



# **POLICY MANUAL**

## **Affordable Housing**

### **NY Rising Housing Recovery Program**

**(Rental Buildings)**

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The policies stated in this manual are current as of February 2021. 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 the [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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# Contents

- 1.0 New York Rising Program Goals ..... 8**
  - 1.1 Introduction ..... 8
  - 1.2 Oversight of Storm Recovery ..... 8
  - 1.3 Program Manual Overview ..... 9
  - 1.4 Meeting the CDBG-DR Program Goals ..... 9
  - 1.5 Fulfilling the Principles Established by New York State’s Action Plan ..... 10
  - 1.6 Outreach and Citizen Participation Plan ..... 11
  - 1.7 Citizen Participation Plan ..... 11
- 2.0 Summary of NY Rising Affordable Housing Programs ..... 13**
  - 2.1 Multi-Family/Affordable Housing Fund ..... 13
  - 2.2 Small Project Affordable Rental Construction Program ..... 13
  - 2.3 Public Housing Assistance Relief Program ..... 14
- 3.0 Multi-Family/Affordable Housing Fund ..... 15**
  - 3.1 Eligibility Criteria ..... 16
  - 3.2 CDBG National Objectives ..... 16
  - 3.3 Eligible Activities ..... 17
    - 3.3.1 New Construction and Rehabilitation of Affordable Rental Housing ..... 17
- 4.0 Multi-Family/Affordable Housing Fund Program Management ..... 19**
  - 4.1 Roles and Responsibilities ..... 19
    - 4.1.1 HCR Role ..... 19
    - 4.1.2 GOSR Role ..... 19
  - 4.2 Program Marketing ..... 19
    - 4.2.1 Solicitation of Funding Proposals ..... 20
    - 4.2.2 Initial Technical Assistance Meeting ..... 20
    - 4.2.3 NYS Housing Finance Agency (HFA) Tax-Exempt Bond Notice ..... 20
    - 4.2.4 HCR Unified Funding Application (UFA) RFP ..... 21
  - 4.3 Project Selection ..... 21
    - 4.3.1 Program Priorities ..... 22
    - 4.3.2 Competitive Criteria ..... 22
  - 4.4 Award Calculation ..... 24
    - 4.4.1 Prevention of Duplication of Benefits (DOB) ..... 25
    - 4.4.2 Duplicative Assistance ..... 25
  - 4.5 Project Funding and Disbursement ..... 26
    - 4.5.1 Grant / Loan Agreements ..... 26
    - 4.5.2 Subrogation ..... 28
    - 4.5.3 Assignment Relating to Funds Received under CDBG-DR Program ..... 28
    - 4.5.4 Authorization for Program to Contact Third Parties ..... 28
  - 4.6 Disbursement of Funds ..... 28
  - 4.7 Construction Monitoring ..... 29
  - 4.8 Approval of Conversion to Permanent Financing ..... 29

|  |           |
|--|-----------|
| 4.9 Lease-up Monitoring.....   | 29        |
| 4.9.1 Determining Tenant Income .....  | 29        |
| 4.10 Environmental Review.....   | 30        |
| 4.11 Green Building Standards .....  | 30        |
| 4.12 Floodplain, Floodway and Coastal High Hazard Area Policy .....                          | 30        |
| 4.13 Flood Insurance Policy .....  | 30        |
| <b>5.0 Small Project Affordable Rental Construction (SPARC) Program.....</b>                 | <b>32</b> |
| 5.1 Roles and Responsibilities .....   | 32        |
| 5.1.1 HCR Role .....   | 32        |
| 5.1.2 GOSR Role .....  | 32        |
| 5.2 Program Marketing.....   | 32        |
| 5.2.1 Solicitation of Funding Proposals .....  | 33        |
| 5.2.2 Project Selection .....  | 33        |
| 5.3 Prevention of Duplication of Benefits (DOB) .....  | 33        |
| 5.3.1 Duplicative Assistance .....   | 34        |
| 5.4 Project Funding and Disbursement.....  | 34        |
| 5.4.1 Grant / Loan Agreements .....  | 35        |
| 5.4.2 Subrogation.....   | 36        |
| 5.4.3 Assignment Relating to Funds Received under CDBG-DR Program .....                      | 36        |
| 5.4.4 Authorization for Program to Contact Third Parties .....                               | 37        |
| 5.5 Disbursement of Funds .....  | 37        |
| 5.6 Procurement, Project Selection, and Conflict of Interest.....                            | 37        |
| 5.7 Construction Monitoring .....  | 37        |
| 5.8 Approval of Conversion to Permanent Financing.....                                       | 37        |
| 5.8.1 Lease-up Monitoring – Determining Tenant Income.....                                   | 38        |
| <b>6.0 Public Housing Initiatives- Public Housing Assistance Relief Program (PHARP).....</b> | <b>39</b> |
| 6.1 Eligibility Criteria.....  | 39        |
| 6.2 CDBG National Objectives .....   | 39        |
| 6.3 Eligible Activities.....   | 39        |
| 6.4 Award Calculation .....  | 40        |
| 6.4.1 Prevention of Duplication of Benefits (DOB) .....                                      | 40        |
| 6.4.2 Duplicative Assistance .....   | 41        |
| 6.5 Project Funding and Disbursement.....  | 42        |
| 6.5.1 Grant / Loan Agreements .....  | 42        |
| 6.5.2 Subrogation.....   | 43        |
| 6.5.3 Assignment Relating to Funds Received under CDBG-DR Program .....                      | 43        |
| 6.5.4 Authorization for Program to Contact Third Parties .....                               | 44        |
| 6.6 Disbursement of Funds .....  | 44        |
| 6.7 Procurement and Conflict of Interest.....  | 44        |
| 6.8 Construction Monitoring .....  | 44        |
| 6.9 Approval of Conversion to Permanent Financing.....                                       | 44        |

|  |           |
|--|-----------|
| 6.10 Lease-up Monitoring.....  | 45        |
| 6.10.1 Determining Tenant Income .....   | 45        |
| 6.11 Environmental Review.....   | 45        |
| 6.12 Green Building Standards .....  | 46        |
| 6.13 Floodplain, Floodway and Coastal High Hazard Area Policy .....  | 46        |
| 6.14 Flood Insurance Policy .....  | 46        |
| <b>7.0 Acronyms and Definitions.....</b>   | <b>47</b> |
| 7.1 Acronyms .....   | 47        |
| 7.2 Definitions .....  | 48        |
| <b>Exhibit 1 – Program Administrative Requirements and Cross-Cutting Federal Regulations.....</b>                          | <b>52</b> |
| <b>Exhibit 2 - Citizen Participation Plan.....</b>   | <b>53</b> |
| <b>Public Outreach .....</b>   | <b>53</b> |
| <b>Programmatic Outreach.....</b>  | <b>54</b> |
| <b>Outreach to Vulnerable Populations .....</b>  | <b>55</b> |
| <b>Public Notices, Public Hearings, and Comment Period.....</b>  | <b>55</b> |
| <b>Substantial Amendments to the Action Plan.....</b>  | <b>56</b> |
| <b>Performance Reports .....</b>   | <b>56</b> |
| <b>Technical Assistance .....</b>  | <b>57</b> |
| <b>Citizen Participation Requirements for Sub-recipients and Local Governments Participating in CDBG-DR Programs .....</b> | <b>57</b> |



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# 1.0 New York Rising Program Goals

## 1.1 Introduction

In response to the damage caused by Superstorm Sandy and other natural disasters that occurred across the nation in 2011, 2012, and 2013, the U.S. Congress appropriated \$16 billion in Federal Fiscal Year 2013 funds for the Community Development Block Grant - Disaster Recovery (CDBG-DR) program through Public Law 113-2. Enacted on January 29, 2013, this law stipulates that these funds be used for the following recovery efforts:

*“...necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013, for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Provided, that funds shall be awarded directly to the State or unit of general local government as a grantee at the discretion of the Secretary of Housing and Urban Development...”*

Following Superstorm Sandy, Hurricane Irene, and Tropical Storm Lee, (Covered Storms) the State of New York developed the NY Rising Housing Recovery Programs (the Program), along with several other disaster recovery initiatives as outlined in the [State of New York Action Plan for Community Development Block Grant Program Disaster Recovery](#) (Action Plan). The NY Rising Housing Recovery Programs are designed to help New Yorkers who were impacted by Superstorm Sandy, Hurricane Irene, and/or Tropical Storm Lee to recover and rebuild. Just as importantly, the Program will help stimulate economic growth in storm affected communities.

## 1.2 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. The Governor’s Office of Storm Recovery (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.

### **1.3 Program Manual Overview**

This manual is designed to outline the major program policies that the State and its agents will use to direct the operation of the Multi-Family/Affordable Housing Program which includes the Affordable Housing Fund (AHF) and Small Project Affordable Rental Construction (SPARC) programs and the Public Housing Assistance Relief Program (PHARP) (collectively referred to as “Affordable Housing Programs”) initiatives. It is intended to serve as a resource for New York State residents and other parties interested in details of how the program will be operated, including eligibility requirements, the types of assistance offered, and program recipient obligations. It serves as a general reference guide for administrative staff and other interested parties, including Project Sponsors, Contractors, 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 Affordable Housing Policy Manual and manuals for other programs will be made available for public review and use at <http://www.stormrecovery.ny.gov>.

### **1.4 Meeting the CDBG-DR Program Goals**

In support of the U.S. Department of Housing and Urban Development’s (HUD) recovery objectives, New York State has specifically designed its programs to help impacted residents and communities to recover from the damage inflicted by the storms of 2011 and 2012. As expressed in the Federal Housing and Community Development Act, the primary objective of the general CDBG program 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 (LMI).” CDBG funding appropriated in response to disasters must meet those general goals of the CDBG program.

All CDBG-DR funded housing activities must meet one of the three national objectives required under the authorizing statute of the CDBG program:

- Benefit Low and Moderate Income (LMI) persons
- Aid in the prevention or elimination of slums or blight (Slum and Blight)
- Meet a need having a particular urgency (Urgent Need)

As described in the GOSR’s policies, the activities funded through the NY Rising Housing Recovery Programs will be required to meet either LMI or Urgent Need National Objectives.

## 1.5 Fulfilling the Principles Established by New York State's Action Plan

The NY Rising Housing Recovery Programs are expected to encourage investment in communities by ensuring that properties are not just rebuilt but also become safer—especially for those areas where there is a high risk of future flooding—revitalizing the vibrancy of New York State's disaster-impacted communities and enhancing the quality of life as well as the production of new affordable housing developments in storm impacted areas; and helping communities develop and implement strategies that facilitate the coordination of the NY Rising Housing Recovery Programs funding with other federal, state, and local community development resources.

The NY Rising Housing Recovery Programs and the other activities outlined in the Action Plan are based on the foundation of six key principles:

1. ***Building back better and smarter*** – As New Yorkers work to repair the severe damage caused by Superstorm Sandy, the state will use the opportunity to ensure that damaged buildings are not simply restored to their pre-storm condition or replaced with the same kind of structures. Instead, New York State will invest in additional mitigation measures to prevent similar damage from occurring in the future.
2. ***State-led, community-driven recovery*** – New York State is collaborating closely with local governments and other organizations to ensure a coordinated and holistic response, while looking to individual communities to develop forward-looking local recovery plans that meet their specific needs.
3. ***Recovery from Irene and Lee*** – The recovery efforts will also extend to those communities still recovering from Hurricane Irene and Tropical Storm Lee.
4. ***Leveraging private dollars*** – New York State will undertake programs that will help unlock capital markets and increase the amount of low-interest financing of key projects by reducing the risk for private sector lenders.
5. ***Spending accountability and transparency*** – New York State will implement rigorous controls and checks to ensure funds are spent responsibly and in compliance with federal and state guidelines.
6. ***Urgency in action*** – The recovery is a long-term endeavor, but people need immediate help. The projects and programs presented in the Action Plan have been shaped to achieve the fastest delivery and best support possible, while working within the parameters of the HUD guidelines.

## 1.6 Outreach and Citizen Participation Plan

Outreach efforts will be guided by the State and accomplished through a variety of resources and activities, including the following:

**Online:** Promotion of recovery resources and the State Action Plan are available on the Governor's Office of Storm and links to the Homes and Community Renewal (HCR) standard notice of funding availability known as the Unified Funding Application and Notice of Funds Availability/Request for Proposal are available at <http://www.stormrecovery.ny.gov>.

**In Person:** GOSR and/or HCR staff present information on available AHF funds and CDBG-DR requirements at outreach events held to publicize funding available through HCR's Unified Funding Application and Notice of Funds Availability/Request for Proposal. The RFP process affords opportunities for technical assistance prior to application submission.

GOSR and/or Homes and Community Renewal (HCR) staff present information on available SPARC funds and CDBG-DR requirements at outreach events held to publicize funding available through a Request for Proposal process. The RFP process affords opportunities for technical assistance prior to application submission.

GOSR conducted outreach to public housing authorities (PHA) in the aftermath of Superstorm Sandy. GOSR-identified damage at PHAs is identified in the State's Action Plan.

## 1.7 Citizen Participation Plan

The New York State Citizen Participation Plan provides New York citizens with an opportunity to participate in the planning, implementation, and assessment of the State's CDBG-DR Sandy, Irene, and Lee recovery program(s). The Plan sets forth policies and procedures for citizen participation, in accordance to federal regulations, which are designed to maximize the opportunity for citizen involvement in the community development process. The State has attempted to provide all citizens with the opportunity to participate, with emphasis on low- and moderate-income individuals, individuals with limited English proficiency, individuals requiring special accommodations due to disabilities, and individuals in CDBG-DR targeted communities.

The State's Citizen Participation Plan ensures that there is reasonable and timely access for public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG-DR grant funds. In following HUD's guidance in the November 2013 Federal Register, substantial Action Plan Amendments will now include a thirty-day (30) public comment process with at least one (1) public hearing. The State has and will continue to coordinate outreach meetings with state entities, local governments, non-profits, private sector, and involved associations. The State will also invite public comments to the Action

Plan and Substantial Amendments for the duration required by HUD. They will be posted prominently and accessed on the Governor's Office of Storm Recovery official website. The State will use means such as press releases, posting notices on the New York State Governor's website and/or GOSR's website, to maximize access of program information to the impacted citizens and businesses. The New York Citizen Participation Plan for CDBG-DR Sandy, Irene, and Lee Recovery is attached in Exhibit 2.

## **2.0 Summary of NY Rising Affordable Housing Programs**

The NY Rising Rental Buildings Recovery Programs and Public Housing Assistance Relief Program operate the Multifamily Affordable Housing Fund (AHF), Small Project Affordable Rental Construction Program (SPARC), and the Public Housing Assistance Relief Program (PHARP). The programs serve a range of needs including new housing construction in storm-damaged areas and repair of storm-damaged rental properties. The three programs are described below.

### **2.1 Multi-Family/Affordable Housing Fund**

The Multifamily/Affordable Housing Fund is a housing development program that provides financing assistance for acquisition, capital costs and related soft costs associated with the new construction of affordable housing developments of eight or more units or rehabilitation of affordable housing developments of four or more units (projects involving four or more small buildings on a single property are eligible). The purpose is to address unmet housing need in area damaged by one or more Covered Storms.

The AHF Program supports both the preservation of governmentally assisted affordable housing developments, as well as the development of new affordable housing to address the rental housing shortage and help revitalize hard hit communities.

Projects selected for assistance will primarily serve Low- and Moderate-Income (LMI) residents, including special needs and other vulnerable populations. AHF may also assist mixed-income projects where a majority of units are reserved for occupancy by LMI persons.

AHF provides project financing in partnership with HCR requests for proposals utilizing federal tax-exempt bonds issued by New York State Housing Finance Agency (HFA) and/or projects receiving federal or state Low-Income Housing Tax Credits (“LIHTC”) allocated or approved by HCR. GOSR may also provide funds to public housing and other eligible projects outside of the HCR RFP process.

### **2.2 Small Project Affordable Rental Construction Program**

The Small Project Affordable Rental Construction Program supports the substantial rehabilitation and new construction of small rental properties. Funding is provided to a Community Development Finance Institution to make loans and grants to residential property developers. The Program provides financing assistance for acquisition, capital costs, and related soft costs associated with the new construction or rehabilitation of small rental properties with fewer than 20 units.

### **2.3 Public Housing Assistance Relief Program**

The Public Housing Assistance Relief Program provides reimbursement for costs of repairing damaged public housing developments and funds for new construction of public housing in storm-damaged areas.



### 3.0 Multi-Family/Affordable Housing Fund

The AHF supports substantial rehabilitation and new construction of larger affordable rental housing projects. AHF seeks to leverage other public and private sources of affordable housing financing, including tax-exempt bonds, conventional private debt, federal and State Low-Income Housing Tax Credits, Historic Tax Credits, State housing capital funds, and other sources.

This Program supports the preservation (i.e. reconstruction/repair/mitigation) of governmentally assisted, including HUD-assisted affordable housing and other rental housing developments of four units or more damaged by Hurricane Irene, Tropical Storm Lee, and/or Superstorm Sandy, as well as the production of new affordable housing developments designed to help replace the rental units lost through the storms and assistance for resiliency improvements to existing buildings in storm impacted areas.

The Program also supports the new construction of affordable rental housing of eight units or more that helps to alleviate a shortage of affordable housing created or exacerbated by the loss of rental units through one of the three named storms, and to support the overall recovery in areas that were impacted by the storms. However, mixed income developments will be eligible for assistance if developers are able to leverage other funding to support the non-LMI units.

AHF provides “gap financing” for the repair or construction of affordable rental housing with four or more units in which at least 51% of the units will be occupied by Low- and Moderate-Income persons. Gap financing refers to the provision of capital subsidies to make up the difference between allowable project costs and capital available from mortgage debt, private equity, and other public or private financing, including grants. Mixed-income projects including “LMI” and “market rate” units are permitted. GOSR provides gap financing based on project underwriting performed by HCR.

Assistance is provided to developers of affordable housing. 24 CFR 570.202(b)(1) allows grantees to provide assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes. As the March 5, 2013 Notice allows grantees to undertake new construction of housing, developers receiving AHF assistance may engage in new construction. Developers obtain site control, plan the development, obtain necessary permits and manage the project. GOSR may designate for-profit and private non-profits as developers.

Developers are treated as end users of assistance. These private entities are direct program beneficiaries and are distinct from developers, subrecipients, grantee employees, and contractors. The Program used the Developer definition identified in “NSP Policy Alert! Guidance on the Procurement of Developers and Subrecipients – June 1, 2012, U. S. HUD CPD, Office of Block Grant Assistance, 2012-06.

Assistance is provided for unmet needs for repair, reconstruction, and new construction of housing after accounting for all federal, state, local and/or private sources of disaster-related assistance, including, but not limited to, property owners' and/or flood insurance proceeds. All projects must meet eligibility requirements, including a tie-back to one or more of the Covered Storms.

### 3.1 Eligibility Criteria

Qualified for-profit and not-for-profit housing developers apply for CDBG-DR funds to repair, reconstruct, or develop new rental housing. Developer entities must be incorporated within the United States of America. Developers listed on State or federal debarment lists are ineligible for assistance.

To be eligible for assistance, projects must:

- Be located in a disaster-declared county (see Table 1 below).
- Demonstrate a tangible connection to addressing a recovery need arising from the disaster. Each project must respond (directly or indirectly) to the impacts of the declared disaster. Evidence such as FEMA reports on damage to housing stock in the project's market area, indications that the storm exacerbated a shortage of housing in the area served by the project, local government statements that the project meets a housing or economic recovery need arising from the storm(s), and similar documentation demonstrate tie-back to the storm(s).
- Provide housing primarily for Low- and Moderate-Income persons.
- Demonstrate capacity to undertake the project as verified through underwriting.

Table 1: Disaster-declared counties

| Eligible Counties |          |            |             |             |
|-------------------|----------|------------|-------------|-------------|
| Albany            | Dutchess | Montgomery | Rensselaer  | Tioga       |
| Bronx             | Essex    | Nassau     | Richmond    | Tompkins    |
| Broome            | Franklin | New York   | Rockland    | Ulster      |
| Chemung           | Fulton   | Oneida     | Saratoga    | Warren      |
| Chenango          | Greene   | Orange     | Schenectady | Washington  |
| Clinton           | Hamilton | Otsego     | Schoharie   | Westchester |
| Columbia          | Herkimer | Putnam     | Suffolk     |             |
| Delaware          | Kings    | Queens     | Sullivan    |             |

### 3.2 CDBG National Objectives

All AHF projects must primarily serve LMI persons, and therefore the majority of the CDBG-DR funding provided to the project will qualify under the LMI National Objective. GOSR obtains a written commitment from the Project Sponsor that 51% or more of units will be made available for rent to Low- and Moderate-Income tenants in accordance with

the project proposal. Partner agencies providing project financing in the form of tax-exempt bonds, Low Income Housing Tax Credits (LIHTC), and New York State capital sources typically impose long-term affordability restrictions ranging from thirty to fifty years, enforced by Regulatory Agreement or similar binding agreement. HCR retains responsibility for monitoring compliance with occupancy requirement throughout the regulatory period.

### **3.3 Eligible Activities**

Eligible activities include repair and new construction of affordable housing. All developments financed in whole or in part by the AHF must meet the New York State Building Code or the New York State Residential Code and all locally adopted and approved building codes, standards and ordinances.

All reconstruction and new construction of residential buildings must incorporate Energy Conservation Construction Code of New York State (ECCCNYS current edition) into construction and achieve certification. Repair of buildings must follow guidelines in the HUD CPD Green Building Retrofit Checklist. GOSR may accept a green building standard that it deems substantially equivalent to or in excess of the ECCCNYS or the HUD CPD Green Building Retrofit Checklist. Sponsors may exceed program minimum property standards as long as project costs funded by AHF meet cost reasonableness standards. Additional upgrades may be paid for with private funds.

#### **3.3.1 New Construction and Rehabilitation of Affordable Rental Housing**

AHF funds may be used for:

- Acquisition, site preparation, construction and related soft costs (including environmental health hazard mitigation costs), required for the new construction or rehabilitation of affordable housing developments. Site work may be an allowable construction cost to the extent it is necessary to render the residential units decent, safe, and sanitary. Site work includes grading and excavation, as well as installation of the septic and infiltration systems, utilities, and other ancillary residential structures and improvements.
- In projects combining residential and non-residential uses, AHF funds may only be used for eligible costs attributable to the residential component of the project.
- Funding is capped at \$9,000,000 for projects in Nassau, Suffolk, and Westchester Counties, and \$7,000,000 for projects in the remaining eligible counties outside New York City. There are no caps for projects in New York City. To direct sufficient levels of assistance to those most in need, especially low to moderate income and minority households, a higher overall dollar cap amount may be applied to those properties that provide a significant number of units designated for Very Low Income (VLI) households, special needs, and other vulnerable populations.

- Reimbursement of eligible repair/replacement costs, acquisition, capital costs and related soft costs (including environmental health hazard mitigation costs), associated with the new construction or rehabilitation of affordable housing developments related to the repair of disaster-impacted property.
- When practical and warranted, reimbursement for cost of mitigating future damage (including elevation when practicable and cost effective) for properties located within a 100-year floodplain.
- Assistance for cost-effective mitigation activities including but not limited to:
  - The replacement of disaster-impacted non-luxury residential appliances
  - Elevation of substantially damaged properties located within the 100-year floodplain.
    - If elevating, the structure must be elevated to at least 2 feet above the Base Flood Elevation or to a level dictated by the local building authority.
  - Elevation of electrical systems and components
  - Securing of fuel tanks
  - Use of flood resistant building materials below base flood elevation
  - Installation of flood vents
  - Installation of backflow valves (only if structure is elevated)
  - Installation of roof strapping (only if structure is elevated)
- In projects combining residential and non-residential uses, AHF funds may only be used for eligible costs attributable to the residential component.
- Funding is capped at \$9,000,000 for projects in Nassau, Suffolk, and Westchester Counties, and \$7,000,000 for projects in the remaining eligible counties outside New York City. There are no caps for projects in New York City. To direct sufficient levels of assistance to those most in need, especially low to moderate income and minority households, a higher overall dollar cap amount may be applied to those properties that provide a significant number of units designated for Very Low Income (VLI) households, special needs, and other vulnerable populations. Funding caps may be changed for future funding rounds depending on recovery need and circumstances.

## **4.0 Multi-Family/Affordable Housing Fund Program Management**

### **4.1 Roles and Responsibilities**

#### **4.1.1 Partnership Agency Role**

Partnership agencies manage preparation and publication of notices of funding availability and of awarded projects through its Private Activity Bond “open round” and its United Funding Activity (UFA) NOFAs process, provide technical assistance to applicants, receive applications, conduct initial eligibility and feasibility reviews, conduct project underwriting, and refer applications to GOSR for consideration. Partnership agencies are responsible for carrying out activities in coordination with GOSR.

#### **4.1.2 GOSR Role**

GOSR retains day-to-day administrative management and oversight of CDBG-DR activities. GOSR is responsible for establishing and maintaining financial accountability for CDBG-DR funds, compliance with CDBG-DR regulations, and establishing and maintaining project files and records.

GOSR is responsible for ensuring compliance with CDBG-DR statutory, regulatory, and programmatic requirements including, but not limited to, the following:

- Compliance with National Objectives and eligible activities
- Duplication of Benefits (DOB) review
- Davis-Bacon compliance and monitoring
- National Environmental Protection Act (NEPA) compliance
- HUD Section 3 compliance
- Uniform Relocation Act Compliance
- Federal Fair Housing/EEO
- Americans with Disabilities (ADA) compliance, as applicable, and Section 504 compliance

### **4.2 Program Marketing**

GOSR makes AHF program resources available in partnership with agencies including, but not limited to, New York State HCR or New York City’s Department of Housing Preservation and Development (HPD). AHF funds are made available through a competitive and advertised Requests for Proposals (RFP). HCR and GOSR may issue a joint-RFP or GOSR may review a partner agency’s RFP and coordinate to identify viable projects.

Joint – RFP: GOSR joins information sessions held at locations around the State to advertise the availability of funds from a variety of State programs under the Division of

Housing and Community Renewal, Housing Trust Fund Corporation, Housing Finance Agency, and other agencies and public benefit corporations operating under the Homes and Community Renewal umbrella. Notices of funding availability are published in the State Register and distributed to affordable housing industry groups.

Referral of Eligible Projects: Partner agency identifies projects through competitive RFPs. Where a partner agency underwriter identifies a project that may be appropriate for GOSR funding, that underwriter may refer the project for GOSR review for eligibility. Where more than one project exists that requires gap financing, GOSR and partner agency may rank the projects using GOSR's Multifamily AHF Project Scoring Sheet to the extent feasible.

#### **4.2.1 Solicitation of Funding Proposals**

Project Sponsors may request CDBG-DR assistance by responding to a Notice of Funds Availability or Request for Proposals released by HCR and/or GOSR. Notices and RFPs prescribe information to be submitted for review and competitive scoring. Projects are reviewed for development team capacity, project feasibility, project readiness, and alignment with stated Priorities and Competitive Criteria.

HCR releases RFPs and publicizes Notice of Funds Availability in the State Register and on its website, [www.nyshcr.org](http://www.nyshcr.org). HCR and GOSR present funding opportunities, priorities, and selection criteria at public information sessions at various locations around the State.

#### **4.2.2 Initial Technical Assistance Meeting**

Project Sponsors may be required to attend Technical Assistance sessions with HCR and GOSR staff before submitting an application. Technical Assistance sessions include:

- Review of the project description, recovery rationale, budget including source and use of funds and operating budget for review.
- Discussion of HCR and GOSR staff review project readiness and alignment with program policies and priorities.
- CDBG-DR program eligibility requirements, including “tie-back” to the storm and green building requirements
- Cross-cutting federal requirements for compliance with Davis-Bacon, Uniform Relocation Act (URA), Section 3, Fair Housing. These requirements are described in further detail later in this policy manual.

#### **4.2.3 NYS Housing Finance Agency (HFA) Tax-Exempt Bond Notice**

HCR maintains an open, rolling application process to allocate private activity tax-exempt bonds which may be combined with Low-Income Housing Tax Credits (LIHTC). Together with HCR, GOSR makes AHF funds available to be combined with applications proposed under the open round. More than 50% of the project costs must be financed by Private Activity Bonds (PABs) issued by HFA and allocated from the State's Private Activity Bond volume cap. The bond financing provided by HFA qualifies the project for an allowance of 4% Low-Income Housing Credits (often termed “as-of-right” tax credits).

AHF financing may only be utilized to finance the development of residential properties where the majority of units are affordable to households with incomes up to 80% of area median income (AMI), as adjusted for family size. Up to 30% of the Project's units may be affordable to tenants with incomes above 60% of AMI. Projects must also be compliant with relevant income thresholds under HFA tax exempt bond financing program and LIHTC requirements.

Applicants may request AHF financing as either a construction loan or a permanent loan. All projects will be subject to a minimum regulatory period of 30 years.

#### **4.2.4 HCR Unified Funding Application (UFA) RFP**

GOSR makes AHF funds available through HCR's RFP process for allocation of "9%" Low-Income Housing Tax Credits, State Low-Income Housing Tax Credits and various state capital funding programs.

Applicants with a high degree of readiness to proceed may request funding under the Early Award procedure. Eligible Early Award applicants demonstrate ability to close within 120 days of application, and address one or more of the New York State priorities identified in the RFP, such as advancing revitalization and economic development (including disaster recovery), supportive housing, workforce housing, affordable housing preservation, and veterans housing. Such projects must include discussion of ability to meet deadlines for starting construction and lease-up. AHF Projects seeking Early Award status must also qualify as Priority 1, 2, or 3 in Section 3.3 of this document, below. For AHF applicants, the status of required NEPA and SEQR reviews is assessed in determining readiness to close within 120 days. No funds are committed to a project before NEPA and SEQR review is complete.

### **4.3 Project Selection**

When issuing an RFP, GOSR relies on its own established Program priorities and competitive criteria to select projects for award.

Eligible and feasible projects submitted through the competitive RFP process are scored and ranked by HCR and evaluated separately by GOSR. GOSR scored projects according to the Program Priorities and Competitive Criteria outlined in Sections 3.3.1 and 3.3.2. All eligible and feasible projects in the highest Priority group will be funded before projects in a lower Priority group. In instances where GOSR identified more projects than the Program had funding available to award, the Program will deploy a ranking system by priority and competitive criteria to select which projects to fund.

Projects in New York City will be selected in consultation with New York State Homes and Community Renewal, New York City Housing Preservation and Development, and/or other agencies facilitating projects that fit within this Program based on portfolios

and unmet needs. GOSR considers Program Priorities and Competitive Criteria when selecting projects to award.

Developers receiving assistance through this program are selected through a competitive Request for Proposals process and are considered “developers” under CDBG regulations. Developers are not required to use a competitive process for selecting general contractors, subcontractor, and professional services providers. Developers are permitted to have an identity of interest between the owner, developer, and/or builder. Project underwriting and cost containment practices assure cost reasonableness.

### 4.3.1 Program Priorities

In reviewing responses to RFP’s, GOSR grouped and reviewed project proposals according to the Program Priorities listed in Table 2. When reviewing projects identified by a partner agency, GOSR considers these priorities when awarding funds.

Table 2: Program Priorities

|                   |   |
|-------------------|---|
| <b>Priority 1</b> | Repair of existing buildings that have documented damage from one of the Covered Storms and capital needs   |
| <b>Priority 2</b> | New Construction of replacement rental housing for units placed out of service by one of the Covered Storms   |
| <b>Priority 3</b> | Sites located in Community Reconstruction Program areas;  |
| <b>3a</b>         | New construction in one of the NY Rising Community Reconstruction Program Areas that is specifically named in a NY Rising Community Reconstruction (NYRCR) Plan |
| <b>3b</b>         | New construction in one of the NYRCR areas where affordable housing of the type proposed is identified as a need in the community plan;                         |
| <b>3c</b>         | New construction in one of the NYRCR areas where affordable rental housing in general is identified as a need in the community plan;                            |
| <b>3d</b>         | New construction in one of the NYRCR areas, where affordable rental housing may not have been mentioned as a priority in the community plan.                    |
| <b>Priority 4</b> | New construction in communities proximate to NYRCR areas, within the eligible counties  |
| <b>Priority 5</b> | New construction within the eligible counties   |
| <b>Priority 6</b> | Replacement of storm damaged units at offsite locations, as a remedy of substantial damage  |
| <b>Priority 7</b> | Repair or renovation of existing properties at risk of loss to the affordable or market-rate housing stock, by incorporating a range of resiliency measures     |

### 4.3.2 Competitive Criteria

As part of its review of RFP submission\,s, GOSR ranks projects within each priority group, according to following competitive criteria. The highest-ranking projects with each Priority group will be funded first. When reviewing projects identified by a partner agency, GOSR considers this criteria to select a project.



1. Admissions preference for rental households who were displaced by one of the Covered Storms.
2. Resiliency measures that exceed New York State Building Code.
3. Proximity to other planned or in-process CDBG-DR infrastructure improvements and/or integration with storm recovery-related economic development activity. Integration with storm-related recovery activity includes hiring vendors assisted by GOSR small business initiatives and renting retail/community facility space to businesses receiving assistance from GOSR.
4. Commitment to green building standard more stringent than HFA required standard. The following standards are deemed to exceed HFA requirements: Enterprise Green Communities, US GBC LEED, Energy Star (Certified Homes of Multifamily High Rise, ICC 700 National Green Building Standard, EPA Indoor Air Plus (Energy Star a prerequisite), NYSERDA Multifamily, or any other equivalent comprehensive green building standard. Only recognized standards are awarded points
5. Alignment with other state housing priorities, including:
  - **Regional Economic Development Council Projects:** Project advances the State’s housing goals and objectives, including any goals set forth by the Regional Economic Development Council strategic plan applicable to the area in which the projects are located
  - **Housing Opportunity Projects:** Project includes workforce housing for families in areas experiencing economic and population growth and served by high performing schools:
    - “High Performing School” is one that attains rating better than 75% of all US school districts per Location Inc., School District Rating.
    - Applications proposing housing located outside of a HUD-designated Qualified Census Tract (confirm QCT status at: <http://www.huduser.org/QCT2013/qctmap.html>).
    - Applications proposing projects located in a community with a low incidence of crime (neighborhood is safer than 75% of neighborhoods in the USA, per the Location, Inc. Total Crime Index data);
  - **Mixed Income/Mixed Use Revitalization Projects:** Application proposes to create or rehabilitate mixed-use buildings with mixed-income housing and that is part of a strategic plan for the economic stabilization and revitalization of infrastructure-rich downtown areas or neighborhoods;
  - **Transit Oriented Development (TOD):** Application proposes workforce housing for families in close proximity to MTA rail stations outside NYC or which are in communities that have completed and are implementing TOD plans;

- **Mitchell-Lama Preservation:** Applications proposes preservation of HCR-supervised Mitchell-Lama housing by extending its useful life and/or by averting conversion to market rate housing.

## Resiliency Measures

### **1. Coordinated Resiliency Plan/Program**

- Comprehensive assessment of measures to promote resiliency, life safety, and security in order to provide the most safe and secure living environmental quality, including hazard analysis / risk assessment, mapping of facility site with hazards identified by location, pedestrian security, parking and landscape breaks, fencing, well planned "walking" community.

### **2. Envelope Protection**

- Using materials on the building envelope that are more resistant to storm damage and resilient by their nature and foresight for building placement, including high quality roofing systems, exterior veneers, safe rooms or basements, landscaping away from buildings, well designed and barricaded parking lots

### **3. Utilities Protection**

- Protection of electric, sewer, gas, etc. utilities from natural hazards through underground electrical service, backflow prevention, backup power generation, full facility mechanical plants with redundancy

### **4. Site Selection**

- Site not in floodplain, site not near or impacted by hazardous materials facilities, pipelines, hazmat railroad transportation, other industrial or heavy commercial sites, site is naturally elevated/resilient

Illustrative measures that exceed basic standards include, but are not limited to, a Coordinated Resiliency Plan/Program, building envelope protection, utilities protection, site selection.

## **4.4 Award Calculation**

To maximize effectiveness of limited resources, HCR and GOSR expect Applicants to combine AHF funds with funding from other sources. HCR and GOSR consider AHF funding as "gap-filler" financing, and loans are awarded for Projects requiring a final amount of financing for viability. This process assures that CDBG-DR funds are only used to fund the projects with unmet need after all other sources of financing are accounted for. HCR and GOSR's overall priority is to encourage the submission of AHF applications that leverage a significant number of other sources of capital subsidy and will support and promote high quality, construction ready projects that may advance one of the specific housing priorities of the State.

Therefore, GOSR will provide assistance up to the Unmet Need amount for selected projects, subject to a maximum award of \$9 million for projects in Nassau, Suffolk, and Westchester Counties and \$7 million for projects in other eligible counties. Due to the substantial Unmet Need, there are no caps for projects in New York City. The Unmet Need is the financing gap identified by HCR through its underwriting project, less any assistance classified as duplicative in the Duplication of Benefits review.

#### **4.4.1 Prevention of Duplication of Benefits (DOB)**

Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. §5155) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, Disaster Recovery funds issued through the Department of Housing and Urban Development's CDBG-DR program may not be used for any costs for which other disaster recovery assistance was previously provided for the same purpose.

Generally, financial assistance received from another source that is provided **for the same purpose** as the CDBG-DR funds is considered a Duplication of Benefit (DOB). The State's policy is in accordance with HUD's guidance on duplication of benefits found in Federal Register Notice 5582-N-01 published in the *Federal Register/ Vol. 76, No. 221, page 71060/Wednesday, November 16, 2011*.

#### **4.4.2 Duplicative Assistance**

As mandated by law, all GOSR Affordable Housing Fund (AHF) projects receiving CDBG-DR funding must evidence an analysis of duplication of benefits, funds received for the same purpose as the intended CDBG-DR grant. The Affordable Housing Fund (AHF) provides "gap financing" to qualified affordable housing developers to construction new affordable housing in storm-impacted communities. All developers must submit all funding sources to be analyzed by a qualified underwriter. Underwriting review project sources and uses. Where there is a gap of funding between the existing funds available and the funds needed to complete the project, the AHF provides the additional funds necessary to ensure the viability of the project.

##### **4.4.2.1 New Construction - Analysis**

With the exception of certain Federal Emergency Management Agency grants, FEMA, National Flood Insurance Program (NFIP) and Private Flood Insurance proceeds, and Small Business Administration (SBA) Loans are generally not considered to be intended to the purpose of new construction of affordable housing. However as mentioned, the Affordable Housing Fund requests that all developer disclose all sources of funding for project finance in accordance with the listing in 4.4.2.3.

##### **4.4.2.2 Rehabilitation - Analysis**

In instances where the Affordable Housing Fund identifies a home rehabilitation project, the AHF and / or the underwriter requests information for the project partners to confirm that no duplication of benefits may occur.

#### **4.4.2.3 Potential List of Duplicative benefits**

The Developers must consider the total assistance available to them. This includes all benefits, including cash, insurance proceeds, grants from FEMA, SBA loans, as well as any other assistance received by the applicant from other local, State or federal programs, or private or nonprofit charities. Project Sponsors should pay special attention to the following potential sources of benefits:

- **NFIP:** Insurance proceeds received must be disclosed by the Program Sponsor.
- **Private Insurance:** All insurance proceeds received must be disclosed by the Developer. Where necessary, the Program will look for “undeclared” insurance benefits as well as confirming those disclosed by the Sponsor.
- **FEMA:** FEMA proceeds received must be disclosed by the Project Sponsor.
- **Other:** Funds received from other sources must be disclosed by the Project Sponsor and verified by the Program. Examples include nonprofits, other governmental agencies, and social groups.

Project Developers are required to report all assistance reasonably anticipated. Reasonably anticipated funds include assistance that has been awarded, but has not yet been received, but do not include a situation where the funding source and/or the amount is in question.

GOSR may not duplicate any assistance received for the same project and the award amount will take into account any DOB.

### **4.5 Project Funding and Disbursement**

CDBG-DR funds may be available at a Construction Loan closing, in which not only CDBG-DR, but all funds needed to complete the project will be confirmed as available. Closing may not take place until title clearance has been obtained, to the satisfaction of GOSR counsel. Prior to closing, all Vendor Responsibility clearance must have been obtained for all applicable entities in the ownership chain as well as the general contractor. Any required flood and other applicable insurance will be confirmed at the closing.

#### **4.5.1 Grant / Loan Agreements**

Loan documents, grant agreements, and other forms of agreement as applicable will include the following federal requirements including, but not limited to those listed below:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold);

- Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000);
- Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees);
- Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair);
- Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation);
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers);
- Compliance with Sections 503 and 504 of The Rehabilitation Act of 1973 (29 U.S.C 794) as supplemented by Department of Labor regulations (41 CFR Part 60-741 and 24 CFR 8);
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;
- Awarding agency requirements and regulations pertaining to copyrights and rights in data;
- Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
- Retention of all required records 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;
- Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000); and

- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (U.S.C. 6201).

#### **4.5.2 Subrogation**

Subrogation is the process by which duplicative assistance paid to the Project Sponsor after receiving an award is remitted to the Program in order to avoid a duplication of benefit, whereby the Project Sponsor would be reimbursed twice for the same loss. By signing the grant agreement, the Project Sponsor warrants that he/she will remit any excess funds to the Program, whenever received.

#### **4.5.3 Assignment Relating to Funds Received under CDBG-DR Program**

Per Program agreements, the Project Sponsor(s) will agree that they will assign to the Program all of their future rights to reimbursement and all payments received for named storm under any insurance policy held by the Project Sponsor(s) which provides coverage for physical damage to the property including, but not limited to, any type of casualty or property damage, including flood (the “Policies”) or under any reimbursement or relief program related to or administered by FEMA or SBA for physical damage to the property (not including proceeds received to cover contents), or any other assistance from non-profit organizations, faith-based organizations, other disaster relief entities, and other governmental entities.

The rights the Project Sponsor(s) assigns to the Program are specific to the Property with respect to which the grant proceeds were paid. If the amount of the grant exceeds the amount received from other sources, the Project Sponsor(s) will be entitled to receive the excess amount.

Once the Program has recovered an amount equal to the award proceeds, the NY Rising Housing Recovery Programs will reassign to the Project Sponsor(s) any rights pursuant to this Agreement.

#### **4.5.4 Authorization for Program to Contact Third Parties**

Per Program agreements, the Project Sponsor will explicitly allow HTFC to request of any company with which the Project Sponsor held insurance policies or FEMA or the SBA any non-public or confidential information needed by the program to monitor/enforce its interest in the rights assigned to it and the Project Sponsor will give consent to such company to release information to the NY Rising Housing Recovery Programs.

### **4.6 Disbursement of Funds**

All CDBG-DR funds will be distributed on a reimbursement basis only,. Each development will be registered as a separate activity in DRGR and CDBG-DR funds will be drawn down accordingly. The developer shall provide all documentation of the expenses for which reimbursement is sought. Acceptable documentation may include invoices, checks, receipts, and American Institute of Architects G702 & G703 forms.

## 4.7 Construction Monitoring

HCR, the project's construction lender, or its designee retains primary responsibility for monitoring construction, approving progress payments to contractors, and approving change orders.

## 4.8 Approval of Conversion to Permanent Financing

GOSR requires the submission of all required documents prior to approving the project's conversion to permanent financing.

### Required Documents:

- All required Program Eligibility Documents
- Certificate of Occupancy – or other acceptable document from the local building authority.
- Certificate of Completion
- Elevation Certificate (if elevated)
  - Proof that project was completed according to the applicable Green Building Standard selected in the application and/or commitment letter; which may consist of documentation from construction monitor or project architect
- Current title
- Satisfactory indication that all compliance obligations including Fair Housing, Davis Bacon, Section 3, Section 504 and M/WBE are up to date
- Copies of all Program approved change orders
- Permits as required and applicable

## 4.9 Lease-up Monitoring

### 4.9.1 Determining Tenant Income

The Program will confirm that each project is leased to the number of LMI units identified in the executed commitment letter. The Program will rely on verification provided by the Developer or project partner as verified by HTFC or HFA staff.

In submissions to HCR to determine tenant income, the program requires the developer or a subsequent owner must report the most recent signed federal income tax returns (e.g., IRS Forms, 1040, 1040A or 1040EZ).

If one or all household members do not have an IRS tax return, or the income situation has changed since the tax return(s) was filed, any of the following applicable documents may be presented for every household member that is 18 or older:

- Minimum of three current and consecutive months of check stubs (if the household member is paid monthly)
- Minimum of four current and consecutive check stubs (if the household member is paid weekly, bi-weekly or bi-monthly)
- Pension statement showing current monthly or yearly gross amount

- Social Security statement or IRS Form1099
- Unemployment statement
- Certification of Zero Income Form
- Completed Household Income Worksheet and Certification, verified by information received from the New York State Department of Tax and Finance.

#### **4.10 Environmental Review**

CDBG disaster grant funding from HUD is contingent on compliance with the National Environmental Policy Act (NEPA) and related environmental and historic preservation legislation and executive orders. AHF Project Sponsors are also subject to State Environmental Quality Review (SEQR).

All projects which involve new construction, change of use (as in adaptive reuse projects), or increase the floor area of an existing residential structure by 20% or more must successfully complete an Environmental Assessment (EA) prior to entering into a funding commitment for AHF-financed projects. For projects which involve substantial rehabilitation of existing residential structures, an abbreviated environmental review may be required. As mentioned in [Section 3.2](#), pre-application technical assistance is available to discuss these matters further. All awards will be considered conditional until the environmental review is complete.

#### **4.11 Green Building Standards**

All reconstruction and new construction of residential buildings and substantially damaged homes must incorporate Energy Conservation Construction Code of New York State (ECCCNYS current edition) into construction and achieve certification. Repair of buildings must follow guidelines in the HUD CPD Green Building Retrofit Checklist. GOSR may accept a green building standard that it deems substantially equivalent to or in excess of the ECCCNYS or the HUD CPD Green Building Retrofit Checklist.

#### **4.12 Floodplain, Floodway and Coastal High Hazard Area Policy**

[Executive Order 11988 – Floodplain Management](#) requires Federal activities to avoid impacts to floodplains and to avoid direct and indirect support of floodplain development to the extent practicable. All Project Sponsors must comply with these federal regulations. For more information refer to [HUD Guidance](#). Definitions and regulations regarding the 100 Year Floodplain, Floodway, and the Coastal High Hazard Area can be found in Section 7.0 of this manual.

#### **4.13 Flood Insurance Policy**

If a Project Sponsor receives any assistance from AHF and the property is located within the “100-year” floodplain then the owner is required by federal regulation to maintain flood insurance in perpetuity and, in the event of a transfer of property, the owner is required, on or before the date of transfer, to notify the transferee in writing in the documents



evidencing the transfer of ownership of the property, of the requirements to obtain and maintain flood insurance in perpetuity. If a transferor fails to provide notice as described above, the transferor shall be held liable. The requirement to obtain and maintain flood insurance is included the Loan Agreement and Mortgage documents executed at closing.

As per Federal regulations, if an owner previously received Federal Assistance for the subject property – personal, commercial, or residential – and failed to obtain and maintain flood insurance then the owner is ineligible to receive assistance from CDBG-DR. For more information, refer to [Section 582 of the National Flood Insurance Reform Act of 1994 \(42 U.S.C. 5154a\)](#).

## 5.0 Small Project Affordable Rental Construction (SPARC) Program

### 5.1 Roles and Responsibilities

#### 5.1.1 HCR Role

Acting through HTFC, HCR manages preparation and publication of requests for proposals, provide technical assistance to applicants, receive applications, conduct initial eligibility and feasibility reviews, conduct project underwriting, and refers applications to GOSR for consideration. HCR is responsible for carrying out activities in coordination with GOSR.

#### 5.1.2 GOSR Role

GOSR retains day-to-day administrative management and oversight of CDBG-DR activities. GOSR is responsible for establishing and maintaining financial accountability for CDBG-DR funds, compliance with CDBG-DR regulations, and establishing and maintaining project files and records.

GOSR is responsible for ensuring compliance with CDBG-DR statutory, regulatory, and programmatic requirements including, but not limited to, the following:

- Compliance with National Objectives and eligible activities
- Duplication of Benefits (DOB) review
- Davis-Bacon compliance and monitoring
- National Environmental Protection Act (NEPA) compliance
- HUD Section 3 compliance
- Uniform Relocation Act Compliance
- Federal Fair Housing/EEO
- Americans with Disabilities (ADA) compliance, as applicable, and Section 504 compliance

### 5.2 Program Marketing

GOSR conducts program outreach in partnership with HCR. To reach the greatest number of interested firms, the RFP was posted on HCR's website and a notice of the RFP was also advertised in the New York State Contract Reporter. In addition, notices of the RFP were e-mailed to 71 entities (the "Bidder List"). In an effort to increase subcontracting participation by minority-owned business enterprises and women-owned business enterprises (collectively, "MWBES") and meet the Corporation's 30% MWBE participation goal, the RFP was posted on the on-line Statewide Contracting System by HCR's Office of Economic Opportunity & Partnership Development ("OEOPD"). A pre-bid conference ("Conference") was held on February 2 2015 at 25 Beaver Street, New York.

Pre-Bid Materials can be found at the following link:

<http://www.nyshcr.org/AboutUs/Procurement/SPARC-RFP-PreBidConferencePresentation.pdf>

### 5.2.1 Solicitation of Funding Proposals

HTFC issued a request for proposal (“RFP”) on January 16, 2015 in connection with its administration of CDBG-DR funds appropriated by the Pub.L.113-2. HTFC issued the RFP seeking proposals from certified CDFIs qualified to develop and administer the SPARC program for Small Projects. The Covered Storms highlighted the need in many communities around the State for new rental housing opportunities in markets where Small Projects best meet both demand and neighborhood context. The SPARC program will create an opportunity for storm-affected communities in the State to address affordable housing needs where large-scale development is not feasible or practical.

HCR releases RFPs on its website, [www.nyshcr.org](http://www.nyshcr.org). HCR and GOSR present funding opportunities, priorities, and selection criteria at public information sessions at various locations around the State.

### 5.2.2 Project Selection

HTFC selects the most qualified RFP respondent based on demonstrated capacity to achieve the project goal, project concept, and cost-reasonableness. This may be done through by weighting the merit of RFP responses or by assessing the merit of a single-response. Project goals may include by not be limited to:

- Capacity to meet the CDBG-DR National Objective
- Capacity to comply with Davis-Bacon, Section 504, MWBE, NEPA, and Fair Housing Requirements
- Capacity to monitor project partners and affordable housing developers
- Capacity to originate and service a construction loan.

### 5.3 Prevention of Duplication of Benefits (DOB)

Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. §5155) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, Disaster Recovery funds issued through the Department of Housing and Urban Development’s CDBG-DR program may not be used for any costs for which other disaster recovery assistance was previously provided for the same purpose.

Generally, financial assistance received from another source that is provided **for the same purpose** as the CBDG-DR funds is considered a Duplication of Benefit (DOB). The State’s policy is in accordance with HUD’s guidance on duplication of benefits found in Federal Register Notice 5582-N-01 published in the *Federal Register/ Vol. 76, No. 221, page 71060/Wednesday, November 16, 2011*.

### 5.3.1 Duplicative Assistance

HTFC awards funds to qualified Community Development Financial Institution(s) (CDFI(s)) to administer the SPARC program. While funds to administer the SPARC program are not duplicative with other benefits, grants made to project sponsors and developers may duplicate other funds. It is incumbent on the selected CDFI to perform DOB analysis as part of the Construction loan underwriting process. In its analysis, the CDFI should pay special attention to the following potential sources of benefits and request the following from the affordable housing developer:

- **National Flood Insurance Program (NFIP):** Insurance proceeds received must be disclosed by the Program Sponsor.
- **Private Insurance:** All insurance proceeds received must be disclosed by the Developer. Where necessary, the Program will look for “undeclared” insurance benefits as well as confirming those disclosed by the Sponsor.
- **FEMA:** FEMA proceeds received must be disclosed by the Project Sponsor.
- **Other:** Funds received from other sources must be disclosed by the Project Sponsor and verified by the Program. Examples include nonprofits, other governmental agencies, and social groups.

The CDFI and affordable housing developers are required to report all assistance reasonably anticipated funds. Reasonably anticipated funds include assistance that has been awarded, but has not yet been received, but do not include a situation where the funding source and/or the amount is in question.

GOSR may not duplicate any assistance received for the same project and the award amount will take into account any DOB.

### 5.4 Project Funding and Disbursement

CDBG-DR intends to make funds available at conversion to permanent financing. Conversion will include but may not be limited to CDBG-DR funding. Conversion may not take place until title clearance has been obtained, to the satisfaction of GOSR counsel. Prior to closing, the following must be provided to the program:

#### Conversion Documents:

- All required Program Eligibility Documents
- Certificate of Occupancy – or other acceptable document from the local building authority.
- Certificate of Completion
- Elevation Certificate (if elevated)
  - Proof that project was completed according to the applicable Green Building Standard selected in the application and/or commitment letter; which may consist of documentation from construction monitor or project architect

- Current title
- Satisfactory indication that all compliance obligations including Fair Housing, Davis Bacon, Section 3, Section 504 and M/WBE are up to date
- Copies of all approved change orders
- Permits as required and applicable
- Evidence that the development will meet the national objective.

#### **5.4.1 Grant / Loan Agreements**

Loan documents, grant agreements, and other forms of agreement as applicable will include the following federal requirements including, but not limited to those listed below:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold);
- Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000);
- Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees);
- Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair);
- Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation);
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers);
- Compliance with Sections 503 and 504 of The Rehabilitation Act of 1973 (29 U.S.C 794) as supplemented by Department of Labor regulations (41 CFR Part 60-741 and 24 CFR 8);
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;

- Awarding agency requirements and regulations pertaining to copyrights and rights in data;
- Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
- Retention of all required records 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;
- Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000); and
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (U.S.C. 6201).

#### **5.4.2 Subrogation**

Subrogation is the process by which duplicative assistance paid to the Project Sponsor after receiving an award is remitted to the Program in order to avoid a duplication of benefit, whereby the Project Sponsor would be reimbursed twice for the same loss. By signing the grant agreement, the Project Sponsor warrants that he/she will remit any excess funds to the Program, whenever received.

#### **5.4.3 Assignment Relating to Funds Received under CDBG-DR Program**

Per Program agreements, the CDFI and Project Sponsor(s) will agree that they will assign to the Program all of their future rights to reimbursement and all payments received for named storm under any insurance policy held by the Project Sponsor(s) which provides coverage for physical damage to the property including, but not limited to, any type of casualty or property damage, including flood (the "Policies") or under any reimbursement or relief program related to or administered by FEMA or SBA for physical damage to the property (not including proceeds received to cover contents), or any other assistance from non-profit organizations, faith-based organizations, other disaster relief entities, and other governmental entities.

The rights the CDFI and the Project Sponsor(s) assigns to the Program are specific to the Property with respect to which the grant proceeds were paid. If the amount of the grant exceeds the amount received from other sources, the CDFI and Project Sponsor(s) will be entitled to receive the excess amount.

Once the Program has recovered an amount equal to the award proceeds, the NY Rising Housing Recovery Programs will reassign to the Project Sponsor(s) any rights pursuant to this Agreement.

#### **5.4.4 Authorization for Program to Contact Third Parties**

The CDFI, and the Project Sponsor will explicitly allow HTFC to request of any company with which the Project Sponsor held insurance policies or FEMA or the SBA any non-public or confidential information needed by the program to monitor/enforce its interest in the rights assigned to it and the Project Sponsor will give consent to such company to release information to the NY Rising Housing Recovery Programs.

#### **5.5 Disbursement of Funds**

All CDBG-DR funds will be distributed on a reimbursement basis only at conversion to permanent financing. Each development will be registered as a separate activity in DRGR and CDBG-DR funds will be drawn down accordingly. The affordable housing developer shall provide all documentation of the expenses for which reimbursement is sought to the CDFI. Acceptable documentation may include invoices, checks, receipts, or in the instance of uses that are due and payable at the same time as the payment, then options to purchase or contracts which articulate the timing of payments may be accepted.

#### **5.6 Procurement, Project Selection, and Conflict of Interest**

The selected CDFI must issue an RFP in accordance with established procurement standards. The Request for proposals for Qualified Affordable Housing Developers must outline scope and the deliverable. The CDFI is responsible for vetting responses.

In detail, Qualified Affordable Housing Developers receiving assistance through this program are selected through a competitive Request for Proposals process and are considered “developers” under CDBG regulations. Developers are not required to use a competitive process for selecting general contractors, subcontractor, and professional services providers. Developers are permitted to have an identity of interest between the owner, developer, and/or builder. Project underwriting and cost containment practices assure cost reasonableness. It is incumbent upon the CDFI to determine that the costs of reasonable through the underwriting process. HTFC in its role as grant maker must finalize which project may proceed to a construction loan closing. It is incumbent upon GOSR to advise HTFC in the project selection and confirm tieback to a Covered Storm.

#### **5.7 Construction Monitoring**

HTFC, the CDFI, the project’s construction lender, or its designee retains primary responsibility for monitoring construction, approving progress payments to contractors, and approving change orders. All monitoring must be provided to GOSR upon request.

#### **5.8 Approval of Conversion to Permanent Financing**

GOSR requires the submission of all required documents prior to approving the project’s conversion to permanent financing. Conversion will be based on receipt of the

aforementioned conversion documents and evidence that the project has met the national objective through lease up.

### **5.8.1 Lease-up Monitoring – Determining Tenant Income**

The Program will confirm that each project is leased to the number of LMI units identified in the executed commitment letter. The Program will rely on verification provided by the Developer or project partner as verified by HTFC or HFA staff.

In submissions to HCR to determine tenant income, the program requires the developer or a subsequent owner must report the most recent signed federal income tax returns (e.g., IRS Forms, 1040, 1040A or 1040EZ).

If one or all household members do not have an IRS tax return, or the income situation has changed since the tax return(s) was filed, any of the following applicable documents may be presented for every household member that is 18 or older:

- Minimum of three current and consecutive months of check stubs (if the household member is paid monthly)
- Minimum of four current and consecutive check stubs (if the household member is paid weekly, bi-weekly or bi-monthly)
- Pension statement showing current monthly or yearly gross amount
- Social Security statement or IRS Form 1099
- Unemployment statement
- Certification of Zero Income Form
- Completed Household Income Worksheet and Certification, verified by information received from the New York State Department of Tax and Finance.

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## **6.0 Public Housing Initiatives- Public Housing Assistance Relief Program (PHARP)**

The NY Rising Public Housing Assistance Relief Program (PHARP) addresses the unmet residential repair, reconstruction, or resilience need of Public Housing Authorities (PHAs). The Program provides funding for the repair or replacement of damaged public housing stock, and may include funding for improvements to promote resilience.

### **6.1 Eligibility Criteria**

PHAs who own public housing developments in disaster-declared counties outside of New York City which were damaged by one of the Covered Storms are eligible for assistance. Assistance may be provided directly to the PHA or to a development Partner acting in concert with the PHA

### **6.2 CDBG National Objectives**

All PHARP projects must meet the LMI National Objective. Upon completion, at least 51% of the units will be occupied by households with income below 80% of median. Public housing projects assisted with Program funds will typically serve Very Low-Income households with income at or below 50% of median. New construction projects utilizing Low Income Housing Tax Credits (LIHTC) may set aside units for households with income at or below 60% of median.

GOSR obtains a written commitment from the PHA or PHA Partner that 51% or more of units will be made available for rent to LMI tenants in accordance with the project proposal. Partner agencies providing project financing in the form of tax-exempt bonds, LIHTC, and/or New York State capital sources typically impose long-term affordability restrictions ranging from thirty to fifty years, enforced by Regulatory Agreement or similar binding agreement. Where such financing is used, HCR retains responsibility for monitoring compliance with occupancy requirement throughout the regulatory period.

### **6.3 Eligible Activities**

Eligible activities include reimbursement, repair and new construction of affordable housing. All developments financed in whole or in part by the PHARP must meet the New York State Building Code or the New York State Residential Code and all locally adopted and approved building codes, standards and ordinances.

#### **6.3.1 Reimbursement**

PHAs with storm-damaged public housing facilities may be eligible for reimbursement funding. Reimbursement payments are available to compensate for costs incurred prior to contract with GOSR.

### 6.3.2 Repair

PHAs with storm-damaged public housing facilities may be eligible for repair funding. Repair payments are available to pay for prospective repair work as costs are incurred.

### 6.3.3 New Construction

Acquisition, site preparation, construction and related soft costs (including environmental health hazard mitigation costs), required for the new construction or rehabilitation of replacement public housing. Site work may be an allowable construction cost to the extent it is necessary to render the residential units decent, safe, and sanitary. Site work includes grading and excavation, as well as installation of the septic and infiltration systems, utilities, and other ancillary residential structures and improvements. PHAs who sustained damage to their residential property as a result of a Covered Storm may be eligible for assistance to replace storm-damaged properties. Payments are available for costs incurred to replace residential facilities. The Program may provide assistance to PHAs, PHA Partners, or GOSR-identified Partners for project implementation.

## 6.4 Award Calculation

In instances where the Program provides assistance for new construction, the Program utilizes the award calculation process outlined in Section 4.4 of this manual. In particular, Section 4.4 establishes an award cap and that funds are to be used as “gap-filler” financing.

In instances where the Program provides repair and reimbursement assistance, the Program bases the award off of the FEMA Project Worksheet (PW) and other available Proof of Loss (PoL) statements from flood or private insurance providers. The Program reviews the PW and PoL to identify the line items associated with storm damage and whether those line items are fully covered by FEMA or private insurance. Where the Program confirms uncovered eligible costs, the Program may provide assistance to cover the remaining unreimbursed cost.

### 6.4.1 Prevention of Duplication of Benefits (DOB)

Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. §5155) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, Disaster Recovery funds issued through the CDBG-DR program may not be used for any costs for which other disaster recovery assistance was previously provided for the same purpose.

Generally, financial assistance received from another source that is provided **for the same purpose** as the CDBG-DR funds is considered a Duplication of Benefit (DOB). The State’s policy is in accordance with HUD’s guidance on duplication of benefits found in Federal Register Notice 5582-N-01 published in the *Federal Register/ Vol. 76, No. 221, page 71060/Wednesday, November 16, 2011*.

For new construction projects, the Program provides “gap financing” for the construction new affordable housing in storm-impacted communities. PHAs and PHA Partners must

submit all funding sources to be analyzed by a qualified underwriter. Underwriting review project sources and uses. Where there is a gap of funding between the existing funds available and the funds needed to complete the project, the Program provides the additional funds necessary to ensure the viability of the project.

## 6.4.2 Duplicative Assistance

PHARP projects receiving CDBG-DR funding must be reviewed to identify any duplication of benefits., funds received for the same purpose as the intended CDBG-DR grant.

### 6.4.2.1 New Construction - Analysis

With the exception of certain Federal Emergency Management Agency grants, FEMA, National Flood Insurance Program (NFIP) and Private Flood Insurance proceeds, and Small Business Administration (SBA) Loans are generally not considered to be intended for the purpose of new construction of affordable housing. PHAs and/or PHA Partners must disclose all sources of funding for the project in accordance with the listing in 4.4.2.2 and in 4.4.2.3.

### 6.4.2.2 Reimbursement and Repair - Analysis

In instances where the Program is funding reimbursement and/or repair, the Program requests information from the PHARP partner to identify any potential duplication of benefits.

### 6.4.2.3 Potential list of Duplicative benefits

PHAs and development Partners must consider the total assistance available to them. This includes all benefits, including cash, insurance proceeds, grants from FEMA, SBA loans, as well as any other assistance received by the applicant from other local, State or federal programs, or private or nonprofit charities. These sources include:

- **National Flood Insurance Program (NFIP):** Insurance proceeds received must be disclosed by the PHA.
- **Private Insurance:** All insurance proceeds received must be disclosed by the PHA. Where necessary, the Program will look for “undeclared” insurance benefits as well as confirming those disclosed by the PHA or PHA Partner.
- **FEMA:** FEMA proceeds received must be disclosed by the PHA.
- **Other:** Funds received from other sources must be disclosed by the PHA or PHA Partner and verified by the Program. Examples include nonprofits, other governmental agencies, and social groups.

PHAs are required to report all assistance reasonably anticipated. Reasonably anticipated funds include assistance that has been awarded, but has not yet been received, but do not include a situation where the funding source and/or the amount is in question.

## 6.5 Project Funding and Disbursement

For new construction projects, CDBG-DR funds may be available at a Construction Loan closing, at closing, all funds needed to complete the project will be confirmed as available. Closing may not take place until title clearance has been obtained, to the satisfaction of GOSR counsel. Prior to closing, all Vendor Responsibility clearance must have been obtained for all applicable entities in the ownership chain as well as the general contractor. Any required flood and other applicable insurance will be confirmed at the closing.

CDBG-DR funds may also be available for PHAs as reimbursement for repair costs incurred. In this case, the PHA enters into a Subrecipient Agreement which identifies all sources of assistance for the project. GOSR reviews FEMA project worksheets, contracts and invoices of the FEMA- Ineligible expenses and completes a procurement analysis to confirm the reimbursable expenses.

### 6.5.1 Grant / Loan Agreements

Loan documents, grant agreements, and other forms of agreement as applicable will include the following federal requirements including, but not limited to those listed below:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold);
- Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000);
- Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees);
- Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair);
- Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation);
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers);

- Compliance with Sections 503 and 504 of The Rehabilitation Act of 1973 (29 U.S.C 794) as supplemented by Department of Labor regulations (41 CFR Part 60-741 and 24 CFR 8);
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;
- Awarding agency requirements and regulations pertaining to copyrights and rights in data;
- Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
- Retention of all required records 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;
- Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000); and
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (U.S.C. 6201).

### **6.5.2 Subrogation**

Subrogation is the process by which duplicative assistance paid to the PHA or PHA Partner after receiving an award is remitted to the Program. Subrogation avoids a duplication of benefit, whereby the PHA or PHA Partner would be reimbursed twice for the same loss. By signing the grant agreement, the PHA or PHA Partner warrants that it will remit any excess funds to the Program, whenever received.

### **6.5.3 Assignment Relating to Funds Received under CDBG-DR Program**

In instances of prospective work, the PHA agrees to assign to the Program all future rights to reimbursement and all payments received for named storm under any insurance policy held by the PHA which provides coverage for physical damage to the property including, but not limited to, any type of casualty or property damage, including flood, or under any reimbursement or relief program related to or administered by FEMA or SBA for physical damage to the property (not including proceeds received to cover contents), or any other assistance from non-profit organizations, faith-based organizations, other disaster relief entities, and other governmental entities.

The rights the PHA assigns to the Program are specific to the Property with respect to which the grant proceeds were paid. If the amount of the grant exceeds the amount received from other sources, the PHA will be entitled to receive the excess amount.

#### **6.5.4 Authorization for Program to Contact Third Parties**

Per Program agreements, the PHA will explicitly allow HTFC to request of any company with which the PHA held insurance policies, FEMA, or the SBA any non-public or confidential information needed by the Program to monitor/enforce its interest in the rights assigned to it, and the PHA will give consent to such company to release information to the Program.

#### **6.6 Disbursement of Funds**

All CDBG-DR funds will be distributed on a reimbursement basis only. Each development will be registered as a separate activity in DRGR, and CDBG-DR funds will be drawn down accordingly. The PHA or PHA Partner shall provide all documentation of the expenses for which reimbursement is sought. Acceptable documentation may include invoices, checks, receipts.

#### **6.7 Procurement and Conflict of Interest**

Developers receiving assistance through this program are selected through a competitive Request for Proposals process. Once selected, these Partners are considered “developers” under CDBG regulations. Developers are not required to use a competitive process for selecting general contractors, subcontractors, and professional services providers. Developers are permitted to have an identity of interest between the owner, developer, and/or builder. Project underwriting and cost containment practices assure cost reasonableness.

#### **6.8 Construction Monitoring**

For new construction projects, HCR, the project’s construction lender, or its designee, retains primary responsibility for monitoring construction, approving progress payments to contractors, and approving change orders.

#### **6.9 Approval of Conversion to Permanent Financing**

Where construction and permanent financing are involved, GOSR requires the submission of all required documents prior to approving the project’s conversion to permanent financing.

##### **Required Documents:**

- All required Program Eligibility Documents
- Certificate of Occupancy – or other acceptable document from the local building authority.
- Certificate of Completion
- Elevation Certificate (if elevated)

- Proof that project was completed according to the applicable Green Building Standard selected in the application and/or commitment letter; which may consist of documentation from construction monitor or project architect
- Current title
- Satisfactory indication that all compliance obligations including Fair Housing, Davis Bacon, Section 3, Section 504 and M/WBE are up to date
- Copies of all Program approved change orders
- Permits as required and applicable

## **6.10 Lease-up Monitoring**

### **6.10.1 Determining Tenant Income**

The Program will confirm that each project is leased to the number of LMI units identified in the executed commitment letter or Agreement. For new construction projects, the Program will rely on verification provided by the PHA or PHA Partner as verified by HTFC or HFA staff.

In submissions to HCR to determine tenant income, the program requires the developer or a subsequent owner must report the most recent signed federal income tax returns (e.g., IRS Forms, 1040, 1040A or 1040EZ).

If one or all household members do not have an IRS tax return, or the income situation has changed since the tax return(s) was filed, any of the following applicable documents may be presented for every household member that is 18 or older:

- Minimum of three current and consecutive months of check stubs (if the household member is paid monthly)
- Minimum of four current and consecutive check stubs (if the household member is paid weekly, bi-weekly or bi-monthly)
- Pension statement showing current monthly or yearly gross amount
- Social Security statement or IRS Form 1099
- Unemployment statement
- Certification of Zero Income Form
- Completed Household Income Worksheet and Certification, verified by information received from the New York State Department of Tax and Finance.

## **6.11 Environmental Review**

CDBG disaster grant funding from HUD is contingent on compliance with the National Environmental Policy Act (NEPA) and related environmental and historic preservation legislation and executive orders. Projects are also subject to State Environmental Quality Review (SEQR).

All projects which involve new construction, change of use (as in adaptive reuse projects), or increase the floor area of an existing residential structure by 20% or more must successfully complete an Environmental Assessment (EA) prior to entering into a funding commitment for PHARP-financed projects. For projects which involve substantial rehabilitation of existing residential structures, an abbreviated environmental review may be required. As mentioned in [Section 3.3](#), pre-application technical assistance is available to discuss these matters further. All awards will be considered conditional until the environmental review is complete.

## **6.12 Green Building Standards**

All reconstruction and new construction of residential buildings and substantially damaged homes must incorporate Energy Conservation Construction Code of New York State (ECCCNYS current edition) into construction and achieve certification. Repair of buildings must follow guidelines in the HUD CPD Green Building Retrofit Checklist. GOSR may accept a green building standard that it deems substantially equivalent to or in excess of the ECCCNYS or the HUD CPD Green Building Retrofit Checklist.

## **6.13 Floodplain, Floodway and Coastal High Hazard Area Policy**

[Executive Order 11988 – Floodplain Management](#) requires Federal activities to avoid impacts to floodplains and to avoid direct and indirect support of floodplain development to the extent practicable. All PHAs and PHA Partners must comply with these federal regulations. For more information refer to [HUD Guidance](#). Definitions and regulations regarding the 100 Year Floodplain, Floodway, and the Coastal High Hazard Area can be found in Section 7.0 of this manual.

## **6.14 Flood Insurance Policy**

If a PHA or PHA Partner receives any CDBG-DR assistance and the property is located within the “100-year” floodplain then the owner is required by federal regulation to maintain flood insurance in perpetuity and, in the event of a transfer of property, the owner is required, on or before the date of transfer, to notify the transferee in writing in the documents evidencing the transfer of ownership of the property, of the requirements to obtain and maintain flood insurance in perpetuity. If a transferor fails to provide notice as described above, the transferor shall be held liable. The requirement to obtain and maintain flood insurance is included the Loan Agreement and Mortgage documents executed at closing.

As per Federal regulations, if an owner previously received Federal Assistance for the subject property – personal, commercial, or residential – and failed to obtain and maintain flood insurance then the owner is ineligible to receive assistance from CDBG-DR. For more information, refer to [Section 582 of the National Flood Insurance Reform Act of 1994 \(42 U.S.C. 5154a\)](#).



## 7.0 Acronyms and Definitions

### 7.1 Acronyms

| Acronym       | Name   |
|---------------|--|
| AHF           | Multi-family Affordable Housing Fund   |
| AMI           | Area Median Income   |
| BERA          | Bureau of Environmental Review and Assessment  |
| BFE           | Base Flood Elevation   |
| CBDG-DR       | Community Development Block Grant-Disaster Recovery  |
| CDOL          | Community Development Online (system)  |
| DOB           | Duplication of Benefits  |
| EA            | Environmental Assessment   |
| EPA           | Environmental Protection Agency  |
| ERR           | Environmental Review Records   |
| FEMA          | Federal Emergency Management Agency  |
| FIRM          | Flood Insurance Rate Map   |
| 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   |
| LIHC          | Low-Income Housing Tax Credit Program  |
| LMI           | Low- and Moderate-Income   |
| MWBE          | Minority and Women Owned Businesses  |
| NEPA          | National Environmental Policy Act  |
| NFIP          | National Flood Insurance Program   |
| NYS           | New York State   |
| NYSERDA       | New York State Energy and Research Development Authority                                   |
| PAB           | Private Activity Bond  |
| QAP           | Qualified Allocation Plan  |
| RFP           | Request for Proposals  |
| SAM           | System for Award Management  |
| SBA           | Small Business Administration  |
| SEQR          | State Environmental Quality Review   |
| SFHA          | Special Flood Hazard Area  |
| TOD           | Transit Oriented Development   |
| UFA           | Unified Funding Application  |
| URA           | Uniform Relocation Act   |
| USGBC<br>LEED | United States Green Building Council Leadership in Energy and Environmental Design<br>LEED |

## 7.2 Definitions

**Multi-family Affordable Housing Fund (AHF):** AHF is a housing development program that provides financing assistance for acquisition, capital costs and related soft costs associated with the new construction or rehabilitation of affordable housing developments to address unmet housing need in area damaged by one or more Covered Storms.

**Area Median Income:** Average household income, before taxes, adjusted for family size. For NYS AMI's refer to [this chart](#). Income guidelines are calculated annually and therefore subject to change on a yearly basis.

**Base Flood Elevation (BFE):** The BFE is the regulatory requirement for the elevation or flood-proofing of structures. It is the computed elevation to which floodwater is anticipated to rise during the base flood. Base Flood Elevations (BFEs) are shown on Flood Insurance Rate Maps (FIRMs) and on the flood profiles.

**Change Orders:** Modifications to the Scope of Work required due to unforeseen circumstances.

**Coastal High Hazard Areas:** are the areas subject to high velocity waters, including but not limited to hurricane wave wash or tsunami as designated by the Flood Insurance Rate Map (FIRM) under FEMA regulations as Zone V 1-30, VE or V (V Zones).

**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.

**Covered Storm:** Hurricane Irene, Tropical Storm Lee, and/or Superstorm Sandy.

**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.” Developers are distinct from subrecipients, grantee employees, and contractors. Developers are considered to be 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.

**Environmental Review Record (ERR):** A permanent set of files containing all documentation pertaining to the environmental review compliance procedures conducted and environmental clearance documents

**Floodplain:** (also known as the “Base Flood”): is the low, flat, periodically flooded lands adjacent to rivers, lakes and oceans and subject to geomorphic (land-shaping) and hydrologic (water flow) processes.

The 100-year Floodplain is the land that is predicted to flood during a 100-year storm, which has a 1% chance of occurring in any given year. Areas within the 100-year floodplain may flood in much smaller storms as well. The 100-year Floodplain is used by FEMA to administer the National Flood Insurance Program. (NFIP)

**Floodway:** (also known as the “Regulatory Floodway”) is the portion of the Floodplain effective in carrying flow where flood hazard is generally the greatest, and water velocity is the highest. In the Floodway, fill or other development is likely to divert flow and contribute to increased water depths during a flood. Ideally, Floodways should be undeveloped areas that can accommodate flood flows with minimal risk.

**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 subrecipients.

**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.

**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.

**Low Income Housing Tax Credits (LIHTC):** The LIHTC Program is an indirect Federal subsidy used to finance the development of affordable rental housing for low-income households.

**National Environmental Policy Act (NEPA):** Establishes a broad national framework for protecting the environment. NEPA's basic policy is to assure that all branches of

government give proper consideration to the environment prior to undertaking any major federal action that could significantly affect the environment.

**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.

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

(1) Means a person who:

- (A) Has a disability, as defined in 42 U.S.C. 423; Inability to engage in any substantial gainful activity by reason of 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
- (B) In the case of an individual who has attained the age of 55 and is blind, inability by reason of 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))

**Private Activity Bond (PAB):** In general, a private activity bond is a bond issued by or on behalf of local or state government for the purpose of financing the project of a private user.

**Project Sponsor:** Project applicant, or if an application is completed on the sponsor's behalf, the sponsor as identified in the application

**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.

**Site Specific Checklist (SSC):** The environmental compliance checklist that is required to document environmental clearance before Federal funds are permitted to be awarded.

**Slum and Blight:** “Blighted area” and “slum” mean an area in which at least seventy per cent of the parcels are blighted parcels and those blighted parcels substantially impair or arrest the sound growth of the state or a political subdivision of the state, retard the provision of housing accommodations, constitute an economic or social liability, or are a menace to the public health, safety, morals, or welfare in their present condition and use

**Small Business Administration (SBA):** SBA’s Office of Disaster Assistance (ODA) provides affordable, timely and accessible financial assistance to homeowners, 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.

**Subrogation:** The process by which duplicative assistance paid to the Project Sponsor after receiving an award are remitted to the Program in order to rectify a duplication of benefit.

**Substantial Damage:** Occurs when a property sustains damages that equal or exceed 50 percent of its Fair Market Value (FMV) prior to the event, as determined by a local authorized official (e.g., a code officer) and is sent a Substantial Damage Letter, or if the ECR/AA value (minus elevation and bulkheads costs) meets or exceeds 50 percent of the Program cap.

**Systematic Alien Verification for Entitlements (SAVE):** Is a web-based service that helps federal, state and local benefit-issuing agencies, institutions, and licensing agencies determine the immigration status of benefit homeowners so only those entitled to benefits receive them.

**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.

**Urgent Need Objective:** Under the disaster recovery federal regulations, HUD has determined that an urgent need exists within the Presidentially Declared counties. An urgent need exists because existing conditions pose serious and immediate threat to health/welfare of community, the existing conditions are recent or recently became urgent (typically within 18 months), and the sub-grantee or state cannot finance the activities on its own because other funding sources are not available.

## **Exhibit 1 – Program Administrative Requirements and Cross-Cutting Federal Regulations**

The NY Rising Housing Recovery Programs and its beneficiaries, subrecipients and contractors must adhere to federal and state requirements as applicable and provide confirmation of compliance upon request. It is incumbent upon grant recipients to determine which requirements apply to them. A general reference to all requirements may be found in the NY Rising Housing Recovery Program Cross-Cutting Manual available upon request and located on the Program website.

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## **Exhibit 2 - Citizen Participation Plan**

### **Community Development Block Grant Disaster Recovery Hurricane Irene, Tropical Storm Lee, and Superstorm Sandy**

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The primary goal of the New York Citizen Participation Plan is to provide all New York citizens with an opportunity to participate in the planning, implementation, and assessment of the State's CDBG-DR Sandy recovery program(s). The Plan sets forth policies and procedures for citizen participation, which are designed to maximize the opportunity for citizen involvement in the community redevelopment process. New York State developed the Citizen Participation Plan to meet the requirements of the CDBG Disaster Recovery (CDBG-DR) funding for Superstorm Sandy, Hurricane Irene, and Tropical Storm Lee. The Plan reflects the alternative requirements as specified by the U.S. Department of Housing and Urban Development (HUD) in the Federal Register (FR-5696-N-01), Federal Register (FR-5696-N-06), Federal Register (FR-5696-N-11) and notice of specific waivers.

The State ensures that any Units of General Local Government (UGLGs) or sub-recipients who receive funds have a Citizen Participation Plan that meets the CDBG-DR regulations and takes into consideration the waivers and alternatives made available under CDBG-DR funding.

In order to facilitate citizen participation requirements and to maximize citizen interaction in the development of the New York Disaster Recovery Action Plan, substantial amendments to the Action Plan, and the Quarterly Performance Reports (QPR), the State has laid out targeted actions to encourage participation and allow equal access to information about programs by all citizens, including those of low and moderate income, persons with disabilities, the elderly population, persons receiving Disaster Housing Assistance Program (DHAP) funding, and persons with limited English proficiency.

### **Public Outreach**

GOSR is committed to ensuring that all populations impacted by the storms are aware of the programs available to assist in the recovery from Hurricane Irene, Tropical Storm Lee, and Superstorm Sandy. Through in person meetings, outreach events, online and traditional media, GOSR has publicized programs and conducted outreach efforts throughout the storm impacted areas. In addition, the Governor initiated the NYRCR Program, a grass-roots community driven process that engages the public as a key stakeholder in the planning and rebuilding process. Through 61 cross-jurisdictional Planning Committees representing 119 communities, the NYRCR stakeholders helped to inform their communities about the available recovery programs as they came online.

## Programmatic Outreach

Through the NYRCR Program, there have been over 650 Planning Committee Meetings to construct a vision statement; to conduct an inventory of critical assets and an assessment of risks; and then ultimately to craft the strategies, and proposed projects or actions to address these risks. All meetings were open to the public and were publicized by media advisories, flyers, and posters hung in public buildings; radio announcements; and through social media. Where necessary, meetings were advertised in various languages to ensure the immigrant population was informed. Translators were also present at meetings so that information was clearly understood. For the hearing impaired, sign language interpreters were also available.

More than 250 Public Engagement Events attracted thousands of community members, who provided feedback on the NYRCR planning process and proposals and made additional suggestions. Planning Committees members were instrumental in representing communities that are traditionally underrepresented in disaster recovery, from engaging immigrant populations to working with high school students. Committee members made presentations at senior housing complexes, religious gatherings, schools, and at Chambers of Commerce.

For the Small Business program, GOSR worked in coordination with the Empire State Development Corporation (ESD) as well as its sub-recipient, the Small Business Development Center (SBDC) to create a multi-pronged approach to reach out to more than 3,000 businesses in the impacted communities. This has included paid advertising, door-to-door visits, press releases and other public relations efforts, and collaboration with various constituents and community organizations.

Early in the NY Rising Homeowner Program, the State partnered with the Long Island Housing Partners to target community outreach including but not limited to, persons with disabilities and other special needs, and senior households, with a focus on low- and moderate- income minority communities; outreach to and coordination with civic associations, religious and advocacy groups (racial equity), social service agencies, emergency aid not-for profits, educational institutions, and outreach to residences impacted by the disaster.

The State's vendors on the project also held numerous meetings to inform the public about the availability of grants for home repairs. This outreach consisted of a variety of methods: media announcements, online updates on the Storm Recovery website and through Storm Recovery profiles on social media platforms including Facebook, Twitter, and Instagram, community meetings, and partnerships with sub-recipients. Additionally, staff frequently made presentations to community groups, specifically in Long Island, to provide updated program information. A similar effort has been conducted in counties in upstate New York to make sure that all impacted homeowners have the most up to date information about the program. In addition, frequent technical assistance meetings were



held with applicants to assist homeowners in better understanding the program and completing the rebuilding process successfully.

Further the State also engaged the Welfare Council of Long Island/Long Island Long-Term Recovery Group (LTRG) to conduct targeted outreach to low- and moderate-income individuals that were affected by the Superstorm Sandy, in order to encourage these individuals to apply to the NY Rising Housing Recovery Assistance Program before the April 11, 2014 deadline.

For its rental programs, the State conducted outreach to potential landlords throughout the impacted areas that may be eligible for the program. As part of its implementation, the State also conducted outreach to previous tenants of the damaged rental units to make them aware of potential repaired and newly built units as they were completed.

## **Outreach to Vulnerable Populations**

The State also conducted outreach to residents with more acute needs, particularly low- and moderate- income household and households headed by non-English speaking persons. As noted above, within the NYRCR program, where necessary, meetings were advertised in various languages to ensure the immigrant population was informed. Translators were also present at meetings so that information was clearly understood. For the hearing impaired, sign language interpreters were also available.

As the State continues to implement programs and work with communities to recover from Hurricane Irene, Tropical Storm Lee and Superstorm Sandy, GOSR is committed to continued outreach and program accessibility to vulnerable populations and ensuring that program information is accessible to populations with language barriers. For example, the APA is translated into Spanish, Russian and Chinese, which are the three languages most needed for persons with language barriers in impacted counties (based on the 2008-2012 ACS 5-Year Estimates, Table B16001, Populations 5 Years and Over Who Speak English less than “very well”). The State continues to translate programmatic materials within its Programs. The State also continues to provide translation services as needed in case management and public meetings.

The State’s website ([www.stormrecovery.ny.gov](http://www.stormrecovery.ny.gov)) includes language translation functionality. The State also provides translation of any document into additional languages, braille, or any other formats for persons with visual impairments upon request.

The State continues to further these efforts to reach out to all populations and ensure that the community is educated and aware of all of the recovery programs. As programs adjust and move into new phases, the State will continue to adjust their public outreach to ensure comprehensive outreach to all populations.

## **Public Notices, Public Hearings, and Comment Period**

The State Citizen Participation Plan ensures that there is reasonable and timely access for public notice and comment on the activities proposed for the use of CDBG-DR grant funds. In the Notices for the Second and Third Allocation HUD revised the requirements

for public hearings. The State always holds one public hearing, at minimum, for each substantial amendment, starting with APA6. Written minutes of the hearings and attendance rosters are kept for review by State officials. The State continues to coordinate outreach meetings with State entities, local governments, non-profits, private sector, and involved associations. The State invited public comment to the New York Disaster Recovery Action Plan and will continue to invite public comment for any future Substantial Amendments for a minimum thirty days, posted prominently and accessed on GOSR's official website.

## **Substantial Amendments to the Action Plan**

The State has defined Substantial Amendments to the Action Plan as those proposed changes that require the following decisions:

- Addition or deletion of any allowable activity described in the approved application;
- The allocation or re-allocation of more than \$1 million; and/or,
- Change in the planned beneficiaries.

Those amendments which meet the definition of a Substantial Amendment are subject to public notification, public hearings and public comment procedures. Citizens and units of local government are provided with reasonable notice and an opportunity to comment on proposed Substantial Amendments to the Action Plan. A notice and copy of the proposed Substantial Amendment is posted on the agency's official website. Citizens are provided with no less than thirty days to review and comment on the proposed amendment.

A summary of all comments received and responses are included in the submission to HUD and posted to GOSR's official website. A summary of the comments and responses can be found in the relevant Action Plan Amendment on GOSR's website.

Non-substantial Amendments to the Action Plan are posted on GOSR's official website after notification is sent to HUD and the amendment becomes effective. Every Amendment to the Action Plan (substantial and non-substantial) is numbered sequentially and posted on the website.

## **Performance Reports**

The State must submit a Quarterly Performance Report through HUD's Disaster Recovery Grant Reporting (DRGR) system no later than thirty days following the end of each calendar quarter. Within three days of submission to HUD, each QPR must be posted on GOSR's official website. The State's first QPR is due after the first full calendar quarter after the grant award. QPR's will be posted on a quarterly basis until all funds have been expended and all expenditures have been reported. Each QPR is available at <https://stormrecovery.ny.gov/funding/quarterly-reports>.

Each QPR includes information about the uses of funds in activities identified in the Action Plan as entered in the DRGR reporting system. This includes, but is not limited to: project name, activity, location, and National Objective; funds budgeted, obligated, drawn down,

and expended; the funding source and total amount of any non-CDBG-DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes such as number of housing units complete or number of low- and moderate- income persons benefiting; and the race and ethnicity of persons assisted under direct-benefit activities. The State must also record the amount of funding expended for each Contractor identified in the Action Plan. Efforts made by the State to affirmatively further fair housing are included in the QPR.

During the term of the grant, the grantee provides citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the approved program and to the grantee's use of grant funds as well as contracts procured with CDBG-DR funding. This information is posted on the grantee's official website and provided on request.

## **Technical Assistance**

The State provides technical assistance to facilitate citizen participation where requested, particularly to groups representative of persons of low- and moderate- income and vulnerable populations. The level and type of technical assistance is determined by the applicant/recipient based upon the specific need of the community's citizens.

## **Citizen Participation Requirements for Sub-recipients and Local Governments Participating in CDBG-DR Programs**

To ensure applicant compliance with Section 508 of the Housing and Community Development Act of 1974, as amended, the citizen participation requirements for Units of General Local Government (UGLG) applying for or receiving Disaster Recovery funds from the State are as follows:

Each applicant shall provide citizens with adequate opportunity to participate in the planning, implementation, and assessment of the CDBG program. The applicant shall provide adequate information to citizens, obtain views and proposals of citizens, and provide opportunity to comment on the applicant's previous community development performance.

UGLGs that receive CDBG-DR funds must have a written and adopted Citizen Participation Plan which:

- Provides for and encourages citizen participation, with particular emphasis on participation by persons of low- and moderate- income who are residents of slum and blighted areas and of areas in which funds are proposed to be used;
- Provides citizens with reasonable and timely access to local meetings, information, and records relating to the State's proposed method of distribution, as required by regulations of the Secretary, and relating to the actual use of funds under Title I of the Housing and Community Development Act of 1974, as amended, and the unit

- of local government's proposed and actual use of CDBG funds;
- Provides for technical assistance to groups representative of persons of low- and moderate- income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;
- Provides for the review of proposed activities and program performance by potential or actual beneficiaries, and with accommodations for the disabled;
- Provides for a timely written answer to written complaints and grievances, within 15 working days where practicable;
- Identifies how the needs of non-English speaking residents will be met where a significant number of non-English speaking residents can be reasonably expected to be involved;
- Establishes procedures and policies to ensure non-discrimination, based on disabilities, in programs, and activities receiving federal financial assistance as required by Section 504 of the Rehabilitation Act of 1973, as amended.

The plan must be made available to the public and must include procedures that meet the following requirements:

- *Performance Hearings:* Prior to close out of the disaster recovery program, the Program, the UGLG and State sub-recipients may be required to hold a public hearing to obtain citizen views and to respond to questions relative to the performance of the program. This hearing is held after adequate notice, at times and locations convenient to actual beneficiaries and with accommodations for the disabled and non-English speaking persons provided. Written minutes of the hearings and attendance rosters are kept for review by State officials. Nothing in these requirements shall be construed to restrict the responsibility and authority of the applicant for the development of the application.
- *Complaint Procedures:* The State ensures that each UGLG, or sub-recipient funded with CDBG-DR funds has written citizen and administrative complaint procedures. The written Citizen Participation Plan provides citizens with information relative to these procedures or, at a minimum, provides citizens with the information relative to the location and hours at which they may obtain a copy of these written procedures. All written citizen complaints which identify deficiencies relative to the UGLG, sub-recipient's community development program merit careful and prompt consideration. All good faith attempts are made to satisfactorily resolve the complaints at the local level. Complaints are filed with the Executive Director or Chief Elected Official of the entity who is receiving the funds and who is investigating and reviewing the complaint. A written response from the Chief Elected Official, Agency Head, or Executive Director to the complainant is made within 15 working days, where practicable.