



# **NY Rising Small Business Recovery Program POLICY MANUAL**

**Andrew M. Cuomo, Governor of New York State  
Darryl C. Towns, Commissioner/CEO,  
New York State Homes and Community Renewal  
James Rubin, Director, Governor's Office of Storm Recovery**

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Prepared by:  
Governor's Office of Storm Recovery  
New York State Homes and Community Renewal  
Housing Trust Fund Corporation  
Office of Community Renewal

The policies stated in this manual are current as of April, 2015. 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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# POLICY MANUAL

## NY Rising Small Business Recovery Program

### Version Control

Version Number	Date Revised	Description of Revisions
4.0	April 2015	Clarified application document requirements, process and priorities
3.0	July 2014	Policy updates and clarifications address the following subject areas: environmental review; privately owned recreational facilities; working capital calculations; disbursement process; NAICS codes reclassification; flood insurance
2.0	April 3, 2014	Policy updates and clarifications
1.4	February 5, 2014	Policy Manual distributed to Program Partners
	November 1, 2013	Outlined valuation methodology for losses of agriculture/aquaculture inventories; provided additional acceptable proof of payment documentation examples for reimbursements
	October 28, 2013	Classification of exempt vs. non-exempt activities; items included/excluded in initial damage inspection; clarification of initial damage inspection policy surrounding leasehold and home-based businesses
	October 8, 2013	Allowed businesses to receive multiple disbursements of Award funds
	October 1, 2013	Further modification of definition of Viability; clarification of working capital grant and loan documentation requirements; clarification of documentation for verification of loss
	September 3, 2013	Modification of Seasonal Business definition
	August 20, 2013	Modification of definition of Viability; requirements to provide and/or maintain flood insurance; basis of determining working capital needs

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# State of New York's Program Goals

## 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...”*

CDBG-DR funding is awarded directly to the State or Unit of General Local Government (UGLG) as a grantee at the discretion of the Secretary of Housing and Urban Development. Eligible activities must be authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

Following Superstorm Sandy, Hurricane Irene, and Tropical Storm Lee (the Storms), New York State (the State) developed the NY Rising Small Business Recovery 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) and subsequent Amendments. The Program is designed to help New York State Small Businesses that were directly impacted by the Storms to recover and rebuild, and just as importantly, to stimulate economic growth in affected communities.

Business Owners in disaster declared counties were invited to submit a pre-application for Program assistance and Business Owners who have not yet applied are encouraged to do so. Pursuant to federal regulation, only Business Owners of a Small Business, as defined by 13 CFR Part 121 and articulated below, are eligible for funding. Applicants who are determined to be eligible, work with Program representatives to complete the process beginning with the application, through project completion and Award close out.

## Oversight of Storm Recovery

In June 2013, Governor Cuomo established the Governor's Office of Storm Recovery (GOSR), a division of the Housing Trust Fund Corporation, to maximize the coordination of recovery and rebuilding efforts in storm-affected municipalities throughout New York State. GOSR operates within the New York State Housing Trust Fund Corporation (HTFC). HTFC is a component of New York State Homes and Community Renewal (HCR), a unified leadership platform,

encompassing a variety of New York State agencies and public benefit corporations involved in the provision of housing and community renewal. GOSR was formed to direct the administration of Federal Community Development Block Grant – Disaster Recovery funds.

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

## **Policy Manual Overview**

This Manual is designed to outline the major program policies that the State and its agents use to direct the operation of the NY Rising Small Business Recovery Program. This manual is intended to serve as a resource for New York State residents and other parties interested in the details of how the Program is operated, including basic information on who is served, what kind of assistance is offered, and what the obligations are for Program recipients. The manual serves as a general reference guide for administrative staff and other interested parties, including Business Owners, contractors, units of general local government (UGLGs), and any non-profit organizations that are involved as subrecipients or consultants.

As outlined in the Action Plan and subsequent Amendments, and described in more detail throughout this Manual, the Program is designed to provide grants for the repair or replacement of needed equipment, replacement of lost inventory; working capital; rehabilitate and reconstruct commercial facilities; and provide mitigation assistance for damage or destruction as a result of the Storms. This effort is intended to help individuals and businesses that were hard hit by the storm to recover, as well as to help ensure that communities suffering damage are repopulated and revitalized as quickly as possible.

The manual is not intended to be full compilation of all internal program procedures that must be put in place before the State and its Agents. This NY Rising Small Business Manual and manuals for other programs are available for public review and use at <http://www.stormrecovery.ny.gov>

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

In support of the Department of Housing and Urban Development's (HUD) recovery objective, the State specifically designed its disaster recovery programs to help impacted residents and communities to recover from the damage that has been inflicted by the Storms of 2011 and 2012. As set forth 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-funded activities must meet one of the three National Objectives required under the authorizing statute of the CDBG program:

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

As described in the State’s policies, all of the activities funded through the Program are required to meet either LMI or Urgent Need national objectives.

## **Fulfilling the Principles Established by New York State’s Action Plan**

The Program is expected to encourage investment in communities by assisting local businesses in returning to pre-storm conditions while positioning them to be capable of meeting the needs of their post-disaster operations in a sustainable way; revitalizing the vibrancy of the State’s disaster-impacted communities and enhance the quality of life; and support communities in developing and implementing strategies which facilitate the coordination of Program funding with other federal, State, and local community development resources.

The NY Rising Small Business Recovery Program and the other activities outlined in the Action Plan and subsequent Amendments, are based on the foundation of six key principles:

***Building back better and smarter*** – As New Yorkers work to repair the damage wrought by Hurricane Sandy, the State uses the opportunity to ensure that damaged buildings are not simply restored to their pre-storm condition or replaced with the same kind of structures, but instead invest in additional mitigation measures to prevent similar damage from occurring in the future.

***State-led, community-driven recovery*** – The 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.

***Recovery from Irene and Lee*** – The recovery efforts also extend to those communities still recovering from Hurricane Irene and Tropical Storm Lee.

***Leveraging private dollars*** – The State undertakes programs that help unlock capital markets and increase the amount of low-interest financing of key projects by reducing the risk for private sector lenders.

***Spending accountability and transparency*** – To make certain that funds are spent appropriately and responsibly, the State puts rigorous spending accountability systems in place and employs an independent auditing firm.

***Urgency in action*** – The recovery is a long-term endeavor, but people need help today, so the projects and programs are shaped to achieve the fastest delivery and best support possible.

## Outreach and Citizen Participation Plan

A variety of outreach activities are conducted for all potentially eligible Business Owners, with an emphasis placed on conducting outreach to the following groups:

- LMI Business Owners;
- Businesses that provide economic opportunities to LMI persons;
- Businesses that have not re-opened due to damage or impact from the storm;
- Coastal Fishing Industry Businesses; and,
- Seasonal Businesses.

Outreach efforts are guided by the State and accomplished through a variety of resources and activities listed below.

**Online:** Promotion of recovery resources, including program summaries, fact sheets, brochures, Frequently Asked Questions (FAQs), Action Plan and information on the eighteen Small Business Development Center (SBDC) locations and hours at <http://www.stormrecovery.ny.gov/>.

**In Person:** Door-to-door communication by Program staff and partner organizations, availability of trained Business Advisors to assist potentially eligible Business Owners with the completion and submission of an application.

### **By Phone:**

- Outbound phone calls to potentially eligible Business Owners, including those who have registered with the State to express an interest in receiving assistance, as well as to those known to have registered for disaster aid with the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), and other sources.
- GOSR has provided access to a State-supported NY Rising Recovery hotline, **1-855-NYS-SANDY**, which provides trained representatives who can answer questions about the Programs, guide potentially eligible Business Owners through the application process, and provide updates on the status of applications.

**By Television:** Paid television advertising campaigns to promote the availability of recovery resources.

**Through Partner Organizations:** Partnership and coordination, both formally through sub-recipient arrangements and other more informal arrangements, with not-for-profit community-based organizations involved in disaster recovery efforts in the impacted regions.

**Through Events:** Coordinated engagement and participation by Program staff and partner organizations at community forums, town halls, Chamber of Commerce, Business Associations meetings and other locally-supported community-based events. The State created professional signage, documentation, advertisements and other such material to support and enhance the operation of the Program. Outreach leverages alternative language delivery, including, but not limited to, Spanish, Russian, and Chinese.

Persons with disabilities, those with limited English proficiency or others who may need Program documents presented in a different format are encouraged to contact the NY Rising Recovery hotline at 1-855-NYS-SANDY for assistance with obtaining information in an accessible format.

The State utilizes any and all currently available web-based and other electronic resources, including social networking media, to promote the Program and provide timely dissemination of information and notifications to affected small businesses.

Program-related materials, such as fact sheets, flyers, and more are readily available for download at <http://www.stormrecovery.ny.gov/>, and also are distributed by the State and its Program partners to public officials, municipalities, relevant non-profit organizations, and others as necessary or upon request.

Direct mailings, calls and emails are used to notify Business Owners of their application status, appointment notifications, missing information, grant closing, information regarding the disbursement process and timelines, and other program-related information as necessary.

## **Citizen Participation Plan**

The New York State Citizen Participation Plan provides all 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 now include a thirty-day public comment process with at least one 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 also invites public comments to the Action Plan and Substantial Amendments for the duration required by HUD. They are posted prominently and accessed on the GOSR official website. The State uses 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 as Exhibit 2 to this Policy Manual.

## 1.0 NY Rising Small Business Recovery Programs

New York State has developed a comprehensive grant program under the NY Rising Small Business Recovery Program: small business grants. Both types of assistance can be used for the repair or replacement of needed equipment, replace lost inventory, renovate facilities that were damaged/destroyed, and mitigating damaged properties for future resilience. Grant assistance may also be used to cover eligible working capital expenses.

### 1.1 Types of Assistance

All assistance is limited to activities that are a direct result of Superstorm Sandy, Hurricane Irene or Tropical Storm Lee. The Program also offers mentorship assistance to small business owners located in eligible disaster counties through the Business Mentor Program, which is implemented by Empire State Development. Additional information on this program can be found at <http://businessmentor.ny.gov/>.

#### 1.1.1 Grants

The Program offers several grant assistance options to eligible Business Owners. Each grant assistance option has varying eligibility requirements that Business Owners must meet in order to receive an Award within that option. Business Owners may qualify for more than one grant assistance option. Awards from the varying grant assistance options are cumulative up to either the total amount of eligible, unmet need or the established Maximum Grant Benefit, with the exception of the Coastal Fishing and Seasonal business grants, as a business may only qualify for a Coastal OR a Seasonal business grant.

##### 1.1.1.1 Preliminary Award Initiative

Until May 1, 2014, Business Owners who applied to the Program had the opportunity to apply for a preliminary Award payment of \$10,000 to assist with immediate non-construction related business needs while a full Program application was completed. Business Owners who receive funds under the Preliminary Award Initiative had until December 1, 2014 to complete a full Program application. The State issued notifications to Business Owners of the deadline to remind the Preliminary Award recipients of the requirement to complete a full Program application. Should a business fail to meet the deadline, the business was placed in the recapture process as described in Exhibit 1 of this Policy Manual. Total Program assistance available to each Business Owner was calculated net of any preliminary Award payment received.

##### 1.1.1.2 Small Business Grants

All eligible Business Owners may receive a grant of up to \$50,000 to cover eligible, unmet need to enable a storm-impacted business to repair or replace damaged property, assets and inventory, cover eligible working capital expenses and/or mitigate against future damages.

##### 1.1.1.3 Coastal Fishing Industry Grants

Commercial and recreational fishing businesses (defined as such by the NY Department of Environmental Conservation) may be eligible for an additional \$50,000 to cover eligible unmet need to enable the affected business to repair or replace damaged property, assets and inventory and/or provide the working capital necessary to help the business recover from the impacts of the

storm(s). Businesses are not eligible for both the Coastal Fishing Industry Grants and the Seasonal Business Grants.

#### *1.1.1.4 Seasonal Business Grants*

Seasonal businesses may be eligible for an additional \$50,000 to cover remaining eligible, unmet need to enable an affected business to repair or replace damaged property, assets and inventory and/or provide the working capital necessary to help the business recover from the impacts of the storm(s) and prepare for the upcoming season. Businesses are not eligible for both the Coastal Fishing Industry Grants and the Seasonal Business Grants.

#### *1.1.1.5 Economic Hardship Grants*

Grants of up to an additional \$50,000 may be available for applicants with remaining unmet need and facing severe economic hardship, defined as the risk of business closure or significant employment loss.

In order to be eligible for Economic Hardship assistance, applicants must meet one of the following criteria:

- Experienced significant employment loss as documented by comparing average employment from the NYS-45 Q3 2012 (Q2 2011 for Irene and Lee) to the same quarter NYS-45 of the following year.
  - The average of all three months is used, not individual months;
  - For seasonal businesses significant employment loss is documented by comparing the quarter prior to the storm that falls within their revenue generation period to the same quarter NYS-45 of the following year;
- Can show documented public or employee correspondence regarding impending employment reductions;
- Experienced a decrease in business revenues of 30% or greater as documented by comparing the 12 month period prior to the storm to the 12 month period after the storm. (e.g. September 2011 through September 2012 compared against October 2012 through October 2013 for Hurricane Sandy applicants); or
- The business has not yet reopened since the storm.

Significant employment loss is defined as:

- For businesses with 30 employees or less:
  - Loss of two employees for LMI Business Owners **or** businesses which have a majority of LMI employees; or
  - Loss of three employees for all other businesses.
- For businesses with 31+ employees:
  - Loss of 7% of the total employment for LMI Business Owners **or** businesses which have a majority of LMI employees; or
  - Loss of 10% of all employees for all other businesses.

The Underwriting Agent and/or the State reviews and verifies information provided by Business Advisors in order to make a determination for economic hardship assistance eligibility.

#### **1.1.1.6 Mitigation Grants**

In conjunction with assistance provided to an eligible, impacted business that experienced physical damages, a mitigation grant of up to an additional \$100,000 may be provided to mitigate storm damages from occurring again in the future. Possible mitigation activities include expenses such as elevating key equipment, flood-proofing or elevating businesses. The need for such mitigation must be directly tied to damage from the Storms. Mitigation grants may be used for required and optional mitigation activities as outlined in Section 3.4.3.

#### **1.1.2 Assistance Activities**

Assistance can be utilized to fund a variety of eligible activities. Examples of activities include the repair or replacement of needed equipment, replacement of lost inventory, renovation of facilities that were damaged or destroyed, mitigating damaged properties for future resilience and/or particular working capital expenses.

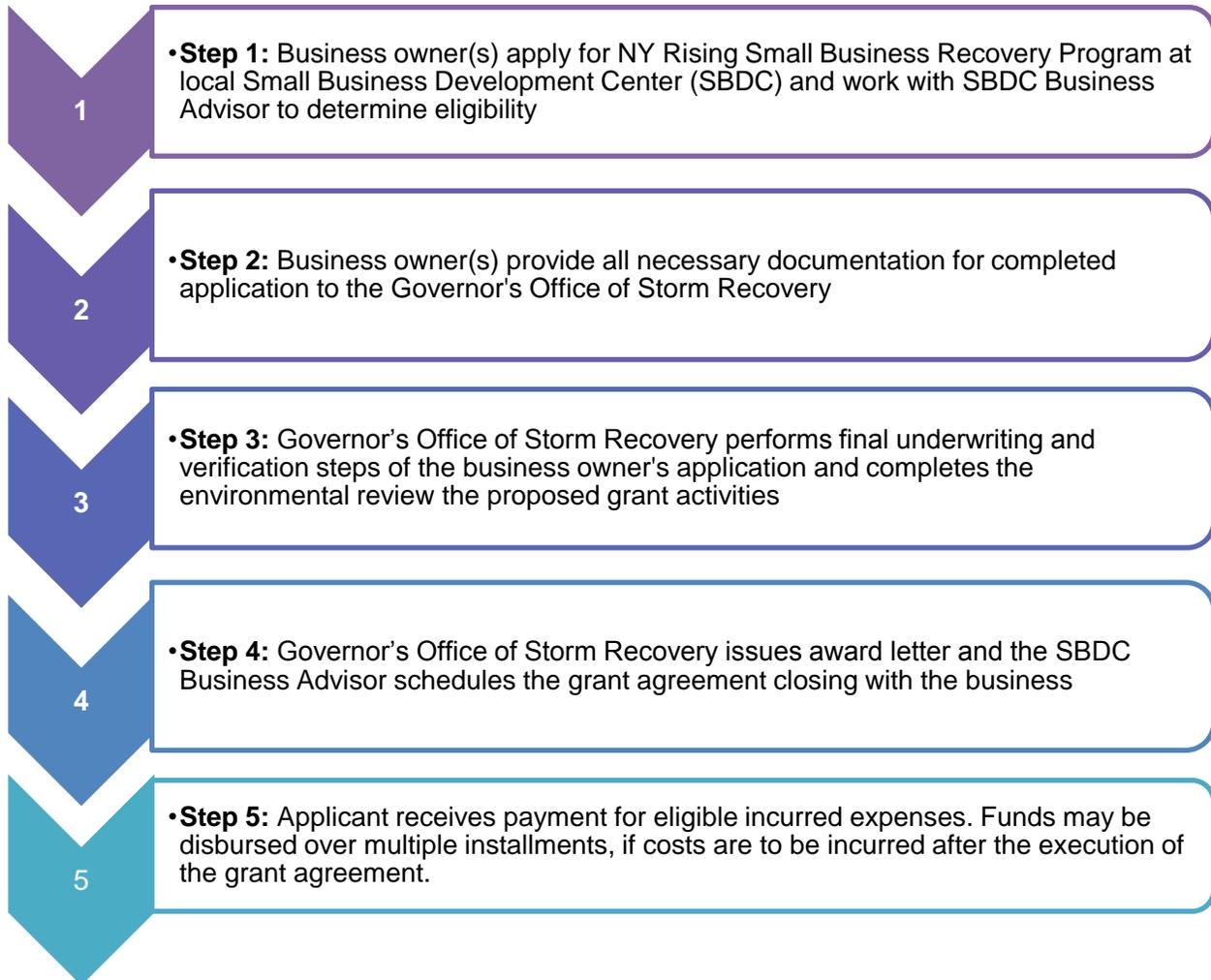
#### **1.1.3 Mentorship Assistance**

Through Business Mentor NY, small businesses may receive free mentorship assistance. Businesses are matched, depending on their specific needs, with volunteer business mentors who are well-positioned to provide mentorship assistance to address small business technical assistance needs. Through Business Mentor NY, businesses may get answers to simple questions or engage in longer-term relationships.

The network of mentors include lawyers, accountants, business consultants, successful entrepreneurs and experts in the field of finance and cash flow management, retail, communications and information technology (IT), human resources and staffing, public relations, and sales and marketing.

Business Mentor NY is available to businesses that employ 100 employees or less and are located in counties that were subject to a federal disaster declaration as a result of Hurricane Sandy, Hurricane Irene or Tropical Storm Lee.

## 2.0 NY Rising Small Business Recovery Program Process



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## 3.0 Policies for the NY Rising Small Business Recovery Program

### 3.1 Application Submission

All Business Owners are required to complete the NY Rising Small Business Recovery Program Application and submit supporting documentation.

Business Owners may submit applications by following the steps below:

- 1) Identify your nearest Small Business Development Center (SBDC):  
<http://stormrecovery.ny.gov/business-centers>
- 2) Call an SBDC to schedule an appointment to have an initial phone consultation with an SBDC Business Advisor.

SBDC Business Advisors serve as the point of contact for Business Owners throughout the application process.

During the initial phone consultation, a Business Advisor provides an overview of the Program, reviews basic eligibility guidelines, discusses documentation required to apply and answers any questions in preparation for application submission. If a Business Owner decides to submit an application upon conclusion of the initial phone consultation, the Business Advisor schedules an in-person initial meeting to collect required documentation and begin the application process.

Only one application is considered per eligible entity. Please note a single entity is determined by any operations classified under a Federal Employer Identification Number (EIN).

For businesses with multiple storm-affected locations under one EIN, the applicant must submit a single application to cover all affected business locations. Regardless of the number of business locations under one EIN, the maximum funding amounts remain the same, and the entity is recognized as one eligible applicant.

Two or more eligible businesses owned by the same individual or group of individuals are permitted to submit one application per business provided each business has its own EIN. The maximum funding amounts for separate business entities owned by the same individual or group of individuals are dictated by the application funding limits.

An application must include all required documentation to be considered complete. At a minimum, Business Owners need to provide the following documents at the initial meeting with the Business Advisor.

#### **Mandatory Documents for All Applicants:**

**Owner Identification** (for each Business Owner with 20% or greater ownership share)

- Any ONE of the following pieces of current official documentation:
  - a) US Passport;
  - b) New York State Enhanced Driver's License;
  - c) Driver's License or State Identification Card and a Birth Certificate; or
  - d) Other Documentation of Legal Residence.

- IRS W-9 (one per business);
- SBA Statement of Personal History (SBA Form 912); and,
- Non-profits only*: List of all non-profit board members and individuals with signing authority.

Business Identification

- Any ONE of:
  - a) Certificate of Incorporation;
  - b) Articles of Organization;
  - c) Partnership Agreement;
  - d) Proof of Not-for-Profit Status;
  - e) Certificate of Doing Business As (DBA); or
  - f) Federal Personal Tax Return – Schedule C (Sole Proprietors only)
- Voided check for business bank account.

Lease/Utilities/Insurance

- Any ONE of:
  - a) Executed Lease at the time of the storm; or
  - b) Deed for business premises.
- Proof that mortgage **and** property taxes are current at time of application;\*, \*\*
- Utility bills (gas, electric, water) at the time of the storm;\*
- Any ONE of:
  - a) Proof of insurance on all impacted locations (including flood insurance if applicable); or
  - b) Proof of no insurance.

*\*If requesting working capital assistance, please provide documentation for the three consecutive months prior to the storm. (For property taxes, proof of payment for 6 months after the storm is required for working capital)*

*\*\* If no proof of mortgage satisfaction is available, the applicant may request the State to run a title search on the property*

Proof of Damage (Provide all that apply, at least ONE is required)

- Official comprehensive proof of loss statement/reports:
  - a) SBA DCMS Loss Verification Report;
  - b) FEMA Loss Report;
  - c) Insurance Claim Loss Reports;
  - d) NY Rising Inspection (AA/ECR, applicable to structural damage only).
- Local record of storm impact **AND** a detailed Business Advisor site visit and write-up:
  - a) Proof of Storm Impact – (any ONE of the following)
    - i. Business Address look up on Surge Map (Available for Superstorm Sandy and Hurricane Irene applicants only);
    - ii. Letter from Village/Township describing area damages;
    - iii. Letter from Long Island Power Authority (only for businesses that experienced losses due to power outages);
    - iv. Letter from Village/Township Department of Transportation (only for that

- experienced losses due to road closures);
- v. NY Department of Environmental Conservation Letter (Commercial Fishing Businesses only); or
- vi. Pictures that clearly demonstrate storm damage experienced by the business.
- b) Detailed Business Advisor Site Visit and Write Up.
- Pre-storm Proof of Ownership
  - a) Pre-storm invoices or receipts;
  - b) Pre-storm pictures;
  - c) Tax Return Depreciation schedules;
  - d) Other reasonable support documentation that demonstrates in-kind replacement of damaged items.

Articulation of Need

- Receipts, proof of payment for eligible replacement, repair costs and/or mitigation costs ALREADY SPENT (documentation includes but is not limited to)\*
  - a) Receipts;
  - b) Vendor purchase agreement;
  - c) Cancelled checks for paid invoices;
  - d) Purchase orders.

*\*All completed construction work must have been incurred within one year of the qualifying storm event and copies of all required permits must be provided in order to be eligible for reimbursement*

- Invoices, estimates for eligible replacement, repair costs and/or mitigation costs NOT YET SPENT (documentation includes but is not limited to)\*
  - a) Third party cost estimates;
  - b) Other independent evidence of projected costs;
  - c) All Applicable Environmental and Building Permits;

Business Viability

- Any ONE of:
  - a) Proof that business is currently open and operating (e.g. interim financial statements, most recent NYS-45, current utility bill, Business Advisor site visit); or
  - b) Actively trying to re-open **with** a Business Plan (determination made by the Business Advisors) and commitment of additional resources, if applicable.

Business Tax/Credit Forms

- Any ONE of:
  - a) Complete business tax filings from 2009, 2010, 2011 (Irene and Lee applicants) **or** 2010, 2011, and 2012 (Sandy applicants) **or** as long as the business has been operating, whichever is shorter; or
  - b) Signed IRS Form 4506-T for business tax returns.
- Two NYS-45s (One for quarter prior to storm and one for the most recent quarter);

### Other Assistance

- Documentation of all other assistance received or applied for, public or private, including current status (approved, denied, pending, and declined);

### **Additional Mandatory Documents for Special Businesses:**

#### Coastal Fishing Businesses (if applicable):

- License /permit or affidavit from New York State Department of Environmental Conservation (NYSDEC) showing business involvement in commercial or recreational fishing in 2011 or 2012, as applicable to the date of the qualifying storm event.

#### Seasonal Businesses (if applicable):

- Monthly revenue statements from fiscal year prior to storm (used to determine that a minimum of 70 percent of income is earned within a 6 month timeframe).

### **Mandatory Documents for Preliminary Award Initiative** (as of May 1, 2014, the Preliminary Award program stopped accepting applications):

Business Owners, who apply for the Preliminary Award Initiative, are required to complete a full program application by December 1, 2014.

### Owner Identification

- Any ONE of:
  - a) US Passport;
  - b) New York State Driver's License;
  - c) New York State Identification Card; or
  - d) Other Documentation of Legal Residence.
- IRS W-9 for all Business Owners.

### Business Identification

- Voided check for business bank account; and,
- Completed ACH form (available online at <http://www.stormrecovery.ny.gov/>).

### Program Forms

- Signed Grant Agreement **with** Certification of Business Eligibility (available online at <http://www.stormrecovery.ny.gov/>).

### **3.1.1 Initial Meeting**

The initial meeting with the Business Owner takes place at a designated SBDC. If an in-person meeting is not possible, the Program provides reasonable accommodations to meet the Business Owner's special needs.

During the initial meeting with the Business Owner, the SBDC Business Advisor provides a thorough program overview which includes: outlining types of assistance available, program phases, eligibility requirements, and eligible activities; reviewing the Business Owner's application; collecting documentation; reviewing and executing required Program forms (consent, affidavit and disclosure documents); and explaining next steps in the application process and answer any questions that the Business Owner may have.

### **3.1.2 Threshold Eligibility Determination**

All applications undergo a threshold eligibility review to determine Business Owner eligibility for the different types of assistance offered by the Program. Business Advisors also conduct a thorough completeness review and initial business viability review. Business Owners with ineligible applications are notified in writing and given the opportunity to seek clarification of this determination. See Exhibit 1 for more information on the clarification and appeals process.

### **3.1.3 Completeness Review**

A Business Advisor reviews and organizes the application and documents submitted by the Business Owner. The Business Advisor determines if all required information and documents are submitted and identifies any additional information and documents needed. If the application is deemed eligible for further processing, the Business Owner's application is forwarded to the State for final processing.

### **3.1.4 Missing Documentation Notification**

Business Owners are given the opportunity to submit missing and deficient information in order to continue processing their application. Business Advisors make reasonable efforts to promptly contact Business Owners to inform them of missing documentation. If a Business Owner is not responsive, the Business Advisor and/or the State may notify the Business Owner that their application will be determined to be inactive or ineligible if they do not respond within an established deadline.

## **3.2 Prioritization**

Federal regulations require that a minimum of 50% of CDBG-DR funding is expended for LMI activities. Applicants are eligible for the Program if they do not meet the national objective of benefitting low- and moderate- income individuals as applicants that meet the national objective of meeting an urgent need. However, the Program tracks demographic information on Business Owners and the individuals employed by all applicant businesses to be able to track and report on the number of jobs retained by an assisted business and the percentage of LMI businesses that are assisted through the Program. Due to the impacts of the storms on certain vulnerable categories of businesses, the State has also placed priority on funding businesses that fall within one of the three following categories:

- 1) Businesses that have not reopened or have experienced significant employment and/or revenue decline;
- 2) Coastal and/or fishing industry businesses;
- 3) Seasonal businesses

Priority is given to the groups listed below in that additional program assistance may be available to applicants that fall within the identified groups and/or meet the national objective of benefitting low to moderate income individuals.

### 3.2.1 Priority Groups

- **Businesses that provide economic opportunities to low- and moderate-income persons**

An application is considered part of the “Businesses that provide Economic Opportunities to Low- and Moderate-Income Persons” priority group if 51% or more of the business’ retained full time equivalent (FTE) employees are low- to moderate-income persons. Businesses that qualify under this priority group may be eligible for additional working capital assistance under the Program. See Section 3.3.9.1 Working Capital for more information on Additional Working Capital for LMI Jobs.

The State considers an individual to be income qualified as low- to moderate- income if the annual wages or salary of the job retained by the assisted business is at or under the HUD-established income limit for a one-person family.

Area Median Income is defined by HUD and is found on the appropriate Fiscal Year Income Limits table. The 80% level is defined for each State and County and is based on the size of the household. Income Limits can be found here:

**2013:** [http://www.huduser.org/portal/datasets/il/il13/index\\_il2013.html](http://www.huduser.org/portal/datasets/il/il13/index_il2013.html)

**2014:** [http://www.huduser.org/portal/datasets/il/il14/index\\_il2014.html](http://www.huduser.org/portal/datasets/il/il14/index_il2014.html)

- **Businesses that have suffered significant employment or revenue decline or businesses that have not re-opened due to damage or impact from the storm**

An application is considered part of the “Businesses Not Yet Re-opened” priority group if the business was open and operating at the time of the storm, but is not yet re-opened due to damage suffered as a result of the Storm(s). Businesses that fall under this priority group may qualify for up to an additional \$50,000 in grant assistance for eligible recovery costs. In order to be eligible for the Program, applicants that fall within this group must provide a Business Plan and proof of commitment of additional funding and/or resources necessary to re-open and/or remain viable.

- **Coastal Fishing Industry Businesses**

An application is considered part of the “Coastal Fishing Industry Business” priority group if the business receives the majority of its income directly related to commercial culture, harvest, packing dealing, shipping and/or processing and/or recreational fishing. Applicants that fall within this priority group may be eligible for up to an additional \$50,000 in grant assistance for eligible recovery costs.

- **Seasonal Businesses**

An application is considered part of the “Seasonal Business” priority group if a minimum of 70% of the business’ annual income is earned during a six month period. Applicants that fall within this priority group may be eligible for up to an additional \$50,000 in grant assistance for eligible recovery costs.

### 3.3 Eligibility Determination

All small business program activities must adhere to the applicable criteria as set forth by the NY Rising Small Business Recovery Program and CDBG National Objectives. The Business Advisors use the criteria in this section to determine if the applicant is eligible for assistance. The State oversees eligibility determinations and makes the final decisions on eligibility in instances where existing policies are not yet defined.

#### 3.3.1 Summary of Eligibility Criteria

Business Criteria
<input type="checkbox"/> The business is located in an eligible county. (see section 3.3.2)
<input type="checkbox"/> The business was damaged during a qualifying storm event. (see section 3.3.3)
<input type="checkbox"/> The business matches one of the defined eligible types. (see section 3.3.4)
<input type="checkbox"/> The business exists as a business entity. (see section 3.3.5)
<input type="checkbox"/> The business meets one of the CDBG National Objectives. (see section 3.3.6)
Business Owner Criteria
<input type="checkbox"/> The applicant is at least a 20% Business Owner of the subject business. (see section 3.3.7)
<input type="checkbox"/> The applicant is a U.S. citizen or an eligible immigrant. (see section 3.3.8)
Eligible Activity Criteria
<input type="checkbox"/> The assistance needed is an eligible small business activity.

#### 3.3.2 Business Located in Eligible County

Businesses located in one of the counties shown below may be eligible for assistance. New York City administers CDBG-DR programs targeting the five New York City counties directly. To be eligible for assistance, an applicant must have been operating and located in a county designated for FEMA Individual Assistance Program (IAP), including:

- **Superstorm Sandy:** Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester.
- **Hurricane Irene:** Albany, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Greene, Hamilton, Herkimer, Montgomery, Nassau, Orange, Otsego Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Ulster, Warren, Washington, and Westchester.
- **Tropical Storm Lee:** Broome, Chemung, Chenango, Delaware, Fulton, Herkimer, Oneida, Orange, Otsego, Schenectady, Schoharie, Tioga, Tompkins and Ulster.

#### 3.3.3 Business Damaged from Qualifying Storm Event

All eligible businesses must have been damaged as a direct result of Superstorm Sandy (10/29/12), Tropical Storm Lee (9/7/2011), and/or Hurricane Irene (8/28/2011) as documented through an official proof of loss statement or a local record of storm impact along with a Business Advisor site visit and write-up. Damages resulting from disrepair, neglect or improper construction methods that existed prior to the storm are not eligible for assistance. Applicants that suffered interruption of business operations caused by physical property damage resulting from wind or water, and/or asset losses caused by power outages or road closures as a result of

the storm are eligible for assistance through the Program. Applicants that experienced power outages that hindered business operations but did not suffer any physical damage are also eligible to receive funding, though at reduced amounts. For additional information on applicants that experienced power outages alone, see Section 3.3.9.1 Working Capital.

### 3.3.4 Eligible Business

If a business is deemed to be a small business under the SBA or a non-profit organization, it may be eligible for assistance. Any business not classified as either a small business or a non-profit organization is not eligible for assistance.

#### All Applicants must:

- Meet the U.S. Small Business Administration’s definition of a small business **or** be a non-profit organization;
  - The SBA, defines a “small business” as:
    - Meeting SBA thresholds either in terms of the average number of employees over the past 12 months, or average annual receipts over the past three years based on a particular NAICS code for the industry in which it operates. More information can be found at <http://www.sba.gov/tools/size-standards-tool?ms=nid4060>.
      - “Annual receipts” of a concern that has been in business for three or more completed fiscal years means the total receipts of the concern over its most recently completed three fiscal years divided by three;
      - “Receipts” is most easily calculated by taking the “total income” (or in the case of a sole proprietorship, “gross income”) and adding the “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations);
      - You can find additional information on how to calculate annual receipts or total employees at [sba.gov](http://sba.gov) or 13 CFR Part 121;
      - Is organized for profit;
      - Has a place of business in the US;
      - Operates primarily within the US or makes a significant contribution to the US economy through payment of taxes or use of American products, materials or labor;
      - Is independently owned and operated;
      - Is not dominant in its field on a national basis.

Please note: If a business previously filed under a particular NAICS code on their tax returns, insurance policy(s), or other official program(s) and propose to amend the self-certification of their NAICS code for reasons that are supportable per the SBA guidance regarding self-certification, then the business needs to demonstrate that they are applying the re-classification of their NAICS code in a consistent manner moving forward throughout the grant period. This can be established through the provision of revised tax returns, insurance or other official documents with the amended NAICS code and/or future official documents may be provided at the time of the award closeout to demonstrate consistent use of the revised NAICS code during the grant period. In such cases, business applicants work in close consultation with their Business Advisors to determine whether the proposed reclassification is justified and supportable.

- Provide proof of authority to do business in New York State where required by law such as a Certificate of Incorporation, Articles of Organization, or Partnership Agreement and Certificate of Doing Business Under an Assumed Name and any required licenses;
- Operated in New York State as of the date of the storm;
- Have suffered eligible unmet need as a direct result of Hurricane Sandy, Hurricane Irene or Tropical Storm Lee;
- Have eligible, unmet need after accounting for all federal, state, local sources of disaster-related assistance, and/or flood and/or private insurance proceeds;
- Be currently operating, or, if not currently operating, demonstrate the business has a clear path to begin operations in the near future, to include committed availability of other funding sources, if applicable;
- Have submitted a complete application, with all required and requested documentation, as outlined herein; and
- Successfully complete a personal and business background check per the State's standards.
- Have average annual gross sales or gross receipts of at least \$25,000.\*

*\*Businesses with annual gross sales or gross receipts of less than \$25,000 may be considered on a case by case basis as determined by the State.*

- Business Owner must not be in foreclosure proceedings. Mortgage lien(s) can be placed on the property.
- Any municipal obligation that may be converted to a lien (property taxes, etc.) must be current prior to assistance and throughout the compliance period. If a Business Owner or business has delinquent municipal obligations of more than \$10,000, the Business Owner must be able to document that obligations have been made current or that they are currently on a payment plan.

**All Applicants with property damage requesting construction/reconstruction assistance must meet the following additional minimum criteria:**

- The assisted property should be wholly commercial in character. Businesses that are home-based businesses may be rehabilitated only where it can be clearly shown that program funds are not used to assist the property for residential use.

**Seasonal businesses must also meet the following additional criteria:**

- Demonstrate that a minimum of 70% of the business' annual income was earned during a six month period during the fiscal year prior to the storm

**Coastal Fishing Industry businesses must also meet the following additional criteria:**

- Receives the majority of its income from business directly related to commercial culture, harvest, packing dealing, shipping and/or processing and/or recreational fishing;
- For commercial fishing, the business must have a valid and current permit or license issued by the NYSDEC for the taking, dealing or shipping, culture and/or sale of marine resources including fish, shellfish, crustacean, or other marine biota;
- For recreational fishing, must have a valid and current NYSDEC marine and coastal district party and charter boat permit and/or license for carrying fishing passengers for hire; or,
- For those businesses that are not subject to permit from NYSDEC, an affidavit attested to by the NYSDEC that their business is directly related to the commercial or recreational fishing industry such as a marina or bait & tackle shop.

**Not-For-Profit Organizations must meet the following additional criteria:**

- Established under Section 501(c)(3) of the Internal Revenue Code, or potentially other not-for-profits as determined by the State;
- Not-For-Profits are evaluated for their eligibility based on their revenue-generating operations and activities.

**Businesses in Liquid Fuel Chain Supply Industry may be required to meet the following additional criteria:**

- Designated stations along critical evacuation routes must agree to adopt measures to mitigate impacts to the liquid fuel supply chain during future disasters. Risk mitigation measures include processes or methods to ensure that fueling stations along critical evacuation routes remain functional, or quickly restore functionality, during power outages. Examples of such mitigation measures include installation of wiring necessary to connect portable emergency generators or installation of a permanently affixed back-up power generator. More information regarding designated stations, mitigation requirements and potential additional grant funding for such mitigation efforts can be found at <http://stormrecovery.ny.gov/fuel-ny>.

### **Ineligible Applicants:**

The following are ineligible for assistance under the Program:

- Business Owners who lost ownership of their damaged property due to foreclosure, or are pending foreclosure for the damaged property are ineligible for assistance;
- Properties located where federal assistance is not permitted are ineligible for assistance.
- Properties must be in compliance with Environmental Code 24CFR Part 58;
- Casinos or other gambling establishments;
- Facilities not open to the general public that serve a predominantly higher income clientele;
  - Privately owned recreational facilities that are open and accessible to the public require additional review on a case-by-case basis to establish eligibility and their employment benefit to persons of low to moderate income;
- Private utilities;
- Professional sports teams;
- Yacht Clubs;
- Homeowners Associations;
- Retailers whose income from tobacco sales is 35% or more of gross, in-store, non-fuel sales;
- Entities engaged in operating or managing adult entertainment businesses (per the discretion of the State);
- Entities engaged or involved in religious activities;
  - The secular portions of a structure or an organization that engages in both religious and secular functions may be eligible. Examples include religious organizations that operate a homeless shelter, food pantry, adult literacy center or child care center that is open to everyone, regardless of faith. In order for recovery costs to be eligible, expenses must be clearly distinguishable between the organization's religious and secular activities.
- Entities engaged in lobbying or political activities;
- Entities who have received federal assistance in the past and where required flood insurance has not been maintained;
- Businesses with gross revenues or gross receipts of less than \$25,000 which are not the Business Owner's primary source of income; and/or,
- Owners of property that is rented out for residential purposes;\*
- Applicants that experienced damages as a result of disrepair, neglect or improper construction methods that existed prior to the storm.

*\*In certain circumstances, owners of vacation rental properties may be eligible if they qualify as a small business and the rental properties are not considered a Second Home. A Second Home is defined as: If during the tax year an owner uses the unit for personal purposes the greater of 14 days, or 10% of the total days rented to others at a fair rental price. If the property is never used by the owner for personal purposes and is rented year round, the property owner should apply to the NY Rising Rental Properties Program.*

### 3.3.5 Existence as a Business Entity

The business must have existed and have been open and operational at the time of the storm, or must have provided documentation to clearly show the business had been preparing to open at the time of the storm and will be able to open as a result of assistance. If the business has closed since the storm, but can substantiate an intent and ability to re-open in the near future as a result of assistance, the business is an eligible applicant.

Depending on the business' current status, the Program verifies that the business was open and operating through **one or more** of the methods listed below. All documentation must be in the business' name and for the damaged address.

#### 3.3.5.1 *Existence, Open and Operational*

- Tropical Storm Lee and Hurricane Irene applicants: 2009, 2010, and 2011 Federal Tax Returns;
- Superstorm Sandy applicants: 2010, 2011 and 2012 Federal Tax Returns;
- Proof of authority to do business in New York State where required by law such as a Certificate of Incorporation, Articles of Organization, or Partnership Agreement and Certificate of Doing Business under an Assumed Name and any required licenses;
- Proof of loss statement from SBA (DCMS Loss Verification Report), private insurance carrier, FEMA and/or public insurance adjuster and/or NY Rising Program Inspection (Program inspections are applicable to structural damage only). If one of these is unavailable, alternative documentation as outlined in Section 3.1 may be provided;
- Utility bill dated immediately prior to the time of the disaster;
- If the business is making material changes to overall business strategy, they need a business plan.

#### 3.3.5.2 *Existence with an Anticipated Opening*

If a business intended to open, but was hindered by the storm, they may still be eligible for funding. The State requires that the business provide documentation to clearly show the business was close to opening before the storm and suffered losses as a result of storm damage. Some or all of the following documents may be required in this circumstance:

- Federal Tax Return from the year of the storm;
- Proof of authority to do business in New York State where required by law such as a Certificate of Incorporation, Articles of Organization, or Partnership Agreement and Certificate of Doing Business under an Assumed Name and any required licenses;
- Business plan;
- Lease on facility/deed;
- Receipts and/or invoices of business-related purchases prior to the storm; and/or
- Losses reported on tax return for the year of the impacting storm.

#### 3.3.5.3 *Not-for-profit Business/Organizations*

Not for profit businesses/organizations are eligible for funding, but should expect to include additional paperwork:

- Ruling or determination letter recognizing IRS exempt status and certificate of incorporation for not-for profits;
- Proof of loss statement from SBA (DCMS Loss Verification Report), private insurance carrier, FEMA and/or public insurance adjuster and/or NY Rising Program Inspection (Program inspections are applicable to structural damage only). If one of these is unavailable, alternative documentation as outlined in Section 3.1 may be provided;
- Utility bill dated immediately prior to the time of the disaster; and
- Lease on facility/mortgage.

### **3.3.6 Meeting a CDBG National Objective**

All program activities must meet an applicable CDBG National Objective. All of the activities funded through the Program are required to meet either LMI or Urgent Need National Objectives. Applications are first evaluated to determine eligibility under the LMI National Objective requirements in accordance with HUD standards. If the applicant does not meet the definition of meeting the LMI National Objective, eligibility for assistance is determined through meeting Urgent Need National Objective, wherever possible under the requirements of this National Objective. Business Owners under the LMI and Urgent Needs National Objectives must be able to document how funds responded to the disaster-related impact.

#### **3.3.6.1 Low and Moderate Income Objective**

- **Low and Moderate Income Objective**

- *Low and Moderate Income Jobs*

- Under the Program, a business meets this National Objective of retaining jobs, when at least 51% of the retained jobs are made available to or held by low- and moderate-income persons.

- Determining Low-and-Moderate Income Status of Jobs:

- In order to meet this National Objective, the Program documents the name of the business, type of job, and the annual wages or salary of the job of each person employed. The Program considers the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (i.e., number of persons).

Under this National Objective, the State maintains documentation on the number of businesses assisted; the retention of total jobs at the time of application approval; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. As such, Applicants are required to provide such information to the State through the Business Demographics Form provided by the Business Advisor.

#### **3.3.6.2 Urgent Need Objective**

Under the CDBG-DR Federal Regulations, HUD determined that an Urgent Need exists within the presidentially declared counties. An Urgent Need exists because existing conditions pose a serious and immediate threat to the health/welfare of a community, the existing conditions are recent or recently became urgent, and the Sub-grantee or State cannot finance the activities on its own because other funding sources are not available. To the extent allowed under federal regulation, all Business Owners which cannot meet the LMI National Objective are placed into the Urgent Need category, wherever possible under the requirements of this National Objective.

Under this National Objective, the State reports and maintains documentation on the number of businesses assisted and the retention of total jobs at the time of application approval.

### **3.3.7 Owner of Subject Business**

Business Owners with greater than 20% ownership are eligible to apply for assistance, and the application must be on behalf all owners. To be assisted, businesses must be currently owned by at least one person who also held ownership prior to the storm and has retained at least 20% ownership in the business.

For businesses where no owner has greater than 20% ownership, the business may be eligible if they can provide one of the following:

- Written approval from all other owners to apply for assistance;
- Written approval from the business' Board of Directors (if applicable) to apply for assistance.

New business entities formed after the storm from a single entity that were affected by the storm may only be eligible under legitimate circumstances on a case-by-case basis such as entities divided due to divorce or dissolution of a partnership.

Verification includes validation of information through 2009, 2010, 2011, 2012 and 2013 Federal Tax Returns, including confirmation of ownership structure and any associated changes.

#### ***3.3.7.1 Business Owners with Criminal Convictions or Charges***

All Business Owners with criminal convictions or charges must disclose this information on their SBA Personal History Form (SBA Form 912).

Business Owners that do not disclose criminal charges or convictions, have repeat offenses, are currently serving sentences, are currently on probation or parole, or are currently charged with committing a crime are not eligible for assistance.

Business Owners with criminal convictions may be eligible for assistance if they meet the following requirements:

- The charge(s) occurred greater than 10 years from the date of application for assistance;
- The applicant provides documentation of sentence(s) served to their Business Advisor.

### 3.3.7.2 Deceased Business Owners

If the owner of the damaged business passed away *after* the storm that damaged the business, the deceased Business Owner has to meet all eligibility requirements. Income determination is based on the new Business Owner. The new Business Owner must agree to own and operate the business after the project is completed for the full compliance period of the grant.

If the Business Owner of the damaged business or property passed away *before* the storm, the new Business Owner has to meet all eligibility requirements and is processed for assistance in the same manner as all other Business Owners. The new Business Owner can attend the appointment, complete paper work, make decisions and must agree to own and operate the business after the project is completed for the full compliance period of the grant.

### 3.3.7.3 Trusts

Businesses held in trust for the benefit of natural persons may be eligible as long as the Business was held in trust at the time of the storm. Where covenants apply, the trustee's powers must include the ability to encumber the Business Property with a covenant; in the event that the Business Property is not owned by the trustee, trustee must obtain prior consent from the owner of the Business Property to encumber the Business Property with a covenant. If the trustee does not possess authority to encumber the Business Property with a covenant, trustee's award will be limited to activities in which covenants are not applicable.

The applicable Grant Agreement must be executed by trustee(s) unless the trust distributes the Business Property to a beneficiary, in which event the beneficiary receiving the Business Property must execute the applicable Grant Agreement.

If a business is owned by one or more trusts, the following must be provided for each trust applicant:

- A copy of the trust agreement;
- List of all parties to the trust (trustee(s), beneficiary(ies)); and
- Social Security numbers for all parties to the trust (to be used for anti-fraud, waste and abuse review)

### 3.3.8 Citizenship and Eligible Immigrants

The Business Owner must be a United States citizen or an eligible immigrant as verified by a signed declaration and one of the following:

- A valid U.S. Passport;
- A valid U. S. Birth Certificate;
- New York State Enhanced Driver's License
- Certificate of Naturalization; or
- Verification through SAVE, an online verification system to validate that Business owner is an immigrant eligible for federal benefits.

### 3.3.9 Eligible Small Business Assistance Activities

Program funds cover the following items (list subject to change):

- Repair/replacement of damage to real property that is a direct result of the Storm(s) including, but not limited to:
  - Roof repair/replacement;
  - Window/door repair/replacement;
  - Siding repair/replacement;
  - Flooring repair/replacement;
  - Drywall/finishing to pre-event condition;
  - Insulation;
  - Bathroom repair/rehabilitation;
  - Foundation repairs;
  - Kitchen cabinet replacement;
  - Well/septic replacement or connection to municipal system;
  - Electrical system repair/replacement;
  - Dock and boat slip repairs/reconstruction;
  - Bulkhead repairs/reconstruction;
- Working Capital (as defined by the Program);
- Environmental health hazard mitigation costs related to the repair or rehabilitation of disaster-impacted property (i.e., lead based paint abatement, asbestos removal, mold remediation, or other health hazards) including testing and clearance requirements;
- Accessibility modifications, including those that are completed on the property if the property was not accessible prior to the Storms; and/or
- Repair, replacement, or reimbursement for the following items damaged/lost as a direct result of the Storms:
  - Machinery;
  - Equipment;
  - Furniture;
  - Fixtures;
  - Supplies;
  - Inventory.

All construction or construction-related requests for reimbursement are eligible only if they were **incurred before the date that is one year after the date of the disaster event or before the date on which the person or entity applies for CDBG-DR assistance, whichever is earlier.**

If a business has future repairs related to the recovery from the impacts of the disaster event, those repairs or activities are eligible for reimbursement, provided they comply with all CDBG-DR requirements. If a business has submitted an application to the Small Business Program, they may not incur costs or commence new work until they have received environmental clearance and written approval from the State. If they have already started work, they must cease work until they have received environmental clearance or else they may not be eligible to receive

CDBG-DR funds for their project. The project is also subject to Davis Bacon and related labor compliance acts for any future construction costs incurred after they have applied to the Program.

Please note that Proof of Loss Statements are used to determine the eligible items for repair, replacement, or reimbursement under this Program. Any requests for deviation in items or amounts from the Proof of Loss Statement must be accompanied with detailed summary of the request, justification for the why the request is being made, and 3<sup>rd</sup> party documentation noting estimated cost and/or scope of work. All requests for deviation must be approved by a Business Advisor and/or the State.

### *3.3.9.1 Working Capital*

1) Effective January 2014, working capital for this program is defined as eligible rent/mortgage costs, property taxes, employee salaries, and utility costs (gas, electric and water). Working capital may be provided for an eligible applicant in combination with funds for the eligible, unmet need or as the only source of assistance as determined and approved by the State. The maximum amount of working capital assistance available is determined by the level of direct damage incurred by the business as described below: Applicants that experienced physical damage that hindered business operations and can demonstrate that they retain six or more full time equivalent employees and positions at the time of application to the Program, and can further demonstrate that 51% of those employees and/or positions are low to moderate income based on the position's annual salary or wages and the area's household income for a single person, may be eligible up to a maximum of \$75,000 working capital:

- **Eligibility:** Applicants that suffered direct property storm damage resulting in hindered business operations and that retain more than 6.0 Full Time Equivalent (FTE) employee positions, of which more than 51% are LMI
- **Effect:** Working capital is increased from \$50,000 up to a maximum of \$75,000
- **Constraints:** The total maximum grant amount an applicant is eligible to receive supersedes the eligible working capital amount. If an applicant is only eligible for the base grant of \$50,000, their eligible working capital is limited to \$50,000 regardless of FTE/LMI status.
- **Required Documentation:** Payroll records for the most recent quarter (which corresponds to most recent NYS-45). Payroll must include list of employees, hours worked and wages paid. Business Demographics Form must correspond to payroll and tie back to the most recent NYS-45.
- **Calculation:** Working Capital calculation is based on documentation for the quarter prior to the storm, with the exception of property taxes, which is calculated based on the actual costs of property taxes for the 6 months after the storm.

2) Applicants that incurred indirect damage that hindered business operations, caused by documented power outages, road closures or inability to conduct business due to storm

related damages (loss of potable water, threat to health/safety, etc.) for greater than or equal to 120 hours (5 days) may receive assistance of 6 months of eligible expenses, up to a maximum of \$25,000.

- 3) Applicants that incurred indirect damage that hindered business operations, caused by documented power outages or road closures or inability to conduct business due to storm related damages (loss of potable water, threat to health/safety, etc.) for greater than 48 hours, but less than 120 hours (5 days) may receive assistance of 6 months of eligible expenses, up to a maximum of \$10,000.
- 4) Applicants that incurred indirect damage that hindered business operations, caused by documented power outages or road closures or inability to conduct business due to storm related damages (loss of potable water, employee inability to work, threat to health/safety, etc.) for less than 48 hours are not eligible for working capital assistance, but may request assistance for physical property losses (such as refrigerated inventory losses).

The power outage for the area in which the business is located must be verified through the business' utility provider along with certification by the Business Owner to substantiate eligibility. To substantiate eligibility, road closures or inability to conduct business need to be verified through documentation from local government(s) along with certification by the Business Owner.

All applicants applying for working capital assistance must provide documentation of the following costs incurred and/or paid by the business (in addition to mandatory application documents) for the 3 consecutive months\* prior to the Storm(s):

- Rent/Mortgage as evidenced by an executed Lease/Mortgage or proof of payment;
- Proof Property taxes were paid (if not included in the escrow payment of a mortgage payment) for the 6 months following the qualifying Storm date; if the local assessor waived the property taxes for any time following the qualifying Storm event, then property taxes are not included in the working capital calculation;
- Employee wages as evidenced by the 3<sup>rd</sup> Quarter NYS-45 (NYS Employee Wage Reporting Form); and
- Electricity, Water and Gas Utilities as evidence by Utility Service Provider Bills.

*\*All expenses, with the exception of property taxes, submitted must be for the same consecutive 3 month period.*

The following additional working capital assistance policies apply for certain business types:

- Business Owner Income/Wages/Draws: Business Owner Income/Wages/Draws are **not** an eligible working capital expense;
- Home-based Businesses:
  - Applicants who claim business income on a Personal Tax Return (e.g.1040) must have completed IRS Form 8829 to be eligible for working capital assistance;
  - Home-based businesses are eligible for the percentage of the home used for

business as noted on the business' most recent tax return (form 8829), subject to all duplication of benefit reviews;

- Applicants who claim business income on a Business Tax Return are eligible for working capital costs as documented on the business' tax return. The applicant must show proof of payment for requested items in order to substantiate business expenses noted on the business return are a portion of total home costs;
- Additional information may be requested at GOSR's discretion to verify eligibility and/or eligible activities for home based businesses;
- Seasonal Businesses: Seasonal businesses should provide working capital documentation for the most recent 3 consecutive months (prior to the storm) within business' 6 month revenue generation season;
- Coastal Fishing Businesses: Boat and/or slip rental/mortgage and fuel expenses are eligible working capital expenses for costal fishing businesses.

More information on working capital assistance can be found in Section 3.9.

### *3.3.9.2 Reimbursements*

Business Owners who sustained damage to their business as a result of an eligible storm and have made repairs or replaced equipment, materials or fixtures, may be eligible for assistance from the State in the form of reimbursement payments. Reimbursement payments may be provided in whole or in part for out-of-pocket funds spent by Business Owners on eligible, uncompensated activities. Business Owners may seek reimbursement alone, or in combination with an additional Award to cover any repairs that still need to be completed in order to restore their business to pre-storm conditions.

To be eligible for reimbursement payments, itemized receipts or itemized invoices with proof of payment (receipts, cancelled checks or credit/debit card statements showing charges), must be provided for all activities requesting reimbursement.

For Business Owners requesting reimbursement for asset or property damage the property must:

- Be located outside the floodway and a Coastal Barrier Resources System **or** be covered by flood insurance prior to receiving assistance (the property is not required to have been covered by flood insurance at the time of the disaster).
  - The floodway is defined by FEMA as the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The floodway is located within a floodplain and is determined using the advisory base flood elevations.
  - To determine whether an applicant business is located in a Coastal Barrier Resources System, see <http://www.fws.gov/cbra/Maps/index.html>.
- A site inspection may be required to verify damages incurred, and confirm the work has been completed and complies with Program requirements.

### *3.3.9.3 Ineligible Activities*

Program funds do **NOT** cover the following items (list subject to change):

- Costs associated with refinancing of existing debt (except for outstanding credit card balances for eligible activities);
- General government expenses;
- Political activities;
- Replacement of lost business revenue;
- Tax arrearages;
- Purchase of construction equipment and tools purchased specifically for clean-up activities (rental fees for equipment and tools used for clean-up are eligible);
- Losses related to a residential purpose regardless of the ownership structure; and
- Any assistance to a business that does not meet the Program guidelines;
- Losses from disrepair, neglect, or improper construction methods prior to the Storm(s);
- Replacement of vehicles.

Applicants that suffered revenue losses without physical damage or power outages as outlined in Program Policies are not eligible for assistance, but may receive Business Mentor NY or SBDC technical assistance to identify business improvement opportunities, re-capture/expand markets or develop a revised business model.

#### 3.3.9.4 Exceptions

In very limited circumstances and at the sole discretion of the State, The Program may consider an otherwise ineligible applicant for funding under the Program on an exceptions and case-by-case basis and at the discretion of the State. However, at no time is an applicant considered for approval on an exceptions basis if the applicant is ineligible to receive federal assistance due to the nature, timing of activities, results of the environmental review or location of the applicant.

### 3.4 Types of Activities

Applicants work with a Business Advisor to select the activities for which they seek grant assistance. While every dollar of grant assistance requires an environmental review, different activities require more or less extensive levels of environmental review. Below is a summary of general distinctions of eligible activities between a relatively less extensive environmental review and a relatively longer and more extensive period of review.

#### 3.4.1 Eligible Activities: Categorically Excluded, Not Subject to Part 58

Activities requiring a less extensive environmental review include:

- Working capital (rent/mortgage, property taxes, utilities and employee wages);
- Repair, replacement, or reimbursement of movable machinery, equipment, inventory **not** dependent on construction, reconstruction, ground disturbance or structural modifications.

*\*Please note: if business is located in a flood plain and receives CDBG-DR assistance for mortgage payments, equipment, machinery, fixtures and/or other acquisitions, the business is required to obtain and maintain flood insurance, as prescribed by FEMA National Flood Insurance Policy.*

#### 3.4.2 Eligible Activities: Categorically Excluded, Subject to Part 58 and/or Environmental Assessment

Activities requiring a more extensive and time consuming environmental review can include:

- Any immovable machinery, equipment, furniture or fixtures;
- Any construction/reconstruction activities;
- Activities requiring or dependent upon construction/reconstruction, if the applicant is requesting assistance for construction/reconstruction activities;
- Mitigation activities;

\*Please note: If business is located in a flood plain and receives CDBG-DR assistance for these activities, the business is required to obtain and maintain flood insurance, as prescribed by FEMA National Flood Insurance Policy.

### **3.4.3 Mitigation Activities**

Depending on the level of damage incurred and geographic location, some businesses may be required to or opt to implement certain mitigation efforts. All businesses that experienced structural damages, regardless of the level of damage incurred or geographic location, may implement optional mitigation efforts. Additional program grant assistance for mitigation activities is limited to \$100,000.

#### **3.4.3.1 Required Mitigation Activities**

Businesses located in the floodplain conducting new construction of their entire building or repairing a building that was determined to be Substantially Damaged are required to implement certain mitigation efforts. Substantial Damage occurs when a property sustained damages equal to or exceeding 50% of its pre-storm Fair Market Value (FMV), as determined by a local authorized official (e.g., a code officer).

Business Owners can identify if their business is Substantially Damaged through any of the following methods:

- Receipt of a substantial damage letter by a Flood Plain Administrator;
- Inclusion of the business in FEMA and/or the municipality data set indicating the business was substantially damaged; or
- A total damage amount (the sum of the AA (“allowable Activities”, ECR (“Estimated Cost of Repair”, Architecture and Engineering estimates excluding bulkheads and elevation work) equal to or exceeding 50% of the pre-storm FMV.\*

*\*Pre-storm FMV can be documented through a pre-storm appraisal, purchase contract, tax assessment or other documentation as approved by the State.*

If a business is required to complete mitigation activities, specifications for such efforts are determined by either the municipality or federal government, whichever is more stringent. Business Owners are advised to work with design professionals and their local building department to ensure compliance with all required mitigation efforts.

Federal minimum requirements as outlined in Vol. 78, No. 76/Friday, April 19, 2013 Notice:

- Elevate (or may, for certain non-residential structures, flood proof) the lowest floor of new construction and substantially improved structures to one foot higher than the latest FEMA issued base flood elevation.

All Businesses not conducting any of the Critical Actions listed below may flood proof non-residential structures as an alternative to elevation. The structure must be flood proofed to base flood elevation plus one foot or municipal requirements, whichever is more stringent. Flood proofing requires structures to be water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic loads, hydrodynamic loads, and the effects of buoyancy or higher standards required by the FEMA National Flood Insurance Program as well as state and locally adopted codes.

Businesses conducting the following Critical Actions are required to elevate (flood proofing is not a suitable alternative), as even a slight chance of flooding would be too great and likely result in loss of life, injury to persons, or damage to property:

- Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;
- Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g. data storage centers, generating plants, emergency operations centers including fire and police stations);
- Likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events (e.g. hospitals, nursing homes, convalescent homes, intermediate care facilities and retirement service centers).

#### *3.4.3.2 Optional Mitigation Activities*

All Business Owners that experienced direct structural damages are eligible for program funding are also eligible to receive assistance for optional mitigation activities to help prevent future damage. Opportunities for mitigation should be considered for all requested repair, rehabilitation or reconstruction activities. Using risk-based criteria guidelines developed by the New York Department of State, the following activities may be eligible for the mitigation grant:

- Elevation of electrical systems and components;
- Securing fuel tanks;
- Use of flood resistant building materials below base flood elevation;
- Installation of flood vents;
- Installation of backflow valves; and/or
- Installation of Roof Strapping.

Ineligible measures include but are not limited to:

- Sandbags or other temporary barriers; and
- Generators or similar backup power systems (except for businesses conducting Critical Actions).

### 3.4.4 Flood Insurance

A CDBG-DR assisted business must obtain and maintain flood insurance in the amount of the value of the items procured with federal funds, as prescribed by FEMA’s National Flood Insurance Program. Business Advisors may provide additional guidance to applicants, but funded activities requiring the assisted businesses to obtain and maintain flood insurance include, but are not limited to:

<b>Flood Insurance Requirements</b> (Applies to all applicants located in the 100 year floodplain)	
<b>Building Coverage Required</b>	<b>Contents Coverage Required</b>
<ul style="list-style-type: none"><li>• <b>Mortgage Assistance</b></li><li>• <b>Fixtures/Immovable Machinery &amp; Equipment</b></li><li>• <b>Construction/Repairs/Construction-Related Activities</b></li></ul>	<ul style="list-style-type: none"><li>• Furniture</li><li>• Movable Machinery &amp; Equipment</li></ul>
<b>Flood Insurance is NOT Required on: Inventory, working capital expenses (except mortgage assistance) or items ineligible for flood insurance through NFIP (docks, fishing traps, boats, etc.). Written documentation for any items deemed ineligible for NFIP must be provided by an NFIP representative.</b>	

## 3.5 Inspections

All Business Owners requesting assistance for construction-related activities may be required to have initial and final property inspections in order to verify damage received and confirm activities that receive funding have been completed. Business Owners requesting assistance for non-construction activities only are not subject to initial inspections, but may be subject to a final inspection to verify all activities for which assistance was requested was completed. For larger construction projects, businesses may be subject to additional inspections in order to verify work is progressing according to program guidelines.

### 3.5.1 Initial Inspection

The initial property inspection establishes an assessment of value for property damage incurred by business. If another official source of damage assessment is provided by the applicant, the applicant may not be subject to an initial property inspection. The assessment of value serves as the basis towards receiving funding for rehabilitation, reconstruction or replacement. Every project which includes property damages and is subject to the initial property inspection has a work write-up performed on the initial inspection. The work write-up documents that the business was damaged from one of the Storms, provide information regarding damage received and provide a resulting assessment of value of future work or work that has already been completed (if applicable).

Only repairs for damage which are reasonably necessary for the operations of the business are included in the inspection and resulting assessment of value. If the business sustained significant damage, the assessment of value is the lesser of the estimate to rehabilitate (repair) or reconstruct (rebuild). Estimates for mitigation repairs are not included in the initial inspection. During an

inspection, an Environmental Considerations Questionnaire is completed to identify any potential environmental hazards. Please note the Environmental Considerations Questionnaire is different from the environmental review discussed in Section 3.7.

The assessment of value for repair is based upon returning the business to its pre-storm standards. All physical and personal property is excluded from the initial inspection:

- Examples of excluded items are:
  - Machinery (e.g., car lifts);
  - Equipment (e.g., canning equipment, sorting tables, engines);
  - Furniture;
  - Fixtures;
  - Supplies;
  - Inventory; and
  - Appliances.

#### *3.5.1.1 Home-based Businesses*

Home-based businesses are eligible for the percentage of the home's mortgage and utility expenses incurred six months after the storm as noted on the business' most recent tax return (form 8829), subject to all duplication of benefit reviews. All Applicants seeking assistance for their home-based business must meet the following requirements to be eligible for the Program:

- Applicants who claim business income on a Personal Tax Return (e.g.1040) must have completed IRS Form 8829 to be eligible for working capital assistance;
- Home based businesses that file a business return, for all assistance requests, must provide clear proof regarding the portion of the home is used for business activities. Photographic documentation may be requested as an alternative method to confirm the percentage of the home used for business;
- Working capital costs allocated solely for the business must be accounted for on the business' tax return and the applicant must show proof of payment for requested items in order to substantiate business expenses noted on the business return are a portion of total home costs;
- Additional information may be requested at GOSR's discretion to verify eligibility and/or eligible activities for home based businesses.

Additionally, the following applies and is used to determine Applicant eligibility:

- Home-based businesses are only inspected for the portion of the home specifically allocated to business.
- A review is conducted during the Duplication of Benefits process to identify any potential overlap of Awards the homeowner may have received for their home.
- Proof of conforming use is not required for a pre-existing home business. Proof of conforming use from the municipality is required if the business established home-based operations post-storm.

### *3.5.1.2 Leasehold Businesses*

- If the Business Owner is a leaseholder (not the property owner), the inspector inspects to the standards that the Business Owner is responsible for within the terms of their lease. The inspector provides a narrative describing the scope of their inspection.
- If the property owner is also an applicant, the inspector performs a separate inspection under the property owner's application for the portion of the property damage not within the responsibility of the leaseholder.

### *3.5.1.3 Businesses with Bulkheads, Docks, or unique construction considerations*

Businesses that require bulkhead, dock or other unique construction repairs may receive an additional initial inspection by a professional familiar with such construction in order to provide an accurate assessment of value based upon the unique nature of such work. This additional assessment of value is added to an applicant's initial inspection to determine a comprehensive assessment. Applicants must be prepared to provide all requisite permits during the application review.

### *3.5.1.4 Businesses with Value-Added Inventory*

For businesses that experienced losses of Value-Added Inventory, value determinations are based upon the market value of inventory minus profit margin. Value-Added inventory is defined as inventory which increases in value through cultivation or manufacture; examples include agriculture, aquaculture, handmade and manufactured goods. Valuation determinations conducted by an expert 3<sup>rd</sup> party valuator (USDA, Ag Extension Services, etc.) are the preferred documentation for such losses. If an expert 3<sup>rd</sup> party valuation is not available, inventory value determinations utilize objective data references, such as commodity exchanges, published market pricing and historical data, such as crop yields, to document and support value determinations. Inventory valuation determinations serve as acceptable documentation for payment or reimbursement as approved by the State.

## **3.5.2 Final Inspection**

Upon completion of repair, rehabilitation or reconstruction work, a program inspector conducts a final inspection. The purpose of the final inspection is to document that all work called for and environmental standards have been completed according to approved specifications.

Depending on the extent of activities completed, the Business Owner may also be required to provide municipal documentation such as a certificate of occupancy or equivalent documentation, indicating that the building is compliant with local code, and is habitable and/or closes out the construction/permit.

If any problems are identified in this inspection, the Program inspector notifies the Business Advisor within a reasonable amount of time for problems to be corrected.

Until problems are corrected, the Program will not disburse any additional payments and may take any necessary legal recourse.

### **3.6 Estimated Costs for Reimbursement or Repair**

As discussed in Section 3.5, an initial property inspection establishes an assessment of value for property damage incurred by businesses. Businesses that sustained damage as a result of one of the Storms in which Business Owners have made repairs to their properties, may be eligible for assistance from the Program in the form of reimbursement payments. Reimbursement payments may be provided in whole or in part for out-of-pocket funds spent by Business Owners to repair their property. Business Owner may seek reimbursement alone, or in combination with additional assistance to cover any additional repairs that still need to be completed in order to restore their property to pre-storm standards.

For work that has already been completed, the inspector provides an estimate of “Allowable Activities” (AA), which provides the Program’s assessment of value for eligible activities already completed by the Business Owner for reimbursement. Documentation of repairs along with two forms of cost documentation (invoice and proof of payment) provided by the Business Owner may be used to adjust the value of the AA and the resulting reimbursement payment(s).

For work that has not yet been completed, an “Estimated Cost of Repair” (ECR) provides the Program’s assessment of value for future eligible activities to return the business to pre-storm standards. Documentation of future activities along with cost documentation (itemized estimates) provided by the Business Owner may be used to adjust the value of the ECR and the resulting future payment(s). In addition, a line item may be included to cover costs of hiring a licensed architect or engineer for professional design services related to construction. ECR cost estimates over \$2,000 are subject to Davis-Bacon Wage Requirements.

All Award amounts are based upon review of estimates (for work to be completed) or receipts (for work already completed) from the Business Owner and are limited by the applicant’s determined Program Maximum Benefit. All receipts and estimates are reviewed against the Business Owner’s AA or ECR by the State or one of its Agents to verify repairs are eligible, reasonable and necessary in order to return the business to pre-storm conditions. As repairs are completed, receipts must be provided for all activities to document that the work was completed and that funds were used for eligible activities.

### **3.7 Environmental Review**

All activities submitted for Program assistance require environmental review pursuant to the National Environmental Policy Act (NEPA) and the New York State Environmental Quality Review Act (SEQRA). The regulations set forth in 24 CFR Part 58 contain the environmental review requirements for responsible entities managing CDBG-DR funding. Critically, until completion of the applicable environmental review requirements, neither the Small Business Program nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance through the Small Business Program, or undertake an activity the Program that would have an adverse environmental impact or limit the choice or reasonable alternatives.

Specific instructions concerning environmental review requirements are made available to all

recipients, sub-recipients, or contractors. All environmental review activities are carried out and documented in the Environmental Review Record (ERR). All determination concerning 24 CFR Part 58 are made by the Environmental Team including, but not limited, the categorization of projects or activities, the applicability of all laws referenced in 24 CFR Part 58, and the substantive components of any environmental review documents.

### **3.7.1 Roles and Responsibilities**

HUD's Environmental Review Procedures allow grantees to assume environmental review responsibilities. In addition:

- GOSR, acting under the auspices of HCR and HTFC, serves as the Responsible Entity (RE), responsible for undertaking compliance efforts for the Program.
- GOSR submits any requests for release of funds directly to HUD for review and approval.
- GOSR is responsible to perform the Environmental Review Records (ERRs) or contract out for a preparer of the ERRs.
- GOSR is responsible for determining whether certain activities are exempt or categorically excluded from environmental review pursuant to and conditional upon the applicable laws and regulations, and appropriately document such determinations.
- The Environmental Team conducts an environmental analysis and prepares compliance documentation in support of the broad and site specific environmental reviews, utilizing a tiered approach when appropriate, in accordance with HUD's regulations and SEQRA.
- GOSR reviews all environmental draft documents as outlined in the required documentation and signs all documents requiring responsible entity or agency official signatures.
- When appropriate, a tiered environmental review is utilized. For tiered reviews, a broad, or Tier 1, review is completed before HUD releases funds and a site-specific, or Tier 2, review is completed for a site before funds are committed to that particular site. The site specific analysis, consisting of the Site Specific Checklist and supporting documentation is completed by the Environmental Team. The site specific ERRs are reviewed and signed off by GOSR. Once these reviews are completed there can be a commitment of funds.
- For reimbursement cases, if it is determined that a business requires abatement for environmental hazards, the business is responsible to comply with applicable environmental regulations.

### **3.8 Verification of Benefits (VOB)**

Section 312 of the Stafford Act (42 USC Part 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 as to which he has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, DR funds issued through the CDBG 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 same purpose as the CBDG-DR funds is considered a Duplication of Benefit (DOB). The State’s policy is in accordance with HUD’s Federal Register Notice 5582-N-01 published in the *Federal Register/ Vol. 76, No. 221, page 71060/Wednesday, November 16, 2011*.

Applicants are required to disclose all sources of disaster recovery assistance received, and on behalf of the State, the Verification Agent verifies the amounts and uses of previously awarded disaster recovery funds. All Business Owners are required to sign a subrogation agreement which subrogates any duplicative proceeds up to the amount awarded for the business’ recovery to the State.

### **3.8.1 Potentially Duplicative Assistance**

Applicants must consider all 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. Business Owners should pay special attention to the following potential sources of benefits:

Examples of potentially duplicative assistance include:

- National Flood Insurance Program (NFIP);
- Private Insurance;
- Federal Emergency Management Agency (FEMA);
- Small Business Administration (SBA);
- Empire State Development (ESD);
- Governor’s Office of Storm Recovery (GOSR);
- New York State Energy and Research Development Authority (NYSERDA);
- Utility Companies (e.g. National Grid, NYSEG); and,
- NY Rising Housing Recovery Program (for home-based businesses).

Applicants are also required to report all assistance reasonably anticipated. “Reasonably anticipated funds include assistance that has been awarded, but has not yet been received,” but don’t include situations where the funding source and/or the amount is in question.

Upon completion of the Verification of Benefits process and a final review by the State, Business Owners eligible to receive an Award receive notification through an award letter.

### **3.8.2 Declining SBA Assistance**

If a Business Owner applies to SBA and is approved, but declined assistance, they must communicate in detail why assistance was declined by completing the SBA Loan Declination Form and providing any correspondences sent to or received from SBA. Per federal guidance, the State reviews and approves/denies the justification provided based on a necessary and reasonableness determination. In such cases, the State performs additional underwriting to inform the final determination of reasonableness for applicant’s decision to decline an SBA loan.

If a Business Owner chooses not to apply to SBA, or applies and is rejected, they are still eligible for Program funding.

### **3.8.3 Non-duplicative Expenditures**

Only funds received for the same purpose are considered a Duplication of Benefit (DOB). For example, funds received from SBA for one specific type of machinery and funds received from this Program for a different type of machinery are not considered a DOB.

Funds that have been received in other federal programs may not always be determined as a DOB. The Business Owner must provide documentation to support the expenditures.

- Funds received from a private loan, not guaranteed by SBA, are not duplicative.
- Assets or line of credit available to the applicant, such as a checking or savings accounts, stocks, bonds, mutual funds, pension or retirement benefits, credit cards, mortgages, lines of credit or life insurance are not duplicative
- Funds used for a different, eligible purpose are not duplicative. If Business Owners receive assistance for generally the same purpose, but use the funds for separate eligible purposes, then the funds may not be duplicative. Business Owners must document their use of the funds to evidence that it was used for different purposes.

## **3.9 Underwriting**

### **3.9.1 Grants**

Only those businesses that have demonstrated Viability are eligible under this Program; a business is considered Viable if it is currently open and operating or actively working to reopen. All grant applicants undergo a review by the Underwriting Agent and/or the State to ensure the application is complete and eligible for assistance.

Personal resources and business assets are not counted towards unmet need when determining eligibility for grant assistance.

### **3.9.2 Working Capital**

Due to the overwhelming need to strengthen small businesses and revitalize storm affected communities, working capital for this program is defined as utility costs (gas, electric and water), employee salaries, property taxes and rent/mortgage costs. For businesses requesting working capital assistance, Business Advisors determine an estimated monthly working capital need as the monthly average of the three consecutive months prior to the storm of working capital costs. Seasonal businesses should provide the most recent pre-storm three consecutive months within the six month period of when at least 70% of their revenue is generated.

Required documentation for working capital need includes three consecutive months of:

- Rent/Mortgage as evidenced by an executed Lease/Mortgage or proof of payment;
- Employee Wages as evidenced by the NYS-45 (NYS Employee Wage Reporting Form);
- Electricity, Water and Gas Utilities as evidence by Utility Service Provider Bills; and,
- Property Taxes as evidenced by proof of payment of 6 months' worth of property taxes

for the 6 months immediately following the storm event. Businesses located in communities whose local municipalities waived property taxes for the same period of time are not eligible for such expenses.

The Underwriting Agent reviews submitted documentation and applicant's file to ensure all requests are "arm's length transactions." Transactions made by related parties or entities are not eligible for working capital assistance. The State or one of its Agents has authority to determine if a submitted transaction is an "arm's length transaction." The Underwriting Agent then calculates estimated monthly working capital need and approves total working capital assistance as determined by the applicant's maximum working capital assistance (Section 3.3.9.1). If the applicant's working capital request is less than their Maximum Grant Benefit, the applicant has the ability to submit for eligible activities such as inventory, machinery, equipment and other eligible activities up to their Grant Maximum Benefit based upon current program policies.

Upon final approval and execution of their grant agreements, open and operational businesses may receive a lump sum payment directly to the applicant for working capital needs. Currently closed businesses must reopen and submit for reimbursement of working capital expenses to receive working capital award funding.

### **3.10 Total Award Determination**

The Program's goal is to provide a holistic solution to meet a Business Owner's unmet need through the provision of grants to assist with recovery of small businesses and encourage economic development for communities affected by Superstorm Sandy, Hurricane Irene and/or Tropical Storm Lee. Total Award determination is composed of a review of the Business Owner's unmet need through development of a Preliminary Project Budget, a Verification of Benefits, and determination of eligibility for grants within program maximum benefit caps. In an effort to assist businesses in stabilizing their operation and preventing additional undue burden, total Award determination is completed by utilizing all eligible types of grant assistance, provided the Business Owner has additional eligible, uncompensated costs. An example of an Award determination is located in Section 3.10.3.

#### **3.10.1 Preliminary Project Budget**

The Preliminary Project Budget, as evidence by projected costs and costs incurred, provides the Business Owner's estimate of the all basic costs requested in order to return the business to pre-storm standards. The Business Advisors review the application and assist in determining a Preliminary Project Budget by identifying the needed repairs, rehabilitation, reconstruction or replacement of assets, as well as working capital funds necessary for recovery of the business.

When determining the Preliminary Project Budget, the Business Advisor takes into account unmet need as determined by the proof of loss statements, documentation for work already completed and future work estimates provided by third parties.

For business assets, the proof of loss statements and/or estimates are used to make a determination of what are necessary and reasonable costs. For working capital, historic records

are used to determine a necessary and reasonable working capital funding level.

All Preliminary Project Budgets are broken into the following categories:

- Machinery & Equipment;
- Furniture;
- Fixtures;
- Inventory;
- Reimbursement (clean up);
- Mitigation; and,
- Working capital within the Program Maximum Benefit.

### **3.10.2 Program Maximum Benefit**

The State analyzed the needs of the affected communities and the availability of funding and derived the following funding limits to maximize the use of the limited federal funds.

The maximum funding Award for each type of assistance is not a minimum threshold required to order to receive assistance. Awards are no greater than the amount needed to cover eligible, unmet repair, rehabilitation, reconstruction, replacement, reimbursement, and working capital needs after accounting for all federal, State, and local sources of disaster-related assistance.

#### **3.10.2.1 Grants**

Eligible applicants are considered for a grant up to their determined Program Grant Maximum Benefit.

Program Grant Maximum Benefit is determined by the Business Owner's eligibility for each type of grant assistance: Small Business, Seasonal or Coastal Fishing, Economic Hardship and Mitigation. Eligibility for types of assistance determines a Business Owner's Program Grant Maximum Benefit. Maximum benefit for each type of grant assistance is cumulative and subject to the business showing sufficient documented, eligible unmet need and meeting all conditions required for each type of assistance. Maximum benefit for each type of grant assistance is:

- Small Business: \$50,000 maximum
- Seasonal **or** Coastal Fishing: \$50,000 maximum
- Economic Hardship: \$50,000 maximum
- Mitigation: \$100,000 maximum

#### **3.10.2.2 Total Program Maximum Benefit**

Total Program Maximum Benefit is capped at \$250,000. In order to receive the Total Program Maximum Benefit, a business must show sufficient documented, eligible unmet need, and meet all conditions required for each type of grant assistance: small business, seasonal or coastal fishing business, demonstration of economic hardship and mitigation.

### **3.10.3 Award Calculation**

All Awards for the Program are calculated in a uniform fashion in accordance with the following policies.

Calculation of an Award begins with a review of proof of loss documentation against the Preliminary Project Budget (Section 3.10.1). The Business Owner submits a request of assistance based upon the Preliminary Project Budget. Depending on the Business Owner’s eligibility for types of assistance, the Program Grant Maximum Benefit is determined.

The State reviews the Preliminary Project Budget to identify any funds received from other sources which are determined a DOB (Section 3.8). Any items identified as a Duplication of Benefit (DOB) is deducted from the Preliminary Project Budget. The result is the Final Unmet Need Amount. A review is conducted by State staff to ensure all amounts as outlined in the Preliminary Project Budget, DOB review and Final Unmet Need amount correspond.

If the Final Unmet Need Amount does not exceed the Program Grant Maximum Benefit, the Final Unmet Need Amount becomes the Maximum Award Amount.

If the unmet need exceeds the Program Grant Maximum Benefit, the Grant Maximum Benefit amount becomes the Maximum Grant Award amount. Upon application of program assistance, if remaining physical unmet need is \$10,000 or greater, the Business Owner must complete a simple business plan form addressing how the business continues operations with remaining unmet need.

The Underwriting Agent determines the maximum Award amount after underwriting the application and receiving the Verification Agent's Verification of Benefits determination. The file and Award calculation undergoes a quality control review and approval by the State prior to the closing meeting. The Business Owner is notified of the Total Program Award after a quality control review is performed.

	Sample Award Calculation	Amount
1.	Additional Total Loss Documentation	\$35,000
2.	Identify Business Owner’s Request for Assistance	\$100,000
3.	Identify All Potentially Duplicative Assistance	\$35,000
4.	Deduct Assistance Determined to be Duplicative	\$30,000
5.	Final Unmet Need (Step 1 minus Step 3)	\$70,000
6.	Maximum Grant Program Benefit	\$50,000
7.	Maximum Grant Award Amount (lesser of Step 4 or 5)	\$50,000
8.	Total Program Award	\$50,000

### 3.10.3.1 Cash Receipts

Paid in cash receipts are accepted provided they meet the requirements noted below. All “Paid in Cash” receipts will be verified by the State. Any cash receipts that cannot be verified, for any reason, will be denied for assistance. At the State’s sole discretion, additional forms of verification may be requested. Also at the State’s sole discretion, any activities/information which indicates possible fraud may result in an applicant’s entire application to be deemed ineligible and/or further investigation.

The following is required of each paid-in-cash receipt for it to be deemed eligible for reimbursement:

- Must be on vendor letterhead;
- Must be legible;
- Must outline items purchased;
- Must include the date items were purchased;
- Must be noted “Paid in Full”; and,
- Must be signed by the vendor.

### 3.10.3.2 Exceptions

In select instances, the Program may consider exceptions to policies and procedures, only as supported by compelling documentation for the requested exception. All policy exceptions are at the sole discretion of the State, and all determinations are final.

## 3.11 Requests for Construction Assistance

### 3.11.1 In-Progress Construction Projects

**Any business requesting construction assistance is required at the time of application to stop all construction or construction related work in order to be eligible for construction or construction related assistance for costs incurred after the time of application.** Once a business applies for construction assistance, any in-progress projects are subject to environmental review and may not proceed until environmental review is successfully completed and the applicant receives, from GOSR, authorization to start work. The project may also be subject to Davis Bacon Wage Requirements (if over \$2,000). The applicant should work closely with the Business Advisor to determine the compliance requirements related to their future work. In order to be eligible for assistance Business Owners with in-progress construction projects must also meet all additional program requirements including but not limited to Contractor pre-qualification; scope of work, contract and contract rider documentation; and securing additional funds for the project. Any rehabilitation is subject to the same requirements.

### 3.11.2 Verifying and Securing Business Owner Funds

HUD requires the Program to prove all required funding to complete a construction project is in place before the Program commits any money to that project. A Business Owner may need to contribute Insurance, FEMA, SBA loans, or their own personal funds in order to receive assistance for a construction project. An applicant must provide the Business Advisor with evidence of available funds to complete the scope of work in the construction contract in the form of a bank statement, an open line of credit, or certification from their financial institution.

Prior to disbursement of funds by the Program, Business Owners must provide evidence to the Business Advisor that all previously required Business Owner funds were paid to Contractor. This evidence may be a cancelled check, debit/credit card statement or other proof of payment from the Applicant to the Contractor, and unconditional lien release acknowledging of receipt of all funds paid to date from the Contractor.

If any additional Business Owner funds are required prior to the final payment, the Business Owner must provide evidence that the balance of Business Owner funds were paid to the Contractor and an acknowledgement of receipt of funds from the Contractor.

If required Business Owner funds are not paid to the Contractor, the grant would be in default and the funds are subject to recapture.

### **3.11.3 Selecting Architects, Engineers and Contractors**

Before a local building department approves and issues building permits, they may require that a licensed architect and/or engineer (design professional) submit stamped plans and/or other submissions. The Business Owner may want to consult with an architect and/or engineer prior to or once they receive their award letter. Architects and/or engineers can perform a number of services, such as getting construction plans approved by the building department, helping the Business Owner find a Contractor, assisting with leveling construction bids, monitoring construction progress and quality, advising the Business Owner during construction, and ensuring the Contractor performs well. If requested assistance includes construction work, the Business Owner is required to submit a scope of work created by the design professional prior to permitting for the Program's approval. The scope must:

- Cover elements identified as in need of repair in ECR;
- Comply with any required mitigation efforts; and,
- Comply with federal, state and local codes.

Business Owners select their own Contractor. For any projects over \$2,000, the selected Contractor and all related sub-Contractors must be willing to comply with Davis Bacon requirements and all other Program requirements including pre-qualification criteria and any reporting requirements. All Contractors must meet the State's eligibility requirements in order to be paid for work completed on behalf of participating Business Owners.

The Business Owner is responsible for negotiating all costs of construction with their Contractor. Further, the Business Owner is responsible for any costs incurred in excess of their grant award.

Business Owners may also access additional information regarding selecting an architect, engineer, and contractor at <http://www.stormrecovery.ny.gov/resources-1>.

### **3.11.4 Minimum Design Standards**

All newly constructed non-residential buildings must meet State Building Code and all locally adopted and approved building codes, standards and ordinances as well as the Uniform Fire Prevention and Building Code based on the 2006 International Codes. All reconstruction and new construction of non-residential buildings must comply with applicable American with Disabilities Act requirements.

Construction methods are encouraged to utilize mold resistant construction materials, sustainable building materials and construction methods where applicable. Elevation (or if applicable, the use of flood resistant materials) is required below the Base Flood Elevation plus of one foot (municipalities may enforce more stringent requirements) for new or Substantially Damaged/Improved non-residential structures. If the structure is NOT substantially damaged, the work is voluntary and may be eligible for mitigation grant assistance.

### 3.11.5 Construction Contract Approval

Once the Business Owner selects a Contractor, the Contractor submits any required pre-qualification documentation to the State and the Business Owner and Contractor finalize the scope of work to be done including but not limited to code compliance issues; required and optional mitigation efforts, the Business Owner must then submit to the Program: the Scope of Work and the Construction Contract and Contract Rider. The following is a description of all those documents:

Contract documents include:

- **Scope of Work:** A final work write up is developed by the Business Owner with assistance from a design professional, presented to the Program and becomes the basis for all work to be completed by the Contractor on behalf of the Business Owner. At a minimum, this scope of work should include that the project addresses repair needs identified during the Program's ECR damage assessment and complies with any required mitigation efforts.
- **Construction Contract and Contract Rider:** A document between the Contractor and the Business Owner that states the responsibilities to each other and the Program before, during and after construction. The rider requires the Contractor to certify that she/he has sufficient construction experience, appropriate licenses, payment and performance bonding capacity, insurance certificates, agrees to the scope of work submitted, and agrees to comply with all applicable Program and Davis Bacon requirements.

### 3.11.6 Construction Change Orders

Change orders are only granted for unanticipated conditions that would have either reasonably been incorporated into the ECR had the condition been identified, or for conditions that materially affect the price or scope of work as awarded that are required to be addressed in order to complete the work in a safe and sanitary manner and in compliance with federal and State guidelines.

All deviations to fire/life safety, the footprint of the building, costs in excess of \$5,000 for unanticipated conditions, changes in scope of work, or changes to foundation plans are considered "Significant Change Orders" and formally submitted to the State for review.

All change order requests must be approved before proceeding with the revised work.

Significant Change Orders must be submitted to the State or one of its Agents for review and approval. Changes in award amounts are only granted if the change order is deemed necessary and the applicant is eligible for additional assistance based upon their determined Grant Maximum Benefit. If the applicant utilized all assistance available, any and all additional costs as outlined in the Significant Change Order are the sole responsibility of the Business Owner and funds must be verified and secured as outlined in Section 3.11.2.

Change orders that do not affect compliance with the scope of work (finish choices, hardware, etc.) are ineligible for change in an award amount, but may be approved between the Design Professional and Business Owner with all costs the responsibility of the Business Owner.

Any Significant Change Order requests must include all of the following:

- A description of the specific work items to be added/changed;
- A calculation of the cost of these items;
- An explanation as to how and why the need for the additional work was not apparent when the Contractor and Business Owner approved the original Scope of Work; and,
- Photos or any other relevant documentation that may be used to support or document the request.

Substantially Damaged status is determined prior to construction start and is not change with future change orders.

### **3.11.7 Punch List Completion**

As in all construction projects, a punch list is developed towards the end of the job. A punch list is a listing of items written as specifications, which constitute the work necessary to complete the contract.

The punch list represents work yet to be done (not additional work over and above the original or amended contract.) Once the punch list is prepared, no other work items are expected of the Contractor.

At this point the Business Owner should have received all warranties and instruction booklets for installed fixtures and equipment from the Contractor.

## **3.12 Financing Terms**

The business is assisted with funds from the NY Rising Small Business Recovery Program to facilitate the disaster recovery efforts necessary for the business. To ensure the proper utilization of these funds, the Business Owner is required to accept the grant assistance as a grant. Grants do not require repayment and interest is not accrued on the funds. All grant Awards are subject to potential recapture, if it is determined by the State that an application or Award does not comply with Program policies. More information regarding recapture is provided in Exhibit 1.

### **3.12.1 Grant Agreement**

Before a Business Owner receives any funding from the Program, applicants are required to sign a grant agreement. The grant agreement the Business Owner is affirming and agreeing including but not limited to the following:

- All information provided is true, correct, and complete in all material respects and accurately represents the financial condition of the applicant, as of the date submitted.
- There has been no material adverse change in the financial condition, assets or business prospects of the Business Owner or any change in the ownership or management of the Business, since the date on which Business Owner submitted the Application, except to the extent disclosed to the Grantor, in writing, prior to the date hereof.
- The Business Owner has good and marketable title to all assets reflected in the business' financial statements and business' assets are not subject to any liens or encumbrances, except as already disclosed in the Financial Information.

- All licenses, permits, and /or other approvals necessary to operate the business are in full force and effect and will continue to be so.
- Business Owner will maintain all types and amounts of insurance as are typical and customary in the same or any type of similar business.
- The Business Owner will not sell, lease, pledge, encumber (except by purchase money lien on property acquired after the date of this Agreement) or otherwise dispose of any of the business' property or assets, except in the ordinary course of business.
- If the property is located in the 100 year flood plain the Business Owner is required to keep the property insured by a flood insurance policy and that they must advise all subsequent purchasers of the property that they too must keep the property covered by a flood insurance policy.
- The Business Owner must immediately notify the Program if they receive any additional payments that could be considered a duplication of benefits. Said payments may be required to be returned to the Program, up to the amount of the grant agreement.
- That the Business Owner will provide evidence as to how the funds were spent.
- Provides a right of entry for inspections of the property to have the right of access and to enter in and onto the Property for the purpose of performing property, environmental and historic preservation review inspections, making assessments, testing (including taking sample materials for any specialized testing) and any inspection-related Program activities.

The grant agreement also sets out the following provisions for the recapture of the grant funds:

- If the Business Owner makes any false statements;
- If the Business Owner does not fulfill any conditions in the agreement;
- If the business is in a 100 year flood zone and the Business Owner does not maintain flood insurance.

### **3.13 Subrogation**

Subrogation is the process by which a Homeowner or Business Owner assigns to the Program all of their future rights of insurance proceeds or other Federal relief funds up to the extent of the grant proceeds paid under the Program.

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

In consideration of the Business Owner's Award of funds and the commitment of the State to evaluate the Business Owner's application for Award of funds under NY Rising Small Business Recovery Program, the Business Owner assigns all future rights to reimbursement and all payments received under any policy of casualty or property damage insurance (the Policies) or under any reimbursement or relief program related to or administered by FEMA or SBA for physical or economic damage to the business that was the basis of the calculation of the Business Owner's Award to the extent of the grant proceeds paid under the Program.

The proceeds or payments whether they are from insurance, FEMA, or any other source of disaster recovery assistance, are referred to herein as "Proceeds." The rights the Business Owner

assigns are specific to the business for which the grant Proceeds were paid arising out of damage to the business originally caused by the Storm(s); it also includes Proceeds received for damage to the business caused by any subsequent event that occurred until the commencement of the project utilizing Program funds. The Policies include, but are not limited to, policies characterized as damage, flood or any other type of casualty or property damage insurance coverage held by the Business Owner and provides coverage for damage to the Property.

If the Business Owner received Award proceeds under the Program in an amount greater than the amount the Business Owner would have received if such insurance and/or disaster relief or reimbursement payment had been considered in the calculation of the Business Owner's Award, once the Program has recovered an amount equal to the Award proceeds, the NY Rising Small Business Recovery Program reassigns to the Business Owner any rights assigned to the State of New York pursuant to the Subrogation Agreement.

### **3.13.2 Cooperation and Further Documentation**

The Business Owner agrees to assist and cooperate with the State should the State elect to pursue any of the claims the Business Owner has against the insurers for reimbursement under any such Policies. The Business Owner's assistance and cooperation includes allowing suit to be brought in the Business Owner's name(s), giving depositions, providing documents, producing records and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by the State. The Business Owner further agrees to assist and cooperate in the attainment and collection of any proceeds that the Business Owner would be entitled to under any applicable FEMA or SBA program as described above.

If requested by the State, the Business Owner agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the State, to the extent of the grant funds granted to the Business Owner under the Program, the Policies, the disaster relief funds from FEMA or SBA and/or any rights thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the State to consummate and make effective the purposes of this Agreement.

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

The Business Owner explicitly allows the Program to request of any company with which the Business Owner held 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 under the Subrogation Agreement and to give the Business Owner's consent to such company to release said information to the NY Rising Small Business Recovery Program.

## **3.14 Closing Meeting**

Once the application has been determined to be complete, documentation for all requested activities has been provided, the Verification of Benefits analysis has been performed, the waste, fraud and abuse review has been completed, and the Award amount has been determined by the Program, the closing team contacts the Business Owner to discuss next steps. Next steps may include submitting any missing documents or anything else that the Business Owner needs to

provide so that an award closing can take place. If the Business Owner expresses a desire to receive services such as technical assistance or mentorship related to closing, the Business Advisor informs them of where/how they may obtain these services.

Required signed documents at the time of the closing may include, but are not limited to the following:

- Award Acceptance Agreement**
- New York Small Business Storm Recovery Program Grant Agreement**
- Subrogation Agreement** ensuring that any Awards made to the Business Owner after the closing such as Flood Insurance, SBA, etc. for damage that was addressed by the Program's Award is subject to the duplication of benefits calculation and consequently may be owed to the Program.
- Construction Rider** (for applicants requesting future construction assistance).

The closing team contacts the Business Owner to schedule the closing date, time and location (if applicable). The applicant is sent a sample copy of the closing documents to review before closing with contact information for the closing team so they can make any corrections or have any questions answered.

In the event a grant award must be amended, execution of a grant amendment will be required.

### **3.15 Disbursement of Funds**

Disbursement of funds occurs after closing on the grant agreement and upon receipt of proof of use of funds for approved expenses. The State issues the funds directly to the businesses. If an awarded business incurs expenses in the future, they are reimbursed for those eligible expenses once an awarded business provides documentation supporting use of funds.

### **3.16 Final Documentation and Award Close Out**

Business Owners are required to provide documentation related to utilization of assistance funds and compliance and monitoring requirements (See Section 3.17). For purposes of accountability, the Program must have written documentation that the assisted Business Owner completed the work for which the funds were received.

### **3.17 Compliance and Monitoring**

The State of New York is required by HUD to monitor all grantees receiving CDBG-DR funding. Therefore, through the design of the Program review policies and procedures, the State monitors 100% of the applicants that are considered for eligibility and/or ineligibility under the Program. On a case-by-case basis, the State may determine additional monitoring of applicants is needed through inspections, additional desktop and onsite monitoring and/or provision of additional documentation, either to be carried out by the State and/or its agents. Through the established policies and procedures, the State monitors all aspects of the New York State Small Business Storm Recovery Program, including but not limited to:

- Applicant eligibility, per local, state, federal and program guidelines through the use of program checklists that relate to the policies set forth in this program policy guide

- Confirmation that all requested applicant expenses are fully supported disaster-related expenses through 100% receipt review
- Confirmation that all approved assistance does not constitute a duplication of benefit and that approved CDBG-DR assistance is necessary and reasonable for unmet recovery needs of the business applicant
- Compliance with HUD National Objectives:
  - Retention of total jobs
  - Number of jobs retained within certain salary ranges
  - Types of jobs
- Qualification as a “small business,” as per the SBA, as defined by an applicant’s North American Industry Classification System (NAICS) code
- Compliance and Receipt of environmental clearance and/or authority to use grant funds prior to commencing new work or receiving grant assistance
- The implementation of multiple checks and balances through a secondary level review at both the SBDC and the State level, leading to 4 reviews of an applicant file prior to final approval or denial

#### Grantee Closeout

Business Owners are required to maintain applicable compliance throughout the monitoring period. Business Owners are reviewed for compliance with certain applicable areas during the grant closeout process.

Business Owner grant compliance requirements reviewed during grant closeout include but are not limited to:

- Maintenance of Insurance, including Flood Insurance, where applicable;
- Consistent use of NAICS codes, if applicant changed their NAICS code in order to be eligible for the Program
- Confirmation that the business did not receive additional disaster-related assistance that may constitute a duplication of benefits received through the Program
- For informational and reporting purposes, a grantee may be requested to provide information about:
  - Creation and retention of jobs at the time of closeout
  - Number of jobs created within certain salary ranges at the time of closeout
  - Types of jobs at the time of closeout
- Not sell, lease, pledge or encumber property or assets, except in ordinary course of business

### **3.18 Appeals**

If the Applicant believes that the Program’s determination of their funding award calculation or eligibility status is incorrect, the Applicant can request a formal State Appeals Form from their Business Advisor.

An Applicant has a right to appeal the following:

- Final Eligibility Determination
- Final Award Determination

In order to appeal, an Applicant must submit a formal State Appeals Form within 30 days from either their Award Letter or Determination Letter, unless an extension has been granted.

Important notes about the appeals process:

- All appeals must be filed on the Appeals Form. Appeals filed on other forms including letters, will not be accepted;
- The Appeals Form should only be submitted after an Award Letter or Determination Letter has been issued;
- The Appeals Form should clearly identify the matter being appealed. The GOSR Appeals Unit will only review the matter identified in the Appeals Form;
- In ruling on your appeal, the GOSR Appeals Unit will only review facts and information already present in the file. It **will** make an exception and review new facts or information where the applicant can establish, as part of the appeal, that such facts or information could not have been reasonably provided prior to the submission of the Appeals Form;
- All appeals must be postmarked to GOSR no later than 30 days after the date on the Letter, unless an extension has been granted by GOSR. If you received an extension approval, attach a copy of the approved extension letter to the Appeals Form;
- All determinations made by GOSR's Appeals Unit are final. No secondary appeals or submissions of supplementary information will be reviewed;
- A written determination is issued to the Applicant to the appeal.

Appeals Forms can be sent by either:

- a) Email: [small\\_business@stormrecovery.ny.gov](mailto:small_business@stormrecovery.ny.gov); or
- b) Mail: The Governor's Office of Storm Recovery  
NY Rising Small Business Recovery Program  
25 Beaver Street (5th Floor)  
New York, NY 10004

## 4.0 Definitions

### 4.1 Acronyms

Acronym	Meaning
AA	Allowable Activities
AFWA	Anti-Fraud, Waste and Abuse
CDBG-DR	Community Development Block Grant-Disaster Recovery
DBA	Doing Business As
DOB	Duplication of Benefits
DR	Disaster Recovery
DRGR	Disaster Recovery Grant Reporting
ECR	Estimated Cost to Repair
EIN	Employer Identification Number
ERR	Environmental Record Review
ESD	Empire State Development
FAQ	Frequently Asked Questions
FEMA	Federal Emergency Management Agency
GOSR	Governor's Office of Storm Recovery
HCR	Homes and Community Renewal
HTFC	New York State Housing Trust Fund Corporation
HUD	Department of Housing and Urban Development
IAP	FEMA Individual Assistance Program
LMI	Low and Moderate Income
NAICS	North American Industry Classification System
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NYS	New York State
NYSDEC	New York State Department of Environmental Conservation
NYSERDA	New York State Energy and Research Development Authority
OIG	HUD Office of Inspector General
PCB	Policy Change Control Board
PwC	PricewaterhouseCoopers LLP
QPR	Quarterly Performance Report
RE	Responsible Entity
ROF	Release of Funds
SAVE	Systematic Alien Verification for Entitlements
SBA	Small Business Administration
SBDC	Small Business Development Center
SEQR	State Environmental Quality Review Act
SSC	Site Specific Checklist
UGLG	Units of General Local Government
VOB	Verification of Benefits

## 4.2 Definitions

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

**Advisory Base Flood Elevations (ABFE):** Provide a better picture of current flood risk than the existing Flood Insurance Rate Maps (FIRMs), which in some cases are more than 25 years old. The new ABFEs are the recommended elevation of the lowest floor of a building. State law, some communities, and the Building Codes may require that the lowest floor be built above the ABFE. The ABFEs are based on FEMA coastal studies that were completed before Hurricane Sandy. The studies include data that has been collected and analyzed over a number of years. Though advisory now, eventually information used to develop the ABFEs will be incorporated into official FIRMs.

**Agent:** Organization contracted by New York State to assist in implementation of the Program.

**Allowable Activity (AA):** An estimate calculated through an inspection of the reimbursement amount for eligible repairs a Business Owner made.

**Award:** Determination of Program funding available to a Business Owner

**Base Flood Elevation (BFE):** The elevation that waters from a 100-year flood will reach.

**Business Advisor:** Main point of contact for Business Owners regarding application for and processing of a request for Program assistance.

**Business Owner:** Any owner of a business with at least 20 percent ownership share.

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

**Coastal Fishing Industry Business:** A business that receives the majority of its income directly related to commercial culture, harvest, packing dealing, shipping and/or processing and/or recreational fishing.

**Coastal High Hazard Areas (V Zones):** 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 – Disaster Recovery (CDBG-DR):** A federal program administered by the US Department of Housing & Urban Development (HUD) which provides grant funds to local and state governments. The CDBG-DR 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.

**Davis Bacon Wage Requirements:** The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers

and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts.

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

**Disaster Recovery Grant Reporting System (DRGR):** The Disaster Recovery Grant Reporting system was developed by HUD's Office of Community Planning and Development for the Disaster Recovery CDBG program and other special appropriations. Data from the system is used by HUD staff to review activities funded under these programs and for required quarterly reports to Congress.

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

**Economic Hardship:** Likelihood for a business to experience employment loss and/or business closure.

Likelihood of employment loss is reviewed by:

- Comparing average employment from the NYS-45 Q3 2012 (Q2 2011 for Irene and Lee) to the same quarter NYS-45 of the following year
  - The average of all three months is used, not individual months
  - For seasonal businesses significant employment loss is documented by comparing the quarter prior to the storm that falls within their revenue generation period to the same quarter NYS-45 of the following year;
- Documented public or employee correspondence regarding impending employment reductions;
- Decrease in business revenues of 30% or greater as documented by comparing the 12 month period prior to the storm to the 12 month period after the storm. (e.g. September 2011 through September 2012 compared against October 2012 through October 2013 for Hurricane Sandy applicants); or
- If the business has not yet reopened since the storm.

Significant employment loss is defined as:

- For businesses with 30 employees or less:
  - Loss of 2 employees for LMI Business Owners or businesses 51 percent or greater LMI employees
  - Loss of 3 employees for all other businesses
- For businesses with 31 employees or more:
  - Loss of 7 percent of the total employment for the business for LMI Business Owners or businesses with 51 percent or greater LMI employees
  - Loss of 10 percent of all employees for all other businesses

**Encroachment:** any floodplain development that could obstruct flood flows, such as fill, a bridge, or a building. A driveway, road, or parking lot at grade (without any filling) would not cause an obstruction. Development of lakeshore floodplains, where there is no flow, is not

considered an encroachment.

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

**Estimated Cost of Repair (ECR):** Provides an estimate of the basic costs needed to repair the business to pre-storm conditions.

**Floodplain:** (Also known as the “Base Flood”) it is the low, flat, periodically flooded lands adjacent to rivers, lakes and oceans and subject to geomorphic (land-shaping) and hydrologic (water flow) process. 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 federal flood insurance program.

**Floodplain fringe:** The portion of the floodplain outside of the floodway, which is covered by floodwater during the 100-year Flood. The term, "flood-fringe" is generally associated with standing rather than flowing water. It is also that part of the floodplain wherein development is subject to a community's floodplain ordinance.

**Floodway:** (Also known as the “Regulatory Floodway”) it 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.

**Flood Zones:** The land areas identified by the Federal Emergency Management Agency (FEMA). Each flood zone describes that land area in terms of its risk of flooding. Everyone lives in a flood zone it's just a question of whether you live in a low, moderate, or high risk area.

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

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

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

**Grant Maximum Benefit:** Maximum grant Award available to a Business Owner based on eligible, uncompensated needs and Program eligibility.

**Homes and Community Renewal (HCR):** New York State unified leadership platform,

encompassing a variety of New York State agencies and public benefit corporations involved in the provision of housing and community renewal.

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

**HUD Office of Inspector General (OIG):** OIG's mission is independent and objective reporting to the Secretary and the Congress for the purpose of bringing about positive change in the integrity, efficiency, and effectiveness of HUD operations. The Office of Inspector General became statutory with the signing of the Inspector General Act of 1978 (Public Law 95-452).

**Internal Revenue Service (IRS):** Federal department responsible for tax collection and tax law enforcement.

**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. (**U. S. Department of Health and Human Services**)

**Low- and-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.

**Marina:** A publicly or privately-owned dock or basin providing secure moorings for pleasure and/or commercial boats and often offering commercial services that support the use of the waterways, such as supply, repair, restaurants, and other facilities.

**Mitigation:** Efforts undertaken today to reduce loss of life and property damage by lessening the impact of future disasters. Mitigation efforts may be optional or required.

**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. The Federal Emergency Management Agency (FEMA) manages the NFIP.

**National Objective:** A HUD criteria governing the eligible uses of CDBG-DR funds.

**Noncitizen:** A person who is neither a citizen nor a national of the United States.

**Owner Expenses:** Costs above the Program's spending caps and/or costs associated with providing ineligible items.

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

- (i) Has a disability, as defined in 42 U.S.C. 423;
  - a. 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))

**Power of Attorney (POA):** An authorization to act on someone else's behalf in a legal or business matter.

**Preliminary Award Initiative:** Opportunity for Business Owners to apply for a preliminary Award payment of \$10,000 to assist with immediate business needs while a full Program application is submitted. Business Owners have until December 1, 2014 to complete a full Program application. As of May 1<sup>st</sup>, 2014, the Preliminary Award program stopped accepting applications.

**Preliminary Project Budget:** Business Owner’s estimate of the all unmet basic costs requested in order to return the business to pre-storm standards. The Preliminary Project Budget serves as the basis for a request for Program assistance.

**Program:** As referenced in this Policy Manual, means the “NY Rising Small Business Recovery Program”

**Punch List:** A list of unfinished matter that needs attention. It is used in the architecture and building trades to organize the completion of a construction project

**Quality Assurance (QA):** Planned and systematic production processes that provide confidence that the policy and procedures of the Program are being executed as planned.

**Quality Control (QC):** Testing to ensure that the policy and procedures of the Program are being executed as planned.

**Quarterly Performance Report (QPR):** Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee’s official web site.

**Responsible Entity (RE):** Under 24 CFR Part 58, the term responsible entity means the grantee receiving CDBG assistance. The responsible entity must complete the environmental review process. The RE is responsible for ensuring compliance with NEPA and the Federal laws and authorities has been achieved, for issuing the public notification, for submitting the request for release of funds and certification, when required, and for ensuring the Environmental Review Record (ERR) is complete.

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

**Renovation:** Rehabilitation that involves costs of 75 percent or less of the value of the property before rehabilitation.

**Seasonal Business:** A business in which a minimum of 70 percent of the business’ annual income is earned during a six month period.

**Second Home:** If a second home is not rented out at any time during the year, it is a second home regardless of if it is used by the household or not. If a home is rented out part of the year and the owner uses the home more than 14 days or more than 10 percent of the number of days during the year that the home is rented, then it is a second home. If a home is rented out for part or all of the year and the owner does not use the home long enough then it is rental property and not a second home.

**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:** Slum and Blight means 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.

**State:** As referenced in this Policy Manual, means “New York State”.

**Storms:** As referenced in this Policy Manual, means “Hurricane Sandy (10/29/12), Tropical Storm Lee (9/7/2011), and/or Hurricane Irene (8/28/2011)”

**Subrogation:** Subrogation is the process by which a Homeowner or Business Owner assigns to the Program all of their future rights of insurance proceeds or other Federal relief funds up to the extent of the grant proceeds paid under the Program.

**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)

**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 Business Owners so only those entitled to benefits receive them.

**Tier 1 (Target Area Assessment):** Environmental assessment of a broad geographical area which is completed before the Tier 2, Site Specific Project Review.

**Tier 2 (Site Specific Project Review):** Environmental assessment of a specific project site. A Tier 2 must be successfully completed before funds for a specific project site may be obligated and spent.

**Total Program Maximum Benefit:** Total Maximum Program Award is capped at \$250,000. In order to receive the Total Program Grant Maximum Benefit, a business would have to show sufficient documented, eligible, unmet need, and meet all conditions required for each type of grant assistance: small business, seasonal or coastal fishing business, demonstration of economic hardship and mitigation

**Underwriting Agent:** An organization contracted by New York State to assist in underwriting grants to determine Awards.

**Urgent Need Objective:** Under the CDBG –DR 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 (within 18 months), and the sub-grantee or State cannot finance the activities on its own because other funding sources are not available. All Business Owners which do not meet the LMI criteria will be placed into the Urgent Need category.

**Value-Added Inventory:** Inventory which increases in value through cultivation or manufacture; examples include agriculture, aquaculture, handmade and manufactured goods.

**Verification of Benefits:** A process in which all other funding sources for damages, potentially received or yet to be received, for the Business Owner are verified in order reduce potential Duplication of Benefits.

**Viability:** A business will be considered viable if it is currently open or actively working to reopen.

**Verification Agent:** Organization contracted by New York State to oversee and execute Verification of Benefits and Duplication of Benefits reviews.

**Working Capital:** Working capital for this program is defined as rent/mortgage costs, employee salaries, and utility costs (gas, electric and water)

**Yacht Club:** A yacht club may have a marina as part of its facility, but it is structured such that it is organized and run by the membership to promote the sailing/yachting/boating or other recreational sport of its members. Membership is selective and the club may sponsor education, racing and other outreach activities related to the club's boating priorities.

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## **Exhibit 1 - Program Administrative Policies**

### **Monitoring and Compliance Oversight**

The Governor's Office of Storm Recovery (GOSR) has established a Monitoring Plan administered by the Monitoring and Compliance Department (MCD) to ensure that all programs and projects comply with applicable federal, State, and local regulations and effectively fulfill the goals set forth in the Action Plan and the Action Plan Amendments. GOSR must ensure compliance with the US Department of Housing and Urban Development (HUD) regulations, which include but are not limited to: Record Keeping, Administrative and Financial Management, Environmental Compliance, Citizen Participation, Conflict of Interest, Procurement, Davis-Bacon Labor Standards, Diversity and Civil Rights regulations (Minority and Women's Business Enterprise, Section 3, Fair Housing, Limited English Proficiency, and American with Disabilities Act), Property Acquisition and Management, Displacement, Relocation, and Replacement.

The Monitoring Plan serves to identify risks, deficiencies, and remedies relating to GOSR directly administered programs, administrative and financial management, and programs administered via GOSR subrecipients. The Monitoring Plan seeks to accomplish the following objectives:

- To determine if a grantee/subrecipient is carrying out its obligations, and its activities as described in the Action Plan for CDBG-DR assistance and its related Grant or Subrecipient Agreement (Agreement).
- To determine if a grantee/subrecipient is carrying out its activities in a timely manner, in accordance with the schedule included in the Agreement.
- To determine if a grantee/subrecipient is charging costs to the project eligible under applicable laws and CDBG-DR regulations, and reasonable in light of the services or products delivered.
- To determine if a grantee/subrecipient is conducting its activities with adequate control over program and financial performance, and in a way that minimizes opportunities for waste, mismanagement, fraud, and abuse.
- To assess if the grantee/subrecipient has a continuing capacity to carry out the approved project, as well as future grants for which it may apply.
- To identify potential problem areas and to assist the grantee/subrecipients in complying with applicable laws and regulations.
- To assist grantee/subrecipients in resolving compliance problems through discussion, negotiation, and Technical Assistance and training.
- To provide adequate follow-up measures to ensure that performance and compliance deficiencies are corrected by grantee/subrecipients, and not repeated.
- To comply with the federal monitoring requirements of 24 CFR 570.501(b) and with 24 CFR 84.51 and 85.40, as applicable.
- To determine if any conflicts of interest exist in the operation of the CDBG-DR program per 24 CFR 570.611.

- To ensure that required records are maintained to demonstrate compliance with applicable regulations.

Consistent with HUD requirements, MCD conducts risk assessments on all entities being monitored, including all programs, contractors, and subrecipients in order to identify the appropriate level of monitoring, including the frequency and depth of review. Entities being monitored are assessed on a scale ranging from low risk to medium risk to high risk. Depending on the results of the risk assessment, MCD conducts levels of monitoring commensurate with the level of risk assessed. In general, the levels of monitoring range from desk auditing, to on-site monitoring, to integrity monitoring. GOSR makes necessary adjustments in its monitoring plan based on the most current information, data, and analyses available. Any risks and deficiencies identified result in a request for timely corrective action from the entity being monitored. GOSR provides Technical Assistance (TA) to all entities being monitored in order to facilitate compliance with all applicable federal, State, and local regulations. **Refer to the “Monitoring and Compliance Policy Manual” for additional guidance and protocols.**

## Investigations

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

## Cross-Cutting Federal Regulations

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

### Americans with Disabilities Act (ADA)

GOSR takes affirmative steps to ensure that qualified persons with disabilities are informed of the availability of program services and activities, and GOSR’s programs or services are readily accessible to, and usable by, individuals with disabilities. GOSR will also ensure that handicapped persons are provided with benefits and services as those provided to non-handicapped individuals; And will ensure that all programs and activities are accessible, both structurally and administratively, to handicapped and disabled persons. The types of reasonable accommodations that can be provided include accommodations or adjustments to a rule, policy, practice, or service.

## **Davis-Bacon Act and Related Acts (DBRA)**

The [Davis-Bacon Act<sup>1</sup> and Related Acts \(DBRA\)](#) requires all contractors and subcontractors funded whole or in part with CDBG-DR financial assistance through the GOSR in excess of \$2,000 to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. In some cases, New York State Prevailing Wage Law is in effect. In these cases, the higher prevailing wage rate between the federal and State must be adhered to and made applicable. For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular pay for all hours worked over 40 in a work week.

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

MCD ensures that GOSR's applicable programs and services are in compliance with DBRA through the submission of weekly payrolls as well as interviews with laborers. GOSR utilizes its Davis-Bacon FTP Submission website and electronic tracking system to both track and monitor weekly payroll submissions by contractors

## **Equal Employment Opportunity**

[Executive Order 11246](#), Equal Employment Opportunity, as Amended, prohibits federal contractors and federally-assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The Executive Order also requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.<sup>2</sup> This regulation is adhered to within GOSR programs

## **Fair Housing**

The [Fair Housing Act](#) requires all grantees, sub-recipients, and/or developers funded in whole or in part with HUD financial assistance to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability or marital status. GOSR enforces the Fair Housing Act by ensuring that all grantees, sub-recipients, and/or developers meet the applicable Fair Housing and Affirmative Marketing requirements and provide a marketing plan and report on compliance in accordance with the Fair Housing Act and the associated [forms](#) on HCR's website, where applicable. The Affirmative Marketing Plan must be in compliance with applicable Fair Housing Laws and demonstrate how the Applicant will affirmatively further fair housing throughout

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<sup>1</sup> 40 U.S.C. 3141 *et seq.*

<sup>2</sup> 41 CFR Part 60.

applicable GOSR disaster recovery programs. **Refer to the “Fair Housing Policy Manual” in Fair Housing Requirements for additional guidance and protocols.**

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

The [Fair Labor Standards Act of 1938](#)<sup>3</sup> (FLSA) establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week.<sup>4</sup> These labor standards are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project. Excluding the exceptions listed below, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under GOSR CDBG-DR program must be paid wages at rates not less than those prevailing on similar construction in the Locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

In some cases, New York State Prevailing Wages and Davis-Bacon Prevailing Wages both apply. In such instances, the higher of the two prevails.

Exceptions to Fair Labor Standards Act of 1938, as Amended (FLSA) include:

- Construction contracts of \$2,000 or less;
- Real property acquisition;
- Architectural and engineering fees;
- Other services (such as legal, accounting, construction management);
- Other non-construction items (such as furniture, business licenses, real estate taxes);
- Rehabilitation of residential property designed for fewer than eight families; and,
- Demolition and/or clearance activities, unless related to construction (demolition and clearance as independent functions are not considered construction). Contact a GOSR CDBG-DR Labor Specialist for assistance.

### **Limited English Proficiency (LEP)**

[Federal Executive Order 131661](#) and [State Executive Order #26](#) require GOSR and all satellite offices, programs, subrecipient, contractors, subcontractors, and/or developers funded whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with LEP and/or Deaf/Hard of Hearing. GOSR ensures fair access through the implementation of a Language Assistance Plan (LAP) which includes non-English based outreach, translation services of vital documents, free language assistance services, and staff training. GOSR’s LEP Coordinator is responsible for coordinating all activities associated with the LAP, and the (MCD) monitors its implementation. Refer to the “Language Assistance Plan” Provision of Language Assistance Services for additional guidance and protocols. **Refer to the “Language Assistance Plan” Provision of Language Assistance Services for additional guidance and protocols.**

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<sup>3</sup> 29 U.S.C. 201.

<sup>4</sup> *Id.*

## Minority/Women-Owned Business Enterprises (M/WBE)

The federal [Executive Order 12432](#) guidelines requires for selected federal agencies to promote and increase the utilization of Minority Business Enterprises. 24 CFR 85.36 requires grantees to ensure that all sub-recipients, contractors, sub-contractors, and/or developers funded in whole or in part with HUD CDBG-DR financial assistance to make a commitment or demonstrate an acceptable “good faith effort” toward ensuring that contracts and other economic opportunities are directed to small and minority firms, women’s business enterprise, and labor surplus area firms.

In addition, GOSR ensures compliance by requiring sub-recipients, contractors, and/or developers to achieve an overall MWBE participation goal of 30 percent of the entire contract value, consisting of 15 percent for Minority-Owned Business Enterprises (MBE) and 15 percent for Women-Owned Business Enterprises (WBE). GOSR verifies MWBE certification and monitors to ensure compliance with all reporting requirements. **Refer to the “MWBE Policy and Procedure Manual” in the Policy Statement Section and Housing Trust Fund Corporation's General Provisions for additional guidance and protocols.**

### Section 3

Section 3 of the Housing and Urban Development Act of 1968 requires grantees, sub-recipients, contractors, sub-contractors, and/or developers funded in whole or in part by the CDBG-DR funding, to the greatest extent feasible, extend hiring opportunities and contracts to Section 3 eligible residents and businesses. Section 3 eligible residents are low- and very low- income persons, particularly those who live or reside in public or government assisted housing. For those entities that receive more than \$200,000 in HUD CDBG-DR assistance and contractors that are awarded covered contracts that exceed \$100,000, GOSR requires that an approved Section 3 plan be in place before the project is awarded and approved. GOSR’s Monitoring and Compliance Team monitors contracts with, sub-recipients, contractors, subcontractors, and/or developers. GOSR manages the education and outreach efforts, reviews the proposed Section 3 Plans, and provides Technical Assistance (TA) when needed. **Refer to the “Section 3” Policy Manual in Section 3 Policy for Prospective Bidders or Policies and Procedures for additional guidance and protocols.**

## Uniform Relocation Act and Real Property Acquisition

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

Section 104(d) requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling and requires one-for-one replacement of lower-income units demolished or converted to other uses.

Subrecipients or contractors must provide the following benefits to households that they displace:

- Relocation advisory services;
- A minimum of 90 day notice to vacate;
- Reimbursement for moving expenses; and
- Payments for added cost of renting or purchasing comparable replacement housing.

GOSR programs subject to the Uniform Act and Section 104(d) includes the CDBG-DR programs. GOSR rules, Notices of Funding Availability (NOFAs), applicant certifications and/or written agreements for funds subject to the Uniform Act and Section 104(d) shall refer to federal and State rules, as appropriate.

### **Real Property**

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

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

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

### **Financial Management**

Pursuant to the Disaster Relief Appropriations Act, 2013 (Public Law 113-2) GOSR maintains and has in place proficient financial controls. As the grantee, the MCD ensures that GOSR, as well as those administering CDBG-DR disaster recovery resources; continuously demonstrate conformity to financial management requirements as required by the Department at 78 FR 14329 (published March 5, 2013). These requirements include, but are not limited to, areas covering: Financial Management; Advances; Internal Controls; Accuracy of Report Information; Program Income; Salaries and Wages; Indirect Costs; Lump Sum Drawdowns; and OMB Circular A-133. GOSR's financial management system will be consistent with and in compliance with 24 CFR

Parts 84, 85, and 570 (as applicable), which ensures that GOSR funds are managed with high levels of accountability and transparency.

The MCD ensures that GOSR's Financial Management practices adhere to the following:

1. Internal controls are in place and adequate;
2. Documentation is available to support accounting record entries;
3. Financial reports and statements are complete, current and reviewed periodically; and
4. Audits are conducted in a timely manner and in accordance with applicable standards.

### **Procurement Policy**

GOSR has established and adopted a procurement policy. With a procurement policy in place, the Monitoring and Compliance Department (MCD) reviews the policy (as amended) to ensure it meets state and federal requirements, and ensures that GOSR adheres to its established policies.

### **Record Keeping, Retention and File Management**

In accordance with HUD regulations, GOSR as a grantee and recipient of CDBG-DR funds follow the records retention as cited in 24 CFR 84.53, which includes financial records, supporting documents, statistical records and all other pertinent records are maintained for five years. GOSR established record keeping and retention requirements in its subrecipient and contractor agreements in accordance with the guidelines established in 24 CFR 570.503(b)(2). For all subrecipients, their retention of records shall be kept in accordance with 24 CFR 85.42, as modified by 24 CFR 570.502(a)(16), which requires for records to be maintained at least for a period of five years following the close out of all activities associated with each program.

Every subrecipient and contractor is required to establish and maintain at least three major categories of records: Administrative, Financial, and Project Case files.

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

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

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

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

## Reporting

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

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

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

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

## Record Retention

Record retention is a requirement of the Program. Records are maintained to document compliance with Program requirements and federal, State, and local regulations and to facilitate an audit review by HUD. Records are maintained in accordance with 24 CFR 570.3, which states they must be maintained for a period of 5 years following the closeout of the award to the State. The GOSR Records Management Program seeks to ensure that:

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

## Access to Records

24 CFR 570.49 Recordkeeping requirements:

*“(c) Access to records.*

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

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

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

## **Audit Trail**

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

Within the NY Rising Housing Recovery Program, Intelligrants serves as GOSR's management information system. Intelligrants provides immediate tracking and imaging of all Program documentation, including but not limited to, applicant notification, eligibility verification documentation, financial funds disbursement documentation to ensure data security and Program oversight to create a clear audit trail of the Program. Additional financial funds disbursement documentation is available from the Tribuo database.

Within the NY Rising Community Reconstruction Program and the NY Rising Infrastructure Program, GOSR Subrecipient Portal (GSP) will serve as GOSR's management information and model file system. GSP contains both grantee and project level files, providing immediate tracking and imaging of Program documentation, including but not limited to, project selection, development and implementation activities, subrecipient agreements and other agreements, financial management and citizen participation data. Ensuring data security and oversight to creating a clear audit trail of the Programs.

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

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

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

## **Conflicts of Interest and Confidentiality**

Conflicts of interest between Applicants, Program administrator, contractors, Program staff and other parties are strictly prohibited by federal law. Generally, no person who is a covered person, and who exercises or has exercised any functions or responsibilities with respect to CDBG-DR activities and who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the

proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

A “covered person” is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or any designated public agencies, or subrecipients that are receiving CDBG-DR funds.

The conflict of interest regulations contained in the contract between the subrecipient and the HCR prohibit local elected officials, HCR staff, subrecipient employees, and consultants who exercise functions with respect to CDBG Disaster Recovery activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, from receiving any benefit from the activity either for themselves or for those with whom they have family or business ties, during their tenure or for one year thereafter.

### **Conflicts of Interest**

The Program requires all Program staff to disclose any relationship with an Applicant or contractor. State program staff, sub-grantees, program administrators, and contractors who disclose such relationships are placed in roles where there is no opportunity for them to display favoritism or collude in order to financially or otherwise benefit themselves, the Applicant, the contractor. For example, a Customer representative may not perform work on the application of family. For purposes of this regulation, “family” is defined to include spouse, parents, mother-in-law, father-in-law, grandparents, siblings, brother-in-law, sister-in-law, and children of an official covered under the CDBG conflict of interest regulations at 24 CFR 570.489(h).

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

### **Confidentiality/Privacy**

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

The data collected from Applicants for the New York State Rising Disaster Recovery Program contain personal information on individuals that is covered by the Federal Privacy Act of 1974, the Personal Privacy Protection Act (NYS POL §95, et. seq.) and the State’s Public Housing Law

(see, PHL §159), among others. These laws provide for confidentiality, and restrict the disclosure of confidential and personal information. Unauthorized disclosure of such personal information may result in personal liability with civil and criminal penalties. The information collected may only be used for limited official purposes:

1. NY CDBG-DR Grant program may use personal information throughout the award process to ensure compliance with program requirements, reduce errors and mitigate fraud and abuse.
2. Independent Auditors, when hired by the program to perform a financial or programmatic audit of the program, for use in determining program compliance with all applicable HUD and federal regulations, including the Stafford Act, CDBG-DR requirements and State and Local law.
3. NY CDBG-DR Program may disclose personal information on an Applicant to those with official Power of Attorney for the Applicant or for whom the Applicant has provided written consent to do so.
4. Organizations assisting the State in executing the CDBG-DR Program must comply with all Federal and State Law Enforcement and Auditing requests. This includes, but it not limited to, HUD, FEMA, FBI, NYS Office of the Comptroller, and the Office of the Inspector General.

## **Detecting and Preventing Duplication of Benefits**

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

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

## **Recapture Policy**

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

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

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

revitalize communities affected by the storms, CBDG-DR funds must be used in accordance with HUD guidelines to help repair or replace damaged homes and businesses or reduce the risk of future damage through resilient rebuilding, elevation or other mitigation measures.

## **Anti-Fraud, Waste and Abuse Checks**

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

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

## **Review of AFWA Check Findings**

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

## **Adjudication and Escalation of AFWA Findings**

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

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

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

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

## Exhibit 2 - Citizen Participation Plan

### **Citizen Participation Plan** **Community Development Block Grant Disaster Recovery** **Hurricane Irene, Tropical Storm Lee, & Superstorm Sandy** January 5, 2015

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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 will ensure that any Units of General Local Government (UGLG) or sub-recipients who receive funds will 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 has included paid advertising, door-to-door visits, press releases and other public relations efforts, and collaboration with various constituents and community organizations.

For the NY Rising Homeowner Program, early on 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 will continue to conduct outreach to potential landlords throughout the impacted areas that may be eligible for the Program. As part of its implementation, the State will also conduct outreach to previous tenants of the damaged rental units to make them aware of potential repaired and newly built units as they are completed.

## **Outreach to Vulnerable Populations**

The State has 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”).

Currently documents are translated into the three above-mentioned languages. The State will continue to translate programmatic materials within its programs. The State will also continue to provide translation services as needed in case management and public meetings.

The State is in the process of upgrading its entire website. In the interim, prior to deployment of the revised website, the State continues to update its current website to enable language access capabilities. In addition, as it rolls out the revised website, the State will prioritize language translation functionality as one of the first phases of the development process. The State will also provide 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 will ensure 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 will always hold a minimum of one public hearing for each substantial amendment which started with APA6. Written minutes of the hearings and attendance rosters will be kept for review by State officials. The State will continue 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,
- 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 will be 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 will be posted on the agency's official website. Citizens will be provided with no less than thirty days to review and comment on the proposed amendment. Written comments may be submitted to:

**Governor's Office of Storm Recovery  
64 Beaver Street  
P.O. Box 230  
New York, New York 10004**

Comments may also be made at [www.stormrecovery.ny.gov](http://www.stormrecovery.ny.gov). A summary of all comments received and reasons why any comments were not incorporated into the Substantial Amendment will be included in the HUD request for a Substantial Amendment and posted

Non-substantial Amendments to the Action Plan will be posted on GOSR's website after notification is sent to HUD and the amendment becomes effective. Every Amendment to the Action Plan (substantial and non-substantial) will be 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 (30) days following the end of each calendar quarter. Within three (3) days of submission to HUD, each QPR must be posted on GOSR's official website for public review and comment. 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 will include 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 will also be included in the QPR.

During the term of the grant, the grantee will provide 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 shall be posted on the grantee's official website and provided on request.

### **Technical Assistance**

The State will provide 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 shall be 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 DR 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 receiving 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 shall be 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 will be 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 will ensure that each UGLG, or Sub-recipient funded with CDBG-DR funds will have written citizen and administrative complaint procedures. The written Citizen Participation Plan shall provide citizens with information relative to these procedures or, at a minimum, provide 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 will merit careful and prompt consideration. All good faith attempts will be made to satisfactorily resolve the complaints at the local level. Complaints will be filed with the Executive director or chief elected official of the entity who is receiving the funds and who will investigate and review the complaint. A written response from the Chief Elected Official, Agency Head, or Executive Director to the complainant will be made within 15 working days, where practicable. A copy of the complaint and determination must be sent to GOSR's head of Monitoring and Compliance.