconciliation Unit within the time allotted, the inaction will be deemed as an acceptance of the determination, and a waiver of any further right to contest or appeal the amount to be repaid.

If an Applicant's appeal is denied or there is failure on the part of an Applicant to appeal within the allotted timeframe, the Applicant will be moved to the Repayment Phase to proceed with collecting the repayment amount from the Applicant.

## **4.0 The Repayment Phase: Terms and Conditions of Repayment**

Once an Applicant has received their Repayment Letter and the appeal period has passed (either through passage of 60 day appeal period or an appeal determination), their file will be moved to the Repayment Phase.

Once the Repayment Phase commences, the Case Agent will assist the Applicant with the steps necessary to repay their funds in a timely manner. All repayments shall be expected to be repaid in full as one lump sum amount.

GOSR will analyze any applicant claims of financial hardship, and may make limited accommodations in some cases in order to facilitate repayment.

The Hardship Committee consisting of Executive and/ Senior Staff will make final determinations on the hardship requests based on the facts and circumstances supporting the hardship form. When determining whether a hardship is warranted, a variety of factors of each applicant's file is considered in totality. Such factors include, but are not limited to: (1) whether the applicant has the financial resources to pay; (2) whether the applicant spent the grant money to repair the property; (3) whether the repair of the property is now completed; and (4) whether there are other mitigating factors. The Applicant will be notified in writing of the hardship determination, and Applicant shall have 30 days to accept the terms of the hardship determination, which may be a repayment agreement and/or a modified payment amount. If the Applicant does not accept this determination, the Applicant will be required to repay the full lump sum amount.

GOSR shall monitor repayments to ensure that Applicants are performing in accordance with the terms of repayment, and GOSR shall take additional, cost reasonable measures as necessary to collect the repayment amount, including instituting a collection proceedings. GOSR, in its sole discretion, shall institute measures necessary to effectuate repayment from individual program applicants to the extent that amounts are collectable.

## **5.0 Recaptured Funds**

All funds recovered as a result of this policy will be tracked and returned to the State's CDBG-DR account or U.S. Treasury in the event that the CDBG-DR Grant has been closed out.

NY Rising is responsible for ensuring its internal system for debt collection is adequate to effectively collect amounts due, and to comply with New York State law.

## 6.0 Applicability

This policy shall apply to all CDBG-DR funds that are managed by the Governor’s Office of Storm Recovery or any of its subrecipients.

Acronym	Name
<b>CDBG-DR</b>	Community Development Block Grant – Disaster Recovery
<b>DOB</b>	Duplication of Benefit
<b>FEMA</b>	Federal Emergency Management Agency
<b>GOSR</b>	Governor’s Office of Storm Recovery
<b>ICC</b>	Increased Cost of Compliance
<b>LMI</b>	Low to Moderate Income
<b>NFIP</b>	National Flood Insurance Program
<b>SBA</b>	Small Business Administration

## 7.0 Acronyms and Definitions

**Action Plan:** The public document required by HUD that details the NY Rising Recovery Programs and how the grantee plans to allocate CDBG-DR funds.

**Applicant:** An individual or entity that submits an application to the NY Rising Recovery Program.

**Community Development Block Grant – Disaster Recovery (CDBG-DR):** Flexible grants to help cities, counties, and States recover from Presidentially declared disasters through the Department of Housing and Urban Development (HUD). Congress appropriates additional funding for the Community Development Block Grant (CDBG) program as Disaster Recovery grants to rebuild the affected areas and provide crucial seed money to start the recovery process.

**Duplication of Benefit (DOB):** Financial assistance received from another source that is provided for the same purpose as the CDBG-DR funds.

**Federal Emergency Management Agency (FEMA):** An agency of the United States Department of Homeland Security. The agency's primary purpose is to coordinate the response to a disaster that has occurred in the United States and that overwhelms the resources of local and State authorities.

**Governor's Office of Storm Recovery (GOSR):** The division of the Housing Trust Fund Corporation established by Governor Cuomo in June 2013 to maximize the coordination of recovery and rebuilding efforts in storm-affected municipalities throughout New York State.

**Low-to-Moderate- Income (LMI):** Low to moderate income people are those having incomes not more than the "moderate-income" level (80% Area Median Family Income) set by the federal government for the HUD assisted Housing Programs. This income standard changes from year to year and varies by household size, county and the metropolitan statistical area.

**National Flood Insurance Program (NFIP):** Created by Congress in 1968 to reduce future flood damage through floodplain management and to provide people with flood insurance through individual agents and insurance companies. FEMA manages the NFIP.

**Reconciliation Case Agent:** The person assigned to assist the Applicant from the initial application through the close out of their case in the NY Rising Program. This person is different than a Reconciliation Case Agent.

**Reconciliation Case Agent:** The person assigned to assist the Applicant in the Recapture process. This person is different than their Program Case Manager.

**Small Business Administration (SBA):** SBA's Office of Disaster Assistance (ODA) provides affordable, timely and accessible financial assistance to Applicants, renters, and businesses. The SBA low-interest, long-term loans are the primary form of federal assistance for the repair and rebuilding of non-farm, private sector disaster losses.