



POLICY MANUAL

Cross-Cutting Requirements

NY Rising Housing Recovery Program

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The policies stated in this manual are current as of November 2020. This manual represents the current version of the Governor's Office of Storm Recovery's (GOSR) cross-cutting policy which shall provide general guidance for the operation of the GOSR's housing recovery programs. 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 or to contact the 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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New York Rising Program Goals

Introduction

Oversight of Storm Recovery

Governor Cuomo established the Governor's Office of Storm Recovery (GOSR), a division of the Housing Trust Fund Corporation, in June 2013 to maximize the coordination of recovery and rebuilding efforts in storm-affected municipalities throughout New York State. GOSR operates within the New York State Housing Trust Fund Corporation (HTFC). HTFC is a component of New York State Homes and Community Renewal (HCR), a unified leadership platform, encompassing a variety of New York State agencies and public benefit corporations involved in the provision of housing and community renewal. GOSR was formed to direct the administration of the Federal Community Development Block Grant-Disaster Recovery Funds.

GOSR works in close collaboration with local and community leaders to respond to communities' most urgent rebuilding needs while also identifying long-term and innovative solutions to strengthen the State's infrastructure and critical systems. GOSR also administers a variety of programs related to housing recovery, economic development, and community reconstruction following the devastating impact of Superstorm Sandy, Hurricane Irene and Tropical Storm Lee.

Manual Overview

This manual is designed to outline the Cross-Cutting Federal Regulations and administrative and Monitoring and Compliance policies that the State and its agents will use to direct the operation of its Housing Recovery Programs and Living With The Bay Programs. Besides the rules and requirements specific to GOSR's Housing Recovery Programs and the Living With The Bay (LWTB) programs, there are several additional broad federal rules that must be adhered to in the course of administering federally funded programs. This manual is intended to serve as a resource for GOSR and its partners in the federal rules relating to non-discrimination and equal access and health and safety. It serves as a general reference guide for administrative staff and other interested parties, contractors, subrecipients, and units of general local government (city and county governments) that are engaged as "sub-grantees" to deliver assistance through the program, and any non-profit organizations that are involved as "subrecipients" or consultants.

This manual is not intended to be a full compilation of all internal program procedures that the State and its agents follow to ensure effective implementation of the policies contained

in this manual. This manual and manuals for other programs will be made available for public review and use at <http://www.stormrecovery.ny.gov>.

1.0 Program Administrative Requirements and Cross-Cutting Federal Regulations

GOSR and its developers/subrecipients must adhere to all applicable State and federal laws, rules, and regulations. This section provides a summary of the significant and applicable federal regulations.

1.1 Americans with Disabilities Act (ADA) and Section 504

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in federally assisted Programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of a telecommunications device for the deaf (TDD)/telephone relay services.¹ GOSR takes affirmative steps to ensure that people with disabilities have equal access to the programs offered by GOSR, and that any aid, benefit or services are delivered in the most integrated manner possible. Qualified persons with disabilities are informed of the availability of programs, services and activities, and GOSR's programs, activities or services are readily accessible to, and usable by, individuals with disabilities. GOSR also ensures that reasonable accommodations or changes to policies, practices, or procedures are made to guarantee people with disabilities equal access to services and programs. Additionally, all programs, services and activities are accessible, both structurally and administratively, to persons with disabilities. GOSR's mandate to conform to the requirements of ADA flows down to all subrecipients, vendors and developers.

Section 504 requires that, for all new construction of multifamily rental projects with 5 or more units and/or substantial alterations of multifamily rental projects with 15 or more units, a minimum of 5 percent of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments. An additional 2 percent

¹ http://www.ada.gov/2010_regs.htm

of the dwelling units (but at a minimum, not less than one unit) must be accessible to individuals with sensory impairments (i.e., hearing or vision impairments). In buildings with 5 or more dwelling units and at least one elevator, all dwelling units and all public/common use areas are subject to Section 504 requirements. In buildings with 5 or more dwelling units and no elevator, all ground floor units and public and common use areas are subject to Section 504 requirements. In addition, Section 504 requires that federally funded new construction of non-housing facilities be designed and constructed to be readily accessible and usable by individuals with handicaps, and that federally funded alterations to existing non-housing facilities do so to the maximum extent feasible.

The Architectural Barriers Act of 1968 (ABA) requires that certain buildings financed with federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards (UFAS).

1.2 Davis-Bacon Act and Related Acts (DBRA)

The [Davis-Bacon Act² and Related Acts \(DBRA\)](#) requires all subrecipients, contractors and subcontractors funded in whole or in part with CDBG-DR financial assistance through GOSR for the construction, alteration, or repair of public buildings or public works valued at more than \$2,000, except residential properties with less than 8 units, to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. However, Davis-Bacon requirements do not apply to force account labor. Davis-Bacon “labor standards clauses” must be included in covered contracts. In some cases, New York State Prevailing Wages and Davis-Bacon Prevailing Wages both apply. In such instances, the higher of the two prevails. Exceptions to DBRA include:

- Construction contracts of \$2,000 or less;
- Real property acquisition;
- Architectural and engineering fees;

² 40 U.S.C. 3141 *et seq.*

- Other services (such as legal, accounting, construction management);
- Other non-construction items (such as furniture, business licenses, real estate taxes);
- Rehabilitation of residential property designed for fewer than eight families; and
- Demolition and/or clearance activities, unless related to construction (demolition and clearance as independent functions are not considered construction).

Subrecipients must work with GOSR to obtain both federal and New York State prevailing wage decisions for each project. After the bids are received, GOSR will verify the eligibility of the contractor to participate in the program.

Additionally, GOSR must follow the reporting requirements per HUD and Department of Labor (DOL) regulations. This requirement also extends to GOSR subrecipients and contractors.

The Wage Compliance Unit within GOSR's Monitoring and Compliance Department (MCD) ensures that GOSR's applicable programs and services are in compliance with DBRA through the submission of weekly payrolls, site visits, and interviews with laborers.

1.3 New York State Prevailing Wages

In addition to DBRA applicability on GOSR construction projects, New York State prevailing wages may be applicable. Under New York State Labor Law ³, contractors and subcontractors must pay the prevailing rate of wage and supplements (fringe benefits) to all workers under a public work contract. Employers must pay the prevailing wage rate set for the locality where the work is performed. Prevailing wage is the pay rate set by law for work on public work projects. This applies to all laborers, workers or mechanics employed under a public work contract.

1.4 Contract Work Hours & Safety Standards Act

The Contract Work Hours and Safety Standards Act ⁴ (CWHSSA) applies to Federally financed (in whole or in part) contracts over \$100,000, and provides that workers be paid at least one and one-half times their basic rate of pay for any time worked in excess of 40

³ Article 8 New York State Labor Law Section 220

⁴ 40 U.S.C. Section 327 et seq.

hours weekly. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages and for liquidated damages computed at \$10.00 per day for each employee who worked overtime and was not paid overtime wages. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages.

1.5 The Copeland "Anti-Kickback" Act

The Copeland Anti-Kickback Act⁵ makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, reconstruction, completion, or repair of any public building, public work, or building, or work financed in whole or in part by Federal loans or grants, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. The Act also provides for the submission of weekly certified payroll reports by all contractors and subcontractors.

1.6 Equal Employment Opportunity (EEO)

[Executive Order 11246](#), Equal Employment Opportunity, as amended, prohibits federal contractors and federally assisted construction contractors and subcontractors who do over \$10,000 in government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The Executive Order also requires government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.⁶ This regulation is adhered to within GOSR programs, and covered contractors and subcontractors must submit an EEO policy statement, staffing plan, and quarterly reports to document compliance.

1.7 Fair Housing

The Fair Housing Act requires all grantees, subrecipients, and/or developers funded in whole or in part with HUD financial assistance to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their race, color, religion, familial status, national origin, sex, or disability. The Fair Housing Act contains requirements for the design of multifamily dwellings containing four or more attached units ready for first occupancy after March 13, 1991 to ensure accessibility to handicapped persons. Additionally, subrecipients, and/or

⁵ 18 U.S.C. Section 874 as implemented in 29 Part 3

⁶ 41 CFR Part 60.

developers funded in whole or in part by GOSR must also follow the New York State Human Rights Law, which covers all the same characteristics as the Federal Fair Housing Act, but offers additional protections based upon age, sexual orientation, marital status, and military status.

GOSR enforces the Fair Housing Act by ensuring that all grantees, subrecipients, and/or developers meet the applicable Fair Housing and Affirmative Marketing requirements and provide a marketing plan and report on compliance in accordance with the Fair Housing Act and the associated forms on HCR's website, where applicable. The Affirmative Marketing Plan must be in compliance with applicable Fair Housing Laws and demonstrate how the Applicant will affirmatively further fair housing throughout applicable GOSR disaster recovery programs. Additionally, GOSR and its Subrecipients maintain and report data on activity beneficiaries' and applicants' demographics for Fair Housing purposes, including race, ethnicity and head of household gender for direct-benefit activities' applicants and beneficiaries.

1.8 Fair Labor Standards Act of 1938, as Amended (FLSA)

The [Fair Labor Standards Act of 1938](#)⁷, as amended (FLSA) establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week for non-exempt workers.⁸ These labor standards are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project.

1.9 Limited English Proficiency (LEP)

[Federal Executive Order 131661](#) requires GOSR and all satellite offices, programs, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with LEP. GOSR ensures fair access through the implementation of a Language Assistance Plan (LAP) which includes non-English based outreach, translation of vital documents, free language assistance services, and staff training. GOSR's LEP Coordinator is responsible for coordinating all activities associated with the LAP, and GOSR's Office of Diversity and Civil Rights (DCR) monitors its implementation.

⁷ 29 U.S.C. 201.

⁸ *Id.*

1.10 Minority and/or Women-Owned Business Enterprises (MWBE)

The Federal [Executive Order 12432](#) guidelines require selected federal agencies to promote and increase the utilization of Minority Business Enterprises (MBEs). 2 CFR 200.321 requires the non-federal entity to take all necessary steps to ensure that all subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with certain federal funds, including CDGB-DR, ensure that contracts and other economic opportunities are directed to small and minority firms, women-owned business enterprises (WBEs), and labor surplus area firms when possible.

New York State is a national leader in requiring that public entities utilize MBE and WBE firms. Per state goals identified by the administration, for projects and agreements executed prior to January 30, 2015, GOSR ensures compliance by requiring, as applicable, subrecipients and contractors to make best efforts to achieve an overall M/WBE participation goal of 20% of the entire contract value consisting of 10% for MBE and 10% for WBE.

For all projects and agreements executed after January 30, 2015, GOSR will be required to make best efforts to achieve an overall M/WBE participation goal of 30% of the entire contract, consisting of 15% for MBE and 15% for WBE, per the increase in utilization targets put in place by New York State. GOSR follows the relevant requirements of NYS Executive Law Article 15-A regarding MWBE participation. The DCR verifies M/WBE certification and the MCD monitors to ensure compliance with all reporting requirements. Where applicable, projects financed pursuant to an HCR competitive Request for Proposal (RFP) must comply with the M/WBE participation goals outlined in the RFP.

For all applicable projects, the DCR works with applicants and subrecipients to provide technical assistance (TA), guidance, and one-on-one support required to implement good faith efforts and meet applicable M/WBE thresholds.

1.11 Section 3

Section 3 of the Housing and Urban Development Act of 1968 requires grantees, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part by CDBG-DR funding, to the greatest extent feasible, to extend hiring opportunities and contracts to Section 3 eligible residents and businesses, when a housing construction, housing rehabilitation or other public construction project or activity meets certain thresholds and criteria. Section 3 eligible residents are low- and very low-income persons, particularly those who live or reside in public or government-assisted housing. GOSR monitors contracts with subrecipients, contractors, subcontractors, and/or developers.

The DCR provides training, TA and one-on-one support for all projects, especially in terms of implementing best efforts to meet Section 3 goals. GOSR also monitors Section 3 goal attainment and provides additional on-the-ground support where required.

1.12 Residential Anti-Displacement

All subrecipients and developers must follow GOSR's Residential Anti-Displacement policy.

1.13 Uniform Relocation Assistance and Real Property Acquisition Act

CDBG-DR federal funds, administered by GOSR and disbursed to subrecipients and direct contractors and/or beneficiaries, are subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (Uniform Act or URA) and/or Section 104(d) of the Housing and Community Development Act of 1974. The applicable federal regulations are located at 49 CFR Part 24 (URA), 24 CFR Part 42 (Section 104(d)), and in the Real Estate Acquisition and Relocation Policy and Guidance Handbook (HUD Handbook 1378).

Section 104(d) requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling and requires one-for-one replacement of lower-income units demolished or converted to other uses. The March 5, 2013 Federal Register Notice (FR-5696-N-01) waived the one-for-one replacement requirements at Section 104(d)(2)(A)(i)-(ii) and (d)(3) and 24 CFR 42.375 for units that meet the State's definition of "not suitable for rehabilitation," as established in the State's Action Plan.

Subrecipients or contractors must provide the following to households or entities (businesses, farms and non-profit organizations) that they displace:

- Required relocation notices, including General Information Notice, Notice of Non-displacement (for temporary relocations), and Eligibility Notice;
- Relocation advisory services;
- A minimum of 90 day notice to vacate;
- Reimbursement for moving expenses, and in the case of non-residential displacement, reestablishment expenses; and
- Payments for added cost of renting or purchasing comparable replacement housing for residential displacements.

In cases involving the involuntary acquisition of real property, as defined by 49 CFR 24.101 (b), Subrecipients or contractors must provide the following benefits to the property owner:

- Appraise property before negotiations
- Invite the property owner to accompany the appraiser during the property inspection
- Provide the owner with a written offer of just compensation and a summary of what is being acquired
- Pay for property before possession
- Reimburse expenses resulting from the transfer of title such as recording fees, prepaid real estate taxes, or other expenses.

Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended, 42 U.S.C. §5181 (“Stafford Act”) provides that:

“Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [Uniform Act] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such [Uniform Act].”⁹

GOSR programs subject to the URA and Section 104(d) include the CDBG-DR programs. GOSR policies and procedures, Notices of Funding Availability (NOFAs), applicant certifications and/or written agreements for funds subject to the URA and Section 104(d) shall refer to Federal and State rules, as appropriate.

1.14 Real Property

If CDBG-DR funds are used to acquire real property, where applicable, GOSR ensures that the property continues to be used for its intended (and approved) purpose, proper records are maintained to keep track of it, steps are taken to protect and maintain it, and that if the property is sold, GOSR is reimbursed for the CDBG-DR share of the property’s value. GOSR, as the grantee, along with its partners and contractors, must tag and log all property valued greater than \$1,000 and update inventory records annually.

This fairly straightforward proposition about the ownership, use, management, and disposition of property is complicated by two facts. First, the rules about property management and disposition differ slightly depending on whether a grantee is a public-sector grantee. (The rules are generally more explicit for governmental grantees). Second, the rules depend on the nature of the property. Real property (e.g., land, buildings) is treated differently than personal property (e.g., equipment, supplies, intangible property like copyrights). (Property Management and Disposition Regulations 24 CFR 570.503; all partners (subs) 24 CFR 85.32; 85.34, govt. subs 24 CFR 84.32; 84.34, nonprofit subs).

The federal requirements relating to property are organized according to title (ownership), use, and disposition. In general, the property management system must provide for accurate records, the performance of regular inventories, adequate maintenance and control, and proper sales procedures. Grantees must follow sales procedures that provide for competition, to the extent practicable, and that result in the highest possible return.

1.15 Financial Management

Pursuant to Public Law 113-2, GOSR maintains and has in place proficient financial controls. The GOSR Internal Audit Department (IAD) exists to examine and evaluate the adequacy and effectiveness of the organization's governance and risk management. IAD plans and considers controls necessary to mitigate risks associated with program and administrative Operations, internal and external Reporting, and Regulatory Compliance. Risks of Fraud, Waste, and Abuse are additionally considered throughout assignments.

MCD and GOSR's IAD ensure that GOSR, as the grantee, as well as those administering CDBG-DR funds continuously demonstrate conformity to financial management requirements as required by FR-5696-N-01. These requirements include, but are not limited to, areas covering: Financial Management; Advances; Internal Controls; Accuracy of Report Information; Program Income; Salaries and Wages; Indirect Costs; Lump Sum Drawdowns; and OMB Circular A-133. GOSR's financial management system will be consistent with and in compliance with 24 CFR Parts 84, 85, and 570 (as applicable, and as amended by 2 CFR 200), which ensures that GOSR funds are managed with high levels of accountability and transparency.

GOSR's Financial Management practices adhere to the following:

1. Internal controls are in place and adequate;
2. Documentation is available to support accounting record entries;

3. Financial reports and statements are complete, current and reviewed periodically; and
4. Audits are conducted in a timely manner and in accordance with applicable standards.

1.16 Record Keeping, Retention, and File Management

In accordance with HUD regulations, GOSR as a grantee and recipient of CDBG-DR funds follow the records retention as cited in 24 CFR 84.53 (as amended by 2 CFR 200.333), which includes financial records, supporting documents, statistical records, and all other pertinent records are maintained for five years. GOSR established record keeping and retention requirements in its partner and contractor agreements in accordance with the guidelines established in 24 CFR 570.503(b)(2). For all partners, their retention of records shall be kept in accordance with 24 CFR 85.42, as modified by 24 CFR 570.502(a)(16), which requires for records to be maintained at least for a period of three years from the time of closeout of HUD's grant to the State or for six years after the closeout of a CDBG-DR funded project, whichever may be longer

GOSR maintains records in accordance with recordkeeping requirements cited in 24 CFR 570.490(a)(1) (as amended by 2 CFR 200), in order to facilitate a review or audit by HUD. Additionally, every partner and contractor is required to establish and maintain at least three major categories of records: Administrative, Financial, and Project Case files.

Administrative records: These are files and records that apply to the overall administration of the partner's CDBG-DR activities. They include the following:

- Personnel files;
- Property management files;
- General program files: Files relating to the subgrantee, partner's, or contractor's application to the grantee, the partner agreement, program policies and guidelines, correspondence with grantee and reports, etc.; and,
- Legal files: Articles of incorporation, bylaws of the organization, tax status, board minutes, contracts and other agreements.

Financial records: These include the chart of accounts, a manual on accounting procedures, accounting journals and ledgers, source documentation (purchase orders, invoices, canceled checks, etc.), procurement files, bank account records, financial reports, audit files, etc.

Project/case files: These files document the activities undertaken with respect to specific individual beneficiaries, property owners, and/or properties.

Reporting

As a recipient of CDBG-DR funds, GOSR established reporting requirements for all partners and contractors in their respective partner and contractor agreements and contracts in accordance with 24 CFR 570.503(b)(2). GOSR established its own reporting requirements in accordance with the provisions as found in 24 CFR 85.40(a) and (e) and 85.41(c) and (d) for Units of General Local Government (UGLGs) or 24 CFR 84.51(a) for non-profit partners reporting requirements.

Generally speaking, GOSR monitors reporting requirements at five different program intervals:

1. At execution of agreements;
2. Monthly;
3. Quarterly;
4. Annually; and
5. As required.

Partners, contractors and developers submit the documents and reports to the State at the times indicated in the partner and grant agreement, loan agreement and/or contract agreement, and in the format prescribed by GOSR staff. Deviations from this requirement must be approved by GOSR staff.

Record Retention

Record retention is a requirement of the Program. Records are maintained to document compliance with Program requirements and federal, State, and local regulations and to facilitate an audit review by HUD. All financial records, supporting documents, statistical records, and all other pertinent records (i) for three (3) years from the time of closeout of HUD's grant to the State or for the period provided in the CDBG regulations at 24 CFR 570.487 (or other applicable laws and program requirements) and 24 CFR 570.488, or (ii) for six (6) years after the closeout of a CDBG-DR funded project pursuant to 42 USC 12707(a)(4) and New York Civil Practice Law and Rules § 213, whichever may be longer. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the retention period, then all such records must be retained until completion of the actions and resolution of all issues, or the retention period, whichever occurs later.

GOSR seeks to ensure that:

- Compliance with all requirements concerning records and records management practices under federal and State regulations;
- That the organization has the records it needs to support and enhance ongoing business and citizen service, meet accountability requirements and community expectations;
- These records are managed efficiently and can be easily accessed and used for as long as they are required; and
- These records are stored as cost-effectively as possible and when no longer required they are disposed of in a timely and efficient manner based on HUD Handbook 2225.6, Records Disposition Schedules and HUD Handbook 2228.2.

Access to Records

24 CFR 570.490 (as amended by 2 CFR 200.336) Recordkeeping requirements:

“(c) Access to records.

(1) Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.

(2) The State shall provide citizens with reasonable access to records regarding the past use of CDBG funds and ensure that units of general local government provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with State or local requirements concerning the privacy of personal records.”

The availability of records is subject to the exemptions to public disclosure set forth in section 87(2) of the New York State Public Officers Law. All Freedom of Information Law (FOIL) requests under the Public Officers Law must be made in writing to the Records Access Officer and will be processed in accordance with the procedures set forth therein.

Audit Trail

All records defined by the organization as important are captured into GOSR's recordkeeping systems (e.g., SharePoint, Intelligrants, Tribuo, Elation, Imarc, GSP, etc.) so they can be appropriately managed.

GOSR Affordable Housing Initiatives, including PHRPP, utilized Microsoft Office SharePoint to create a custom Affordable Housing Initiatives portal as the information management system.. SharePoint provides immediate tracking and imaging of all

Program documentation for each project and serves as a reference point to companion systems housed with GOSR MCR, Finance, Environmental personnel.

All applicant data is secured in GOSR's management information system for a specified period of time in accordance with the current Record Retention and Disposition Schedule.

Recordkeeping, including scanning, uploading to GOSR's management information system, and filing of pertinent Program documentation retention policies are to provide both a physical and an electronic record of activities so that documentation is accessible for audit purposes.

In order to protect non-public personal information, data security measures are in place. For example, hardware and software data security protocols such as the requirement for signed non-disclosure agreements prior to receipt of access credentials for Intelligrants. GOSR also requires that hard copy files containing non-public personal information are kept in locked file cabinets to ensure their physical security.

1.17 Conflicts of Interest and Confidentiality

Conflicts of interest between applicants, partners, program administrator, contractors, program staff and other parties are strictly prohibited by federal law.

A "covered person" is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or any designated public agencies, or partners that are receiving CDBG-DR funds. Generally, no person who is a covered person, and who exercises or has exercised any functions or responsibilities with respect to CDBG-DR activities and who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Conflicts of Interest

The Program requires all Program staff to disclose any relationship with an applicant or contractor. State program staff, sub-grantees, program administrators, and contractors who disclose such relationships are placed in roles where there is no opportunity for them to display favoritism or collude in order to financially or otherwise benefit themselves, the Applicant, or the contractor. For example, a Customer Representative may not perform work on the application of family. For purposes of this regulation, "family" is defined to include spouse, parents, mother-in-law, father-in-law, grandparents, siblings, brother-in-

law, sister-in-law, and children of an official covered under the CDBG conflict of interest regulations at 24 CFR 570.489(h) (as amended by 2 CFR 200).

GOSR may consider granting an exception to the conflict of interest provisions per 24 CFR 570.489(h)(4) (as amended by 2 CFR 200) if GOSR has determined that the partner has adequately and publicly addressed all of the concerns generated by the conflict of interest and that an exception would serve to further the purposes of Title I of the Housing and Community Development Act of 1974, as amended and the partner has complied with the requirements listed in 24 CFR 570.489(h)(4)(i) and (ii) (as amended by 2 CFR 200). GOSR considers whether the exception provides a significant cost benefit or essential degree of expertise; whether the opportunity was provided for under open competitive bidding or negotiation; whether the person affected is a LMI person; whether the affected person has withdrawn from his or her functions or responsibilities; whether the interest or benefit was present before the affected person was in a position to benefit from the conflict of interest; or whether undue hardship results from failure grant the exception.

Confidentiality/Privacy

The New York State Housing Recovery Program is committed to protecting the privacy of all of our individual stakeholders, including the public and those individuals working on the Program. The Program's policies describe how information is to be handled and protected. The purpose of this privacy policy is to establish when and under what conditions certain information relating to individuals may be disclosed.

The data collected from Applicants to GOSR programs contain personal information on individuals that is covered by the Federal Privacy Act of 1974, the Personal Privacy Protection Act (NYS POL §95, et. seq.) and the State's Public Housing Law (see, PHL §159), among others. These laws provide for confidentiality, and restrict the disclosure of confidential and personal information. Unauthorized disclosure of such personal information may result in personal liability with civil and criminal penalties. The information collected may only be used for limited official purposes, including:

- NY CDBG-DR Grant program may use personal information throughout the award process to ensure compliance with program requirements, reduce errors and mitigate fraud and abuse.
- Independent Auditors, when hired by the program to perform a financial or programmatic audit of the program, for use in determining program compliance with all applicable HUD and federal regulations, including the Stafford Act, CDBG-DR requirements and State and Local law.

- NY CDBG-DR Program may disclose personal information on an Applicant to those with official Power of Attorney for the Applicant or for whom the Applicant has provided written consent to do so.
- Organizations assisting the State in executing the CDBG-DR Program must comply with all Federal and State Law Enforcement and Auditing requests. This includes, but is not limited to, HUD, FEMA, FBI, NYS Office of the Comptroller, and the Office of the Inspector General.

1.18 Detecting and Preventing Duplication of Benefits

Generally, financial assistance received from another source that is provided for the same purpose as the CDBG-DR funds is considered Duplication of Benefit (DOB). To prevent the payment of DOB to Applicants, Program controls include, but are not limited to:

- Certification that Applicants have notified the State of all potential DOB;
- Verification of specific DOB through various available sources; and,
- Enforcement of certification to the fullest extent of the law.

Recapture Policy

The New York State Housing Trust Fund Corporation (HTFC) under the Division of Homes and Community Renewal (HCR) through GOSR is responsible for ensuring that CDBG-DR funds awarded by HUD through New York Rising comply with all federal, state and local requirements.

In order to ensure that New York State is able to fulfill its contractual obligations to HUD, and that the Applicants receiving CDBG-DR assistance are using the funds for their intended purpose, GOSR requires all Applicants to sign grant agreements stipulating each party's responsibilities and the potential penalties if the Applicant is found not to have fulfilled their obligations. Specifically, if the funds are not used for eligible activities, the money can be recaptured.

To monitor operations and to guard against fraud or unintentional violations of program requirements, GOSR has established quality control procedures. If a program violation is identified, the State recaptures funds in accordance with its recapture procedure. GOSR understands that the Applicants receiving CDBG-DR assistance have suffered significant losses and the contractual responsibilities are NOT intended to be an imposition on them or to require difficult pre-requisites for benefits. However, because the purpose of the grant is to restore and revitalize communities affected by the storms, CDBG-DR funds must be used in accordance with HUD guidelines to help repair or replace damaged

homes and businesses or reduce the risk of future damage through resilient rebuilding, elevation or other mitigation measures.

1.19 Anti-Fraud, Waste and Abuse Checks (AFWA)

The Anti-Fraud, Waste and Abuse (AFWA) check is designed to identify discrepancies and risk-relevant issues in Applicant-provided information that may be indicative of fraud, waste, and/or abuse risk. This check is run the Applicant and may consist of up to seven components:

- Social Security Number check (for relevant applicant types);
- Business status check (for relevant application types);
- Confirmation of association with damaged property address;
- Check of relevant watch lists and debarment lists;
- Searches for New York State tax warrants;
- Searches for federal tax liens filed in New York State; and/or
- Searches for New York State child support warrants (for relevant application types).

Review of AFWA Check Findings

After AFWA checks are completed, findings are delivered to Customer Representatives who receive reports notifying them of any flags that were identified. In their review of AFWA check findings, Customer Representatives examine application information and Applicant-provided documentation to seek to determine if this information is consistent with flags identified through AFWA checks and to identify potential typographical/data input errors.

Adjudication and Escalation of AFWA Findings

Using relevant federal and State policy and procedure guidelines, the Customer Representative/ Business Advisor determines:

- If flagged issues affect the Applicant's eligibility and
- If further action is necessary in order to adjudicate the application.

Examples of options that may be available to the Customer Representative/Business Advisor could include but are not limited to the following:

- If the flagged issue does not affect the Applicant's eligibility per State policy, the Customer Representative/Business Advisor can recommend that the application be permitted to progress through the application process.

- If the flagged issue is a result of a typographical error (e.g., transposition of last and first names, hyphenation, misspelling, missed letter, missed numerical digit, incorrect ZIP codes), the Customer Representative/Business Advisor can query the underlying documentation submitted by the Applicant for an extra layer of verification and recommend that the application be permitted to progress through the application process, pursuant to satisfactory confirmation of underlying documentation.
- If there is insufficient information to adjudicate the flagged issue and research of publicly available information is not able to provide the information necessary to make a determination, the Customer Representative/Business Advisor can recommend that follow up be conducted with the Applicant or that the application be escalated for further scrutiny.

2.0 Monitoring and Compliance Oversight

GOSR has established a monitoring plan administered by the Monitoring and Compliance Department (MCD). The MCD's monitoring plan is implemented in six month periods and generally includes two types of monitoring: programmatic monitoring and external monitoring.

- Programmatic monitoring includes assessments of key internal controls and compliance with program policies and procedures, contractual requirements, applicable State and Federal regulations, and GOSR's Action Plans and Amendments.
- External monitoring is performed for GOSR partners, developers, and other parties to GOSR agreements, and consists of monitoring compliance with contractual requirements, applicable State and Federal regulations, as well as with program requirements.

2.1 Programmatic Monitoring

Monitoring focuses on functions being performed by GOSR programs. It is intended to provide reasonable assurance that GOSR programs have efficient and effective internal controls, including controls to ensure that:

- Programs achieve their intended results;
- Resources are used in a manner consistent with the agency's mission;
- Programs and resources are protected from waste, fraud, abuse, and mismanagement;
- Laws, regulations, and applicable policies and procedures are followed; and
- Reliable and timely information is obtained, maintained, reported, and used for decision-making.

2.2 External Monitoring

Program partners, including developers and subrecipients, involved in the implementation of the Housing Recovery Programs are included in the MCD's external monitoring plan. Through external monitoring, MCD identifies risks and deficiencies and provides recommendations for corrective actions or technical assistance to address risks.

Additionally, the MCD will conduct post close-out monitoring of Rental Property (RP) applicant files to ensure compliance with contractual requirements related to LMI. The MCD will select a sample of applicant files for review.

2.3 Single Audit

In accordance with 2 CFR 200 (replacing the OMB A-133 Circular for awards issued after December 26, 2014), “Audits of States, Local Governments and Non-Profit Organizations,” all non-federal entities expending \$750,000 or more in federal funds during their fiscal year must have an annual audit conducted, as detailed in 2 CFR 200. Subrecipients that fall within this category must submit a copy of their single or program-specific audit report to GOSR. GOSR is collecting information on each subrecipient’s expenditures to confirm each subrecipient’s single or program-specific audit status. If any findings result, program staff will alert the MCD. The MCD will review the audit report and determine whether any of the findings impact GOSR funding, necessitating a management decision from GOSR. Any deficiencies noted in the management decision must be fully cleared by the subrecipient within thirty (30) days after subrecipient receives the management decision.

Subrecipients that do not expend \$750,000 or more in federal funds must complete a single audit certification for the most recently concluded fiscal year and submit this with a financial report, if one exists, to GOSR. Types of acceptable financial reports include an Independent Auditor’s Report, if a subrecipient has one, or, if a subrecipient is a municipal corporation, it may submit a New York State Comptroller Annual Financial Report (AUD). All entities that do not meet the single or program-specific audit threshold may submit a New York State Charity Bureau Annual Filing Report, if they have one. Non-profit or municipal subrecipients that do not have any of these documents must provide GOSR with an internally generated balance sheet and income statement related to the expenditure of CDBG-DR funds.

2.4 Investigations

The Investigations Department at GOSR is responsible for the following duties: managing a fraud hotline; processing all incoming complaints relating to fraud, misconduct, and wrongdoing; reviewing and analyzing such complaints; obtaining relevant programmatic information to assess such complaints; and determining appropriate further action, including but not limited to further internal investigation, referral to the appropriate law enforcement agency, and corrective action to address any risks or deficiencies in existing

programmatic policies and procedures. Refer to the “Investigations Department Policy Manual” for additional guidance and protocols.

2.5 Office of Diversity and Civil Rights

GOSR’s Office of Diversity and Civil Rights (DCR) works closely with partners, developers, and contractors to advance GOSR’s mission, while increasing access to its workforce and contracting opportunities. This is achieved through advocacy, outreach, technical assistance and training, regulatory review, and program implementation. DCR facilitates GOSR’s compliance with several federal and State diversity and inclusion regulations including: the Minority and Women-Owned Business Enterprises (M/WBE), Fair Housing & Equal Opportunity (FHEO), and HUD’s Section 3 Program. DCR also oversees important accessibility issue areas, including: Limited English Proficiency (LEP), Americans with Disabilities (ADA), and Section 504 of the Rehabilitation Act. DCR serves as an internal resource for GOSR, providing support to Programs, partners, developers, and vendors in achieving compliance with statutory requirements and diversity objectives. DCR’s programmatic support services include:

- Working with projects to ensure they are aligned with GOSR’s diversity and civil rights requirements;
- Reviewing and providing guidance on Section 3 Plans, Section 3 Greatest Extent Feasible Efforts, M/WBE Utilization Plans, and M/WBE Good Faith Efforts;
- Conducting technical assistance and trainings with internal Program staff, partners, and contractors;
- Planning and executing networking events which bring together GOSR partners and contractors with MWBE and Section 3 businesses looking for contracting opportunities;
- Participating in pre-bid, pre-construction, and project meetings to consistently be a resource and provide strategic advice where required;
- Providing policy and regulatory guidance pertaining to applicable diversity regulations, particularly M/WBE and Section 3 requirements;
- Strategically identifying M/WBE and Section 3 firms in order to facilitate the dual goals of providing greater opportunities to M/WBE and Section 3 firms, while also assisting Program in meeting their mandated goals and requirements;
- Working with partners and vendors to utilize the New York State Storm Recovery Opportunities Portal (NYSSROP) in order to post procurement and job opportunities and recruit and source MWBE and Section 3 businesses and Section 3 residents; and

- Providing hands-on technical assistance to partners and contractors where there is a gap between their project's required goals and current utilization.

3.0 Acronyms and Definitions

3.1 Acronyms

Acronym	Name
CBDG-DR	Community Development Block Grant-Disaster Recovery
DOB	Duplication of Benefits
FEMA	Federal Emergency Management Agency
GOSR	Governor's Office of Storm Recovery
HCR	New York State Homes and Community Renewal
HFA	New York State Housing Finance Agency
HTFC	Housing Trust Fund Corporation
HUD	U.S. Department of Housing and Urban Development
LMI	Low- and Moderate-Income
MWBE	Minority and Women Owned Businesses
NYS	New York State
RFP	Request for Proposals
UFA	Unified Funding Application
URA	Uniform Relocation Act

3.2 Definitions

Community Development Block Grant (CDBG): A federal program administered by the US Department of Housing & Urban Development (HUD) which provides grant funds to local and state governments. The CDBG program works to ensure decent affordable housing, to provide services to the most vulnerable in our communities, and to create jobs through the expansion and retention of businesses.

Developer: Developer is defined by the HUD Neighborhood Stabilization Program as “[a] for-profit or private nonprofit individual or entity that the grantee provides NSP assistance to for the purpose of (1) acquiring homes and residential properties to rehabilitate for use or resale for residential purposes and (2) constructing new housing in connection with the redevelopment of demolished or vacant properties.”. PHA or PHA Partners are distinct from sub-recipients, grantee employees, and contractors. PHA or PHA Partners are end-user beneficiaries.

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

Grantee: The term “grantee” refers to any jurisdiction receiving a direct award from HUD under Notice FR–5696–N–01.

Housing Trust Fund Corporation (HTFC): New York State agency through which Program funds are administered to applicants and other sub-recipients.

Department of Housing and Urban Development (HUD): Federal department through which the Program funds are distributed to grantees.

Limited English Proficiency (LEP): A designation for person that are unable to communicate effectively in English because their primary language is not English and they have not developed fluency in the English language. A person with Limited English Proficiency may have difficulty speaking or reading English. An LEP person will benefit from an interpreter who will translate to and from the person’s primary language. An LEP person may also need documents written in English translated into his or her primary language so that person can understand important documents related to health and human services.

Partner: Various entities will be responsible for implementing program activities. The term Partner is used throughout to denote the relationship between GOSR and entities like subrecipients and developers.

Person with Disabilities: [24 CFR 5.403]. A person with disabilities for purposes of program eligibility:

Means a person who: Has a disability, as defined in 42 U.S.C. 423; Inability to engage in any substantial gainful activity due to any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or In the case of an individual who has attained the age of 55 and is blind, inability due to such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this definition, the term blindness means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.

- (ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
 - (A) Is expected to be of long-continued and indefinite duration,
 - (B) Substantially impedes his or her ability to live independently, and
 - (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
- (iii) Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8))

Repair: The labor, materials, tools, and other costs of improving buildings, other than minor or routine repairs.

Request for Proposal (RFP): A procurement document designed to solicit proposal services where cost is considered as a factor.

Uniform Relocation Act (URA): A federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms.

