



# **Buyout and Acquisition POLICY MANUAL NY Rising Buyout Program**

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The policies stated in this manual are current as of March 12, 2014. 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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# New York Rising Program Goals

## Introduction

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

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

Following Hurricane Sandy, Hurricane Irene, and Tropical Storm Lee, the State of New York developed the NY Rising Buyout Programs (the Program), along with several other disaster recovery initiatives as outlined in the [State of New York Action Plan for Community Development Block Grant Program Disaster Recovery](#) (Action Plan). The NY Rising Buyout Programs are designed to help New Yorkers with substantial damage caused by Hurricane Sandy, Hurricane Irene, and/or Tropical Storm Lee.

Owners of 1-unit and 2-unit dwellings in disaster-declared counties who sustained substantial damage as a direct result of one of these storms are invited to submit an application for assistance. Eligible property owners will work with assigned Program representatives throughout the assistance process—from the submission of their applications, to the purchase of their homes

## NY Rising Buyout Programs

### Voluntary Buyouts

The NY Rising Home Buyout Program will include the purchase of eligible substantially damaged properties (>50% of the pre-storm value of the property) inside the floodplain in storm-impacted areas defined as “enhanced buyout areas”. These areas at highest risk in the floodplains are determined to be among the most susceptible to future disasters and that therefore present a greater risk to people and property, will be identified by the State and its local partners. The State will conduct purchases inside of the enhanced buyout areas as “buyouts”, as defined by HUD, whereby they will be eligible for purchase starting at 100% of the property’s pre-storm fair market value (FMV), plus available incentive(s). In accordance with the Notice governing the use of these funds, properties purchased as a “buyout” will be maintained in perpetuity as coastal buffer zones or other non-residential/commercial uses, and may also include acquisition

of vacant or undeveloped land in these targeted areas.

### **Voluntary Acquisitions**

The State intends to conduct purchases outside of the enhanced buyout areas as “acquisitions”, as defined by HUD, whereby purchase offers must begin with the post-storm fair market value of the property. In these instances, however, the State proposes to supplement this post-storm FMV with an added homeowner resettlement incentive equal to a maximum of the difference between the post-storm and pre-storm values of the property. Such an incentive is necessary to allow homeowners inside flood-prone areas that have sustained damage to their residence and are otherwise unable or unwilling to repair their home, and seek to relocate to a safer, less flood-prone area, the ability to do so. Furthermore, this resettlement incentive recognizes the uncertainty of post-storm values of storm-damaged homes, relative to the high costs associated with relocation, therefore affording homeowners the maximum amount of assistance necessary to make this life-altering change. At the same, this resettlement incentive will help homeowners to remain in the community and contribute to its overall recovery from the disaster, while also ensuring that acquired land will be redeveloped in a safer, more resilient manner for the future occupants of the area.

Properties purchased as “acquisitions” will be eligible for redevelopment in the future in a resilient manner to protect future occupants of this property. The post-purchase fate of most acquired properties will be determined by the State in consultation with local officials to ensure that the properties best serve the future goals of the community. In some cases, the properties will remain undeveloped and be transformed into parks or other non-residential uses, while in most cases they will be redeveloped in a resilient manner.

### **Oversight of Storm Recovery**

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

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

### **Program Manual Overview**

This manual is designed to outline the major program policies that the state and its agents will use to direct the operation of the NY Rising Buyout Programs. This manual is intended to serve as a resource for New York State residents and other parties interested in details of how the different programs will be operated, including basic information on who will be served by the program, the types of assistance offered, and program recipient obligations. The manual serves as a general reference guide for administrative staff and other interested parties, including property owner recipients, Contractors, units of general local government (city and county governments) that are engaged as “sub-grantees” to deliver assistance through the program, and any non-profit organizations that are involved as “sub-recipients” or consultants.

This manual establishes the Buyout and Acquisition procedures HTFC follows to respond to the needs of Owners who are burdened by economic limitations or other hardship conditions; guard against fraud, waste, and abuse, and; deliver Program assistance fairly and equitably to eligible Owners.

The manual is NOT intended to be a full compilation of all internal program procedures that must be put in place before the state and its agents can ensure the effective implementation of the policies contained in this manual. For every program policy that is established and set forth in this manual, the Program will establish a comprehensive set of procedures to ensure that policies are implemented in a manner that is efficient and effective, and also guards against fraud and abuse. These written procedures will be in a corresponding procedures manual. This NY Rising Buyout Policy Manual and manuals for other programs will be made available for public review and use at <http://www.stormrecovery.ny.gov>

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

As expressed in the Federal Housing and Community Development Act, the primary objective of the 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).” However, in recognition of the special circumstances that exist in disaster recovery situations and the widespread needs that occur across income groups, the requirement that activities “principally” benefit LMI persons has been adjusted from the standard 70 percent LMI targeting rule to a 50 percent LMI targeting rule for CDBG-DR funds. CDBG-DR funds must not only contribute to the development of viable communities, they must be targeted to those areas most impacted by the disaster or disasters. For New York State, a minimum of 80 percent of the funds awarded must be spent in Nassau, Suffolk, Rockland, and Westchester Counties. In support of the U.S. Department of Housing and Urban Development’s (HUD) recovery objective, New York State has specifically designed its programs to help impacted residents and communities to recover from the damage that has been inflicted by the storms of 2011 and 2012.

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

- Benefit Low and Moderate Income (LMI) persons

- Aid in the prevention or elimination of slums or blight (Slum and Blight)
- Meet a need having a particular urgency (Urgent Need)

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

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

In addition to the direct benefits for the impacted households, the NY Rising Buyout Programs are expected to encourage investment in communities by ensuring that properties are not just rebuilt but also become safer—especially for those areas where there is a high risk of future flooding; revitalizing the vibrancy of New York State’s disaster-impacted communities and enhancing the quality of life; and helping communities develop and implement strategies that facilitate the coordination of the NY Rising Buyout Programs funding with other federal, state, and local community development resources.

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

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

### **Outreach, Communication Plan, and Citizen Participation Plan**

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

- **Online:** Promotion of recovery resources and the State Action Plan are available on the Governor’s Office of Storm Recovery website at <http://stormrecovery.ny.gov>, and a link to the online application for assistance for Property owners is available at <https://buyout.nyshcr.org>.
- **By Mail:** Program invitation letters will be sent out by First Class Certified Mail – Return Receipt Requested to Property owners in specific areas within impacted regions designated by county and local governments as being high risk for future storm damage.
- **In Person:** Availability of trained Buyout Program representatives to assist potentially eligible Property owners with the completion and submission of an application at five Buyout Intake Centers in impacted regions of Richmond and Suffolk counties; information on locations and hours of these centers will be available at <http://stormrecovery.ny.gov>.
- **By Phone:**
  - Outbound phone calls by Buyout Program representatives to impacted residents and potentially eligible Property owners, including those who have registered with the State since these storms to express an interest in receiving assistance.
  - Access to a State-supported disaster recovery hotline, **1-855-NYS-SANDY**, and five dedicated Buyout Intake Centers, which provides trained representatives who can answer questions about the programs, guide potential Property owners through the application process, and provide updates on the status of applications.
- **By Events:** Leaders of locally created committees involved in disaster recovery efforts in the impacted regions may informally share information about the Program at community meetings and other community-based events.

The State and its agents will maintain a database of all individuals contacted through coordinated outreach efforts. This information will be used to populate a geographic information system (GIS) map to better illustrate the location of interested and potentially eligible Property owners and ensure the State undertakes the most effective and aggressive outreach effort to reach those most impacted by these disasters.

The State will create professional signage, documentation, and other materials to support and enhance the operation of the Program. Outreach efforts will leverage alternative language delivery, including, but not limited to, Spanish, Russian, and Chinese.

Persons with disabilities, those with limited English proficiency, and others who may need these documents presented in a different format, will be encouraged to contact the State-supported disaster recovery hotline at **1-855-NYS-SANDY** or one of the five dedicated Buyout Intake Centers for assistance with obtaining information in an accessible format.

The State may use currently available web-based resources, such as news releases made available on the Governor’s Office of Storm Recovery website at <http://stormrecovery.ny.gov> or

its social networking media, to provide information about the Program's progress. Other electronic resources, such as e-mail, may be used to provide timely communications and notifications to affected Property owners as needed.

Program-related fact sheets will be readily available for distribution by the State and its Program partners to public officials, municipalities, relevant non-profit organizations, and others as necessary or upon request.

Communications between Property owner and Program, to the greatest extent practical, may employ the mode the Property owner finds most convenient. Official Notices that could affect the Property owner's eligibility or benefit amounts must be in writing, and the Program must retain records that prove the Property owner received each Notice. The best method for delivering Notices is ordinarily by First Class Certified Mail – Return Receipt Requested.

### **Citizen Participation Plan**

The purpose of the New York State 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, Irene, and Lee recovery program(s). The plan outlines 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 will attempt to provide all citizens with the opportunity to participate, with emphasis on low and moderate income individuals, non-English speaking individuals, individuals requiring special options due to disabilities, and those in CDBG-DR targeted communities.

While the citizen participation waivers provided by HUD permit a more streamlined public process, the New York State Citizen Participation Plan will ensure 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. Although the waiver removes the requirement that a grant applicant must hold public hearings or meetings to disseminate information and collect citizen comments, the State has and will continue to coordinate outreach meetings with state entities, local governments, non-profits, private sector and involved associations. The State will also invite public comments to the Action Plan and Substantial Amendments for a minimum of seven days, posted prominently and accessed on the Division of Housing and Community Renewal (DHCR) official website. The State will use means such as press releases, posting notices on the New York State Governor's website and/or DHCR's website, to maximize access of program information to the impacted citizens and businesses.

The New York State Citizen Participation Plan for CDBG-DR Sandy, Irene, and Lee Recovery can be located in Exhibit 1 of this Policy Manual. It is also at <http://www.stormrecovery.ny.gov>

## 1.0 NY Rising Buyout Programs

New York State has two programs under the NY Rising Buyout Programs. These programs will provide assistance for repairing damaged property, reconstructing damaged homes, mitigating damaged properties for future resilience, reimbursing Property owners who have already begun repairing their homes, and special provisions for two-unit owner-occupied homes. An overview of each program is provided below. Many Property owners will participate in more than one of these activities.

The Program implements the shared HUD and HTFC policy of providing assistance to community members, primarily LMI, Owner-occupant households and to others who are eligible based on property location and urgent need (URG) under this voluntary property acquisition (Buyout) Program. The majority of the properties that will be assisted through the Recreate NY Smart Home Programs will be single family Owner-occupied homes. However, it is important to recognize that many of the buildings to be assisted might be two-family homes, with the Owner occupying one unit and a tenant the other.

The buyout process is made of several different steps, including the application, Intake, eligibility determination, the Duplication of Benefits (DOB) process, the Verification of Benefits (VOB) process, finalization of the award, closing, payments, and relocation, plus any appeals.

### 1.1 NY Rising BUYOUT

Enhanced Buyouts are select pre-defined targeted buyout areas, determined in consultation with county and local governments, within the 100-year flood plain and in the highest risk area (FEMA flood map “V Zone”). Substantially Storm-damaged properties (damage that equals 50% or greater of the FMV) within this area are offered 100% of pre-Storm FMV. Any property acquired as an Enhanced Buyout at pre-Storm FMV will result in the land remaining open green space in perpetuity. Reconstruction may **NOT** occur on lots in these areas; lots will be maintained as coastal buffer zones or other non-residential/commercial uses, and may also include acquisition of vacant or undeveloped land in these targeted areas.

### 1.2 NY Rising ACQUISITION

Substantially Storm-damaged properties located inside the 500-year floodplain, but outside of the high-risk area (V Zone), may be purchased through Acquisition at 100% of post-Storm FMV (plus eligible relocation or other assistance). The difference between the pre-Storm FMV and post-Storm FMV of an Acquisition property is offered to the Owner as an incentive. NYS has the flexibility to hold any property purchased through Acquisition as undeveloped green space in perpetuity or to redevelop it in a resilient manner.

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## 2.0 NY Rising Buyout Programs Process

Phase	Key Steps
<b>Phase 1:</b> Application Submission and DOB Meeting	<ul style="list-style-type: none"> <li><input type="checkbox"/> Application submission</li> <li><input type="checkbox"/> Threshold eligibility determination</li> <li><input type="checkbox"/> Completeness review</li> <li><input type="checkbox"/> Duplication of Benefits (DOB) Meeting</li> </ul>
<b>Phase 2:</b> Environmental Assessments and Appraisal	<ul style="list-style-type: none"> <li><input type="checkbox"/> Phase I Environmental Site Assessment (ESA)</li> <li><input type="checkbox"/> Phase II Investigation (if applicable)</li> <li><input type="checkbox"/> Fair Market Value (FMV) Appraisal</li> <li><input type="checkbox"/> Conditional Offer</li> </ul>
<b>Phase 3:</b> Verification of Benefits (VOB) Review	<ul style="list-style-type: none"> <li><input type="checkbox"/> Property Eligibility Verification</li> <li><input type="checkbox"/> Application and Owner Eligibility Verification</li> <li><input type="checkbox"/> AFWA Verification</li> <li><input type="checkbox"/> Receipt Review</li> <li><input type="checkbox"/> Third Party Review</li> <li><input type="checkbox"/> Award Calculation</li> </ul>
<b>Phase 4:</b> Offer and Contract Execution	<ul style="list-style-type: none"> <li><input type="checkbox"/> Award Offer</li> <li><input type="checkbox"/> Owner Appeal (if applicable)</li> <li><input type="checkbox"/> Offer Meeting</li> <li><input type="checkbox"/> State Contract Execution</li> <li><input type="checkbox"/> Title Clearance</li> </ul>
<b>Phase 5:</b> Relocation (if applicable)	<ul style="list-style-type: none"> <li><input type="checkbox"/> Tenant Relocation</li> <li><input type="checkbox"/> Tenant Appeal</li> </ul>
<b>Phase 6:</b> Closing	<ul style="list-style-type: none"> <li><input type="checkbox"/> Personal Property Inspection</li> <li><input type="checkbox"/> Closing</li> <li><input type="checkbox"/> Deed Restriction</li> <li><input type="checkbox"/> Deed Recordation</li> </ul>
<b>Phase 7:</b> Demolition and Remediation	<ul style="list-style-type: none"> <li><input type="checkbox"/> Property Management and Security</li> <li><input type="checkbox"/> Pre-Demolition: PMF Item Completion, Development, Reviews and Inspections</li> <li><input type="checkbox"/> Demolition: Abatements, Permits, Demolition, and Load Documents</li> <li><input type="checkbox"/> Post Demolition and Closeout: PMF Item Completion, and Closeout Submission</li> </ul>
<b>Phase 8:</b> Final Closeout and Deed Restrictions Monitoring	<ul style="list-style-type: none"> <li><input type="checkbox"/> Final Accounting and Audit. Implementation of perpetual Deed Monitoring and Reporting Process</li> </ul>

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## PHASE 1: Application Submission and DOB Meeting

### 3.0 Policies for NY Rising Buyout Program

#### 3.1 Application

All Property owners will be required to complete the NY Rising Buyout Programs application and submit it along with supporting documentation.

Property owners may submit applications in one of four ways:

- Complete the online application at <http://www.stormrecovery.ny.gov> and submit electronically
- Call **1-855-NYS-SANDY (1-855-697-7263)** to arrange for assistance by phone
- Visit a Program office and have Program staff assist with in-person submittal. Please visit the New York State Recovery Resources website for Program Office locations at: <http://www.stormrecovery.ny.gov>
- Complete a paper application by hand and return to any of our Buyout Intake Centers or by mail to:

**NY Rising Buyout Programs  
Attn: Applications  
535 Broad Hollow Road  
Melville, NY 11747**

An application **must** include all federal and state required documents to be complete. At a minimum, Property owners will need to provide the following documents:

- Documentation of ownership for residence (deed) or residential income property
- Documentation of household income
- Evidence of current property tax payment
- Documentation of amounts received or approved, but not yet accepted, from **all** other disaster-related assistance, such as flood insurance, Property owners insurance, the Small Business Administration (SBA), or other federal, state, local, private, and not-for-profit sources.
- Documentation of the status of mortgage payments
- FEMA registration numbers
- Tax identification number (Social Security Number or Employee Identification Number, if investor owned).
- Documentation of Occupancy at time of event.

#### 3.1.1 Threshold Eligibility Determination

All applications undergo a threshold eligibility review to determine whether the property is located in an area eligible to receive assistance, and if so, for which NY Rising Housing

Program. Each Property owner that appears to qualify to participate in the Buyout Program is assigned a Customer Representative who reviews the application in detail and schedules a meeting with the Property owner.

The Customer Representative reviews the application and organizes the Property owner's accompanying documents, then identifies any additional information or documents necessary to complete the application. The Customer Representative may schedule the initial meeting with the Property owner by mail, e-mail, or telephone. Confirmation of the meeting schedule is retained in the Property owner's property file.

### **3.1.2 Completeness Review**

A Customer Representative will review and organize the application and documents submitted by the Property owner. The customer representative will determine if all required information and documents have been submitted, and identify any additional information and documents needed.

### **3.1.3 Missing Documents Notification**

Property owners will be given the opportunity to submit missing and deficient information in order to continue processing their application. The customer representative will make reasonable efforts to promptly contact Property owners who have submitted incomplete applications and/or are unresponsive for more than 14 days.

### **3.1.4 Intake Meeting**

The customer representative meeting may take place at the designated Buyout Intake Centers. If the Property owner wants to meet in person, the program will provide accommodations to meet the Property owner's special needs.

During this meeting, the customer representative will provide a thorough overview of the program, review with the Property owner their application and collect missing but required documentation, review and execute required forms, affidavits and/or disclosures documents, explain the remaining steps in the application process and answer any questions that the Property owner may have.

In some cases multiple meetings may be required to collect necessary documents and complete the application review process.

## **3.2 Prioritization**

Federal regulations require that 50 percent of the CDBG-DR funding awarded to New York State (for housing and all other activities combined) be expended to the benefit of LMI households and/or areas (beneficiaries). As a result, the Program established the following priority groups to ensure an appropriation allocation of resources within the category of housing assistance, to ensure the state meets this 50 percent requirement. There are no additional priorities/weights within the following groups nor will a Property owner receive additional priority for meeting multiple criteria.

### 3.2.1 Priority Groups

- **LMI Households** - An application will be considered part of the LMI funding priority group if the Property owner's household income is 80 percent or less of Area Median Income (AMI) as determined by HUD at the time the application is approved.

Area Median Income is defined by HUD and is found on the appropriate Fiscal Year Income Limits table. The 80 percent level is defined for each state and county, is identified as "Low Income," and is based on the size of the household. Income Limits can be found by accessing <http://www.huduser.org/portal/datasets/il.html>

- **Elderly** - An application will be considered part of the elderly priority group if the owner or co-owner of the household is 62 years of age or older at the time of application.
- **Persons with Disabilities** - An application will be considered to be in the Persons with Disabilities priority group if a member of the Property owner's household is a person who has a physical, emotional, or mental impairment with the following conditions:
  - Is expected to be of long-continued or indefinite duration, substantially impedes the person's ability to live independently, and is such that the person's ability to live independently could be improved by more suitable housing conditions.
  - Limits major life activities, such as walking or other gross motor skills, who qualify for Social Security Disability Income (SSDI), or who can provide documentation from a licensed medical professional as to a disabling condition as defined by HUD.
- **DHAP Recipients** - An application will be considered part of the DHAP priority group if the Property owner is currently receiving rental assistance through the Disaster Housing Assistance Program (DHAP). If the property owner is still going through the DHAP approval process at the time of their application to the NY Rising Housing Program, they will be considered by the program to be placed in the priority group.
- **Limited English Proficiency** - An application will be considered part of the Limited English Proficiency (LEP) priority group if the head of household who as a result of national origin, does not speak English as his/her primary language and who has a limited ability to speak, read, write, or understand English.
- **Substantially Damaged** – Substantial damage occurs when a property sustains damages that equals or exceeds 50 percent of its Fair Market Value (FMV) prior to the event, as determined by a local authorized official (e.g., a code officer) or the AA/ECR damages (minus elevation and bulkheads) exceeds 50 percent of the Program cap.

Substantial damage may be determined by the following:

- 1) Receipt of a substantial damage letter from their Flood Plain Administrator, or

- 2) Inclusion in the FEMA and/or the municipality data set indicating the home was substantially damaged, or
- 3) A total damage amount (the sum of the AA and the ECR not including bulkheads or elevation but including AE fees) of greater than 50% of the pre-storm value or

For those who do not fit in one of the categories above, the Property owner can provide additional documentation such as tax records or an appraisal and the Program can review and approve on a case by case basis.

### 3.3 Eligibility Criteria

All housing program activities must adhere to the applicable criteria as set forth by The NY Rising Buyout Programs and CDBG National Objectives. The eligibility criteria summarized below and described in this Section will be used to determine if the Property owner household is eligible for assistance.

The NYS Recreate NY Home Buyout Program affords eligibility for voluntary buyout for one-unit and two-unit homes.

For standard Buyout, at 100% of pre-storm FMV, the property must be inside the highest risk areas along the water referred to as the “V Zone” in FEMA flood maps (“Buyout Property”). Property located inside of the 500-year floodplain but outside of that V Zone (“Acquisition Property”) may be acquired, in most cases, for 100% of post-storm FMV (plus eligible relocation or other assistance).

#### Summary of Eligibility Criteria

Property Criteria
<input type="checkbox"/> The property is one of the defined eligible types (one-unit or two-unit residential dwelling)
<input type="checkbox"/> The property is located in an eligible county, including Nassau, Richmond, Rockland, Suffolk and Westchester counties. Program assistance is available in all counties identified Section 3.3.1
<input type="checkbox"/> The property is located in either the 100 year or 500 year flood plain
<input type="checkbox"/> The property was damaged during a qualified storm event. (see Section 3.3.2)
<input type="checkbox"/> The property matches one of the defined eligible properties. (see Section 3.3.3)
<input type="checkbox"/> Damage to the property is “substantial” (damage exceeds 50% of dwelling value).
– Property owner Criteria
<input type="checkbox"/> The Property owner is the owner of the subject property. (see Section 3.3.4)
<input type="checkbox"/> The property is a residential property

<input type="checkbox"/> The Property owner is a U.S. citizen or an eligible immigrant. (see Section 3.3.6)
<input type="checkbox"/> The Property owner meets one of the CDBG National Objectives. (see Section 3.3.7)
<b>Criteria for Program Incentives of up to 15%</b>
<input type="checkbox"/> 5% In-County Replacement Dwelling Incentive – Property owner-occupant’s Buyout Property is in an Enhanced Buyout Area <i>and</i> the Property owner permanently relocates to a replacement dwelling in the same county as the Buyout Property. The 5 New York City boroughs are treated as a single county for purposes of this incentive.
<input type="checkbox"/> 10% Enhanced Buyout Incentive – The Property owner-occupant’s Buyout Property is located in a high-risk Enhanced Buyout Area.
<input type="checkbox"/> 10% Group Buyout Incentive – The Property owner-occupant’s Buyout Property is part of a cluster of 2-10 adjoining Buyout Properties located inside the high-risk V Zone but not inside an identified Enhanced Buyout Area.

### 3.3.1 Eligible Counties

In accordance with federal regulations, 80 percent of the program funding must be expended in the most impacted counties: Nassau, Suffolk, Rockland and Westchester (shown in **bold**). However, the counties shown in the following table are also eligible for assistance. Four of the New York City counties (shown in grey text) are not eligible for assistance under the NY Rising Buyout Repair Program. New York City will administer its own CDBG-DR programs; However, NYS HTFC administers the Recreate NY Smart Home Buyout Program for Richmond County (Staten Island). For that reason, Richmond County is also in bold. NYC and NYS will work together closely on eligible Property buyout and acquisition activities.

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

### 3.3.2 Property Damage from Qualified Storm Event

The home must have damage from Hurricane Sandy (October 29, 2012), Tropical Storm Lee (September 7, 2011), and/or Hurricane Irene (August 28, 2011) as documented through photographs, assistance received from other funding sources, and/or a damage assessment

conducted by the program.

### 3.3.3 Eligible Properties

Eligible structure types are limited to the following:

**One-Family Residences:** A one-unit residential dwelling.

**Two-Family Residences:** A two-unit residential dwelling.

### 3.3.4 Ownership of Buyout Property

All Property owners of the Buyout Property must voluntarily agree to sell the property to HTFC. Any Property owner of a recorded interest in the property who refuses to agree to sell the property has the power to veto the transaction and prevent the Buyout.

- If any Owner of a Property is deceased, whether before or after the Storm event, the Executor (or Administrator) of the Estate of [decedent name] must join in the sale of the Property to HTFC.
- Surrogate's Court consideration and approval is required before HTFC buys real property from any probate estate.
- The correct documents are essential for HTFC to obtain good title to a property, and all documents necessary to establish the seller(s) title and extinguish all other ownership interests and claims must be recorded before (or together with) closing the HTFC purchase transaction. Examples include satisfaction of judgment, discharge of mortgage, affidavit of survivorship, change of owner name, etc.

#### 3.3.4.1 Limitations on Type of Ownership

1. **Reverse mortgage:** Owners with a reverse mortgage at the time of the Storm are eligible, provided the remainder of the term of the reverse mortgage is more than 5 years when the application is submitted.
2. **Property owned with other individuals:** Property owners who owned and occupied a structure at the time of the storm that is located on land that they owned along with other individuals (e.g., owned together with their family) must be treated as a Property owner on owned land and are eligible.
3. **Purchase contracts:** Contract for deed is not eligible unless the Property owner converts his/her contract to full ownership prior to receiving funding assistance from the program.

Rent or Lease-to-own is not eligible unless the Property owner converts their contract to full ownership prior to receiving funding assistance from the program.

Conditional Sale Contracts are not eligible unless the Property owner converts their contract to full ownership prior to receiving funding assistance from the program.

The following legal documents are proof that a Property owner was purchasing a home on

a contract as identified above:

- Notarized contract dated and executed prior to the incident date for review by the Program's legal staff
- Notarized and executed contract that was filed prior to the incident date in the conveyance records of the county

Proof that a contract has been completed and title conveyed to the purchaser is provided by one of the following:

- Presentation to the customer representative of a notarized, executed conveyance document from the seller to the contract purchaser
- Evidence of recordation of the title in the name of the Property owner in the conveyance records of the county

4. **Gift of Property:** A Gift of Property is a form of property transfer without exchange or payment.

- Gift of Property made post storm are eligible.
- Gift of Property made prior to the storm are eligible and residency is established in the same manner as other properties.

For the purpose of the Program, a Gift of Property must be:

- In writing
- Notarized
- Recorded in the public record

The Program reserves the right to demand any award amount to be paid back in full to the state if, at any time, a determination is made that a transfer of money between the two parties had occurred in conjunction with the Gift of Property.

5. **Trust:** Property held in trust for the benefit of natural persons can be eligible as long as at least one of the occupants at the time of the storm was a current beneficiary of the trust. The trustee's powers must include the ability to encumber the property with liens. If the trustee's powers do not include the ability to encumber the property with liens, the beneficiaries with an interest in the damaged property must sign the closing documents along with the Trustee.

The following is required to confirm eligibility:

- The Property owner must provide a copy of the trust document
- The trust document or an abstract or extract of the trust must be recorded in the conveyance records of the county in which the damaged property is located and may be recorded post-storm, if necessary.

The applicable award agreement and/or declarations must be executed by trustee(s) unless the trust distributes the property to a beneficiary, in which event the beneficiary receiving

the property must execute the applicable award agreement and/or declarations.

6. **Lost Ownership:** Property owners who lost ownership of their homes due to foreclosure, or are pending foreclosure, are ineligible for assistance.
7. **Environmental Code:** Properties located where federal assistance is not permitted are ineligible for assistance. Properties must be in compliance with Environmental Code 24 CFR Part 58.
8. **Second Homes:** Second homes are ineligible for assistance. A property is considered a Second Home for the purposes of this program if:
  - o The home is not rented out at any time during the year but it is a second home regardless of the number of days of use by the household.
  - o The home is rented out for 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, then it is a second home.
9. **Non-residential buildings:** Non-residential structures that are not attached to the residence are ineligible for assistance.
10. **Vacant Land:** Vacant land that falls within defined “enhanced buyout areas” and/or land that is contiguous to the residence (of the property owner) is eligible for assistance.

### 3.3.5 Verification of Ownership

At a minimum the property owner must produce a deed for the subject property, as well as the following documentation (where applicable):

- Proof of 2012 School Tax Relief (STAR) exemption
- 2012/13 Federal income taxes return showing Home Address as the damaged property address.
- 2012/13 NY State income tax return, showing Permanent Home Address as the damaged property address.
- Verification, in the form of bills or a letter from the provider, that water, electric, gas, sewer services or other utilities were provided to the owner for 6 months immediately preceding the time of the incident in which the damage occurred, and were mailed to the damaged property address. Usage must be consistent with residential uses.
- Other qualified documents may be presented for consideration of proof of ownership.

### 3.3.6 Citizenship and Eligible Immigrants

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

- U.S. Citizens
  - o A valid U.S. Passport

- A valid Birth Certificate
- Certificate of Naturalization
- Proof of FEMA assistance
- Eligible Immigrant
  - Will be verified through SAVE, an online verification system to validate that Property owner is an immigrant eligible for federal benefits.
  - Must provide declaration of lawful presence in the United States and have photographic identification such as a passport.

### **3.3.7 Meeting CDBG National Objectives**

All program activities must meet one of the three National Objectives required under the authorizing statute of the CDBG program. The NY Rising Buyout Programs will principally provide assistance to those households meeting the LMI objective. When the Property owner does not meet the definition of the LMI Objective, eligibility for assistance will be provided through the Urgent Need Objective.

#### *3.3.7.1 Low and Moderate Income Objective*

In determining income, the program will use the most recent signed federal income tax returns (e.g., IRS Forms, 1040, 1040A or 1040EZ).

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

- Minimum of three current and consecutive months of check stubs (if the household member is paid monthly)
- Minimum of four current and consecutive check stubs (if the household member is paid weekly, bi-weekly or bi-monthly)
- Pension statement showing current monthly or yearly gross amount
- Social Security statement or IRS Form 1099
- Unemployment statement
- Certification of Zero Income Form
- Completed Household Income Worksheet and Certification

#### *3.3.7.1 Urgent Need Objective*

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

Needs category.

### **3.4 Incentives**

Eligible property in the CDBG-DR Program area located as described in the high-risk flood areas, may be eligible for Buyout incentives. Property in a defined, targeted (Enhanced Buyout) area is eligible for acquisition incentives that may amount, in combination, to as much as 15% of the Standard Buyout amount, as follows:

- A 5% In-County Replacement Dwelling Incentive is available to residents of dwellings in Enhanced Buyout areas who purchase their replacement dwellings in the same county where their Storm-damaged property is located (New York City residents may relocate in any of its five boroughs).
  - Note: Although the Action Plan does not explicitly prohibit a selling Property owner from receiving this 5% incentive if the replacement dwelling is located in the highest risk area, that choice of replacement dwelling location is contrary to the stated purpose of the Program. Contact the Customer Representative Manager if the situation arises with any Property owner's replacement dwelling. The State may issue specific guidance on this topic at any time.
- A 10% Enhanced Buyout Incentive is available to Property owners who relocate out of designated high-risk Enhanced Buyout areas that are dedicated as coastal buffer zones in perpetuity.
- Grouped adjoining properties that, if purchased in their entirety, will yield augmented benefits as natural area.
- Up to 10% Group Buyout Incentive in areas outside the Enhanced Buyout areas in when needed to reclaim properties in a high-risk area as a contiguous tract in order to avoid patchwork acquisition that could obviate the intended Program benefits.
- This level of incentive was selected to ensure that a sufficient incentive is available, since the number of properties involved will need to be significant in those areas to produce the intended outcome. In the rare instances in which the purchase of group properties makes sense to re-purpose that area, the State believes that graduated incentives are essential to induce Property owners to sell their properties.

### **3.5 Subrogation**

Subrogation is the process by which duplicative assistance paid to the Property owner after receiving an award is remitted to the Program to rectify a duplication of benefit.

#### **3.5.1 Assignment Relation to Funds Received Under Program**

In consideration of the Property owner award of funds or the commitment by NYS to evaluate the Property owner's application for the award funds under the Recreate NY Smart Home Programs; the Property owner will assign to the Program 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 the SBA for physical damage to the property (not including proceeds received to cover contents), that was the basis of the calculation of the Property owner's award to the extent of the Forgivable Promissory Note proceeds paid under the Program.

The proceeds or payments, whether they are from insurance, FEMA or the SBA, shall be referred to herein as "Proceeds." The rights the Property owner assigns are specific to the Property with respect to which the Forgivable Promissory Note proceeds were paid (the Property), which is described in the Property owner's application with the Program arising out of physical damage to the Property, originally caused by the federally declared disaster but also including Proceeds received for damage to the Property caused by any subsequent event that occurred, until the purchase of the Property using 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 Owner and which provides coverage for physical damage to the Property.

Once the Program has recovered an amount equal to the award proceeds, the NY Rising Buyout Programs will reassign to the Property owner any rights assigned to the NYS pursuant to this Agreement.

### **3.5.2 Cooperation and Further Documentation**

The Property owner agrees to assist and cooperate with NYS should NYS elect to pursue any of the claims the Property owner has against the insurers for reimbursement under any such policies. The Property owner's assistance and cooperation shall include allowing suit to be brought in the Property 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 NYS. The Property owner further agrees to assist and cooperate in the attainment and collection of any proceeds that the Property owner would be entitled to under any applicable FEMA or SBA Program described above.

Property owner agrees take necessary actions and to execute additional documents at HTFC request to assign Property owner's insurance policies to NYS, to the extent of the Promissory Note funds granted to Property owner under the Program, the disaster relief funds from FEMA or SBA.

### **3.5.3 Authorization to Contact Third Parties**

The Property owner explicitly allows the Program to request of any company with which the Property 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 this Agreement and to give the Property owner's consent to such company to release said information to the NY Rising Buyout Programs.

## PHASE 2: Environmental Assessments and Appraisals

### 3.6 Environmental Review

Specific instructions concerning environmental requirements will be made available to all recipients, sub-recipients, or Contractors. CDBG disaster grant funding from HUD is contingent on compliance with the National Environmental Policy Act (NEPA) and related environmental and historic preservation legislation and executive orders. Accordingly, environmental review activities will be carried out for site contamination and demolition control, and documented prior to commitment of funds.

#### 3.6.1 Roles and Responsibilities

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

- Housing and Community Renewal (HCR) will assume the role of the Responsible Entity (RE), responsible for undertaking compliance efforts for the Program.
- HCR will submit any requests for release of funds directly to HUD for review and approval.
- HCR will be responsible to perform the Environmental Review Records (ERRs) or contract out for a preparer of the ERRs.
- The program management consultant will conduct an environmental analysis and prepare compliance documentation in support of the broad and site specific environmental reviews, utilizing a tiered approach, in accordance with HUD's regulations and State Environmental Quality Review Act (SEQR).
- HCR will review all environmental draft documents as outlined in the required documentation and sign all documents requiring RE or agency official signatures.
- A broad, or Tier 1, review must be completed before HUD will release funds and a site specific, or Tier 2, review must be completed for a site before funds can be committed to that particular site. The site specific analysis, consisting of the Site Specific Checklist and supporting documentation will be completed by the program management consultant with input from the construction manager. The site specific ERRs will be reviewed and signed off by HCR. Once these reviews have been completed there can be a commitment of funds.
- The construction manager and/or program manager is responsible for working in good faith with the HCR where additional documentation may be necessary to resolve an outstanding environmental/historic preservation compliance factor

## PHASE 3: Verification of Benefits Review

### 3.7 Duplication of Benefits

Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5155) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, Disaster Recovery funds issued through the Department of Housing and Urban Development's CDBG-DR program may not be used for any costs for which other disaster recovery assistance was previously provided. Flood insurance payments, home repair assistance, temporary housing assistance, and other Storm-damage benefits must, accordingly, be subtracted from the total amount that an owner is eligible to receive under this Program.

The voluntary property Buyout Program assists owners who need to purchase replacement housing by offering a fair amount for each parcel to owners who wish to sell at a fair price. The amount of assistance received by an Property owner from both governmental and non-governmental sources (except for documented repair expenses to the Storm-damaged structure) must be subtracted from the Fair Market Value (FMV) to determine the amount HTFC offers to pay the Property owner to buy the Storm-damaged property.

Customer Representatives schedule a Duplication of Benefits (DOB) meeting with the Property owner. The principle reason for the meeting is to assemble a fully executed set of documents required to prepare HTFC's Contract of Sale and Rider together with the additional materials comprising the offer package (HTFC Offer) for the Storm-damaged property. Additional topics the Customer Representative and Property owner cover include explanation of the timeline for responding to the Offer, exchange of contact information to quickly resolve any questions about the sale, and obtaining tenant information for currently occupied rental property.

Applicants are required to disclose all sources of disaster recovery assistance received, and the Program is required to verify the amount received.

### 3.8 Verification of Benefits Process

The Stafford Act requires HTFC to "assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other Program or from insurance or any other source." 42 U.S.C. 5121. The Customer Representative helps the Property owner identify and assemble documents supporting the request for assistance and uses that substantiated information to make a Determination of Benefits the Property owner is eligible to receive.

To avoid making incorrect awards based on mistake, mischief, or misunderstanding, HTFC obtains third party verification of financial assistance provided or available from other programs, insurance, and elsewhere for the same purpose as the benefits in this Program. That is the

Verification of Benefits (VOB) received.

The first goal of the VOB process is to compare the Property owner's report of the amounts and purposes of benefits received with the benefit amounts and purposes reported by third party verification sources. The second goal is to detect DOB process errors and initiate their correction. The VOB process is a practical technique for prevention of waste, fraud, and abuse as specifically mandated for this Program (Fed. Reg. Vol. 78, No. 43, p. 14331, March 5, 2013). It is also intended to prevent abuse of Property owners caused by mistaken benefit calculations that could provide too little assistance, and to prevent waste from mistaken benefit calculations that could provide too much assistance. It can also prevent fraud that could occur if Property owners intentionally attempt to conceal benefits they received, or expect to receive, from other sources.

The VOB process is only one of the Anti-Fraud, Waste, and Abuse (AFWA) processes that NYS implemented in the Program to assure the funds provided by the citizens of the U.S. are spent to fulfill the intended purposes. Honest reporting by the Property owner of Storm recovery benefits received before contracting to sell the substantially damaged property is the linchpin of the VOB process. That limitation must not be overlooked, although it cannot be overcome by any practical technique. The VOB process can verify the accuracy of the amounts a Property owner reports receiving from each of the various sources of recovery funds. However, it is impractical to ask every property owner insurance underwriter issuing policies in New York whether each Property owner participating in the Program received an insurance settlement not reported as part of the application. The VOB team does, however, obtain records of benefits provided by both FEMA and SBA to every participant in the Program. In the event that a Customer Representative has good reason to believe that a Property owner received duplicative benefits from a specific insurance provider, it could be practical to request information from that insurance carrier. Under any other circumstances, it must be kept in mind that the VOB process cannot verify that a Property owner who states that no private insurance settlement funds were received actually did not receive unreported private property owner insurance settlement payments.

### **3.8.1 Duplicative Assistance**

The most common source of disaster recovery assistance comes from insurance, FEMA, and SBA. However, assistance may also come from non-profit organizations, faith-based organizations, other disaster relief organizations, and other governmental entities.

1. **National Flood Insurance Program (NFIP):** Insurance proceeds received must be disclosed by the Property owner and verified by the Program.
2. **Private Insurance:** All insurance proceeds received must be disclosed by the Property owner and verified by the Program. The program is looking for "undeclared" insurance benefits as well as confirming those disclosed by the Property owner.

If the Property owner has not received the proceeds at the time of application, the proceeds will not be counted as a DOB. However, the Program will verify the status prior to the determination of an award for assistance. If the insurance company confirms that no

proceeds have yet been provided to the Property owner, then the Property owner will be required to sign a subrogation agreement which subrogates the insurance proceeds up to the amount of the award. For more on the subrogation process, see Sec. 3.5.

3. **FEMA:** FEMA proceeds received must be disclosed by the Property owner and must be verified by the Program.
4. **Small Business Administration (SBA):** SBA proceeds approved and/or received must be disclosed by the Property owner and verified by the Program.
5. **Other:** Funds received from other sources must be disclosed by the Property owner and verified by the Program. Examples include nonprofits, other governmental agencies, and social groups.

### 3.8.2 Declining of an Small Business Administration Loan

If funds intended for the same purpose as Program assistance are available from another source, the Property owner may wish to seek those funds first to avoid the necessity of subrogation efforts and repayment transactions potentially resulting in the event of receiving that subsequent assistance. Loans from the U.S. Small Business Administration (SBA) are a major source of disaster recovery assistance, and many Property owners of residential property find that SBA loans meet all of their uninsured disaster recovery assistance requirements. If a Property owner declines to accept assistance available from another source such as the SBA, the State must determine whether Program assistance is either necessary or reasonable.

A variety of legitimate reasons, however, can preclude a Property owner from receiving SBA assistance that a case worker might initially view as available to a Property owner. In addition to the Demonstrable Hardship policy outlined in Section 7.5 of the Homeowner Policy Manual for the NY Rising Housing Recovery Program, the other acceptable “necessary and reasonable” circumstance for Property owners of disaster-affected properties to have declined SBA loans is that the cost burden of housing including insurance, taxes, principal and interest exceeds 30%. HUD considers a household “cost-burdened” when its gross housing costs, including utility costs, exceed 30 percent of its gross income. To determine this number the Program will multiply total household income by 0.3. If rent or mortgage payment plus utilities and owner association fees is more than that amount, the household is cost-burdened and may be unable to repay additional indebtedness. Therefore the SBA loan will not be considered a DOB and the Property owner will be able to receive the full benefit for which they are eligible.

If a Property owner has declined an SBA loan, it is presumed that a hardship existed, and the SBA loan amount will not be deducted from the award amount. However, if the Property owner cannot prove that there is a hardship then it may be deducted at a later date. The “Applicant’s SBA Loan History” Form will used to make this determination.

### 3.8.3 Non-duplicative Expenditures

Funds that have been received in other federal programs may not always be determined as a

duplication of benefit. The Property owner must provide documentation to support these expenditures.

Examples of allowable expenditures:

- Funds received but used for a different eligible purpose. For example, funds received may have been used on temporary housing costs and would therefore not be duplicative.
- Funds not available to the Property owner. For example, when insurance funds received must be used for a forced mortgage payoff based on the terms of the mortgage.
- Funds received from a private loan and not guaranteed by SBA are not duplicative.
- Assets or line of credit available to the Property owner, e.g., checking or savings accounts, stocks are not duplicative.
- Funds received for repair that have already been used to repair the home might not be counted against the award amount.

Examples of unallowable expenditures; may continue to be considered a DOB:

- Non-essential appliances (washer/dryer)
- Food, clothes, household goods
- Sheds, fences (any structure not under common roof)
- Funeral costs
- Insurance premiums
- This list is not exhaustive

Benefit determinations will undergo a second level of review and approval. Once approved, the Customer Representative will contact the Property owner to review and clear any discrepancies.

## PHASE 4: Offer and Contract Execution

### 3.9 NY Rising Buyout Program Maximum Benefit

The Program has analyzed the needs of the affected communities and the availability of funding and derived the following cap amount and allowance:

**Enhanced Buyouts:** Enhanced Buyouts are select pre-defined targeted buyout areas, determined in consultation with county and local governments, within the 100-year flood plain and in the highest risk area (FEMA flood map “V Zone”). Substantially Storm-damaged properties (damage that equals 50% or greater of the FMV) within this area are offered 100% of pre-Storm FMV. Any property acquired as an Enhanced Buyout at pre-Storm FMV will result in the land remaining open green space in perpetuity. Reconstruction may **NOT** occur on lots in these areas; lots will be maintained as coastal buffer zones or other non-residential/commercial uses, and may also include acquisition of vacant or undeveloped land in these targeted areas.

**Acquisition:** Substantially Storm-damaged properties located inside the 500-year floodplain, but

outside of the high-risk area (V Zone), may be purchased through Acquisition at 100% of post-Storm FMV (plus eligible relocation or other assistance). The difference between the pre-Storm FMV and post-Storm FMV of an Acquisition property is offered to the Owner as an incentive. NYS has the flexibility to hold any property purchased through Acquisition as undeveloped green space in perpetuity or to redevelop it in a resilient manner.

NYS will use the 2013 FHA loan limits as the ceiling for the purchase price for properties that participate in this Program.

### 3.10 Award Calculations

Once the VOB investigation is complete, a formal Verification of Disaster Benefits Received form is completed and reviewed, then forwarded to the Customer Representative.

Funds received from other sources which are determined a Duplication of Benefit (DOB) (see Section 3.7) will be deducted from the offer amount unless the Property owner can demonstrate, through receipts, that the funds received have already been expended on eligible costs. The result is the unmet need amount.

If the unmet need does not exceed the applicable cap, it becomes the Maximum Award Amount. If the unmet need exceeds the applicable cap, the cap amount becomes the maximum award.

An offer will be made, and if the Property owner believes the offer is inadequate, an appeal can be filed. If the appeal is in the Property owner's favor, the VOB team must create a replacement VOB determination, which will be the basis for a new offer. The Senior Customer Representative will request the re-determination of the VOB by email and furnish a copy of the new FMV appraisal(s). For more on the appeal process, see Section 4.3.

## PHASE 5: Relocation

### 3.11 Relocation

HTFC adheres to a policy of full compliance with both the contract it formed with HUD to create this Program and with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 - 4655) and implementing regulations 49 CFR 24 (URA) and applicable HUD policies, subject to applicable waivers. HTFC also administers this Program in compliance with § 414 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq. ("The Stafford Act") provisions for tenants of the Storm damaged property, which states:

Relocation Assistance:

*Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) [42 U.S.C. 4601 et seq.] shall be denied such eligibility as a*

*result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.*

(42 U.S.C. 5181)

The 13 counties in New York were declared *major disaster areas* declared by the President October 28, 2012. The Stafford Act provides replacement housing payment to residential tenants who were displaced by destruction or substantial damage to their homes and were unable to reoccupy their dwellings before Initiation of Negotiations (ION) between HTFC and the Property owner for rental property Buyout. The Stafford Act operates to confer constructive occupancy of the disaster-affected dwelling to the tenant effective on the ION date. HUD and HTFC determine constructive occupancy to tenants eligible for Relocation Assistance identical to that provided to all other displaced persons required to relocate due to destruction of their dwellings by either the natural disaster or by the disaster recovery Program. Relocation Customer Representatives apply Program rules consistently and fairly to determine whether each displaced tenant applying is eligible to receive the relocation assistance provided by the Program under the URA.

This HTFC policy assures that persons displaced because of this federally-assisted Program do not suffer disproportionate injuries. HUD granted waivers of certain Program requirements so HTFC can apply similar rules and award similar amounts to similarly situated Property owners without regard to which Program received the application.

For example, one agency's Program limits the availability of rental assistance to one amount. However, rules of a different agency's Program now contributing to assist with a disaster so large that it is not practical for a single agency to provide all needed assistance established a different limitation long ago. HUD granted the waivers to enable all Property owners to receive benefits according to the same rules and eliminate the risk of discovering too late that a different Program would have provided additional benefits in view of an Property owner's particular circumstances.

### **3.12 Occupancy Standards**

HTFC policy requires that all residential dwellings in the Program be fit for human occupancy and be recognized as Decent, Safe, and Sanitary; (DSS). To make this policy effective, HTFC requires that its funds and the funds that it administers may be expended only for properties that are DSS. Comparable replacement dwellings must be adequate in size to accommodate all occupants of the displacement dwelling. It may not be possible to locate a replacement dwelling with the same size and floor plan as the displacement dwelling. The replacement dwelling must, however, provide the displaced person with the same utility and function as the displacement dwelling. The replacement dwelling must be currently available on the private market in an area that is at least as desirable as the location of the displacement dwelling and free of unreasonable adverse environmental conditions such as noise, dust, nuisances, traffic, litter, etc. The replacement dwelling must have the size, finish features, lot size, improvements, and utilities typical of residential developments in the area, and it must be within the financial means of the displaced person.

HTFC is committed to a policy of providing displaced persons with comparable permanent replacement dwellings that meet all occupancy standards established by HUD, NYS, and the International Property Maintenance Code (IPMC). New York occupancy standards specify both minimum habitable areas and minimum number of rooms based upon the number of household members who occupy the dwelling and the amount of living area needed to avoid overcrowding. Specific needs (e.g., medical needs) of household members must be considered, and the policy implemented to ensure that displaced persons consistently receive fair treatment.

### **3.13 Inspection of Replacement Dwelling**

It is NYS policy to provide the people who suffered Storm damage with assistance to help them and their communities recover from the disaster. Housing is a primary component of recovery. The Relocation Customer Representative must certify that any replacement dwelling purchased or leased by a person relocating because of a voluntary sale of property to NYS HTFC is inspected and found to be Decent, Safe, and Sanitary (DSS). The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 United States Code §4601 et seq., as amended (“URA” or “Uniform Relocation Act”) DSS standard is the standard of habitability to prevent expenditures of public funds in payment to any Owner of dwellings that are unfit for human habitation. Relocation Advisors must inform each occupant of the potential for lead-based paint hazards in dwellings built before 1978 in accord with applicable local, State, and federal requirements.

### **3.14 Recording Covenants and Restrictions Concerning Property Acquired in the Program**

It is also the policy of HCR to use property acquired under the CDBG-DR Program only as authorized by Program rules. HCR policy concerning CDBG-acquired property is also to restrict use to that authorized under statute and applicable agency rules, and further, to prohibit conveyance of any part of the acquired property except as authorized under governing law. The policy is expected to reduce economic loss from future flooding and to yield additional benefits important to residents and visitors.

To make the policy effective, HTFC wishes to memorialize the covenants made in connection with the acquisition of property in the CDBG-DR Program. HCR also wishes to give notice of the restrictions imposed upon the acquired land.

All parcels of land purchased by HCR in the CDBG-DR Program are classified as either within the Special Flood Hazard Area (SFHA) or outside of the SFHA (also known as the 100-year floodplain) in the CDBG-DR Program. The covenants and restrictions for the two types of property are different. The following procedure applies to recording covenants and restrictions concerning both property classifications.

### **3.15 Acquiring Occupied Dwellings**

HTFC has established the policy that it will not purchase property in this Program that is occupied. The reason for this policy is that the intended purpose of this Program is to buy

residential dwellings that have substantial damage (“substantial damage” means that structural damage exceeds 50% of the pre-Storm fair market value [FMV] of the dwelling) and demolish those homes. The sources of funding require that the funds be used for the purposes intended, so the Program cannot purchase any property unless all Property owners vacate the property and join in the sale to HTFC.

The Program requires, in the case of condominium and cooperative properties, that every Unit Property owner of each Unit and all Property owners of any interest in the Buildings, Common Elements, and the Property (as defined in New York Real Property Code Article 9B, § 339-e) to be acquired join in the sale to HTFC. It is not possible for every closing to occur simultaneously, so it is not required that every condominium or cooperative Property owner be present at a single closing. HTFC can take ownership of a condominium or cooperative property only after the property is vacant and every Property owner has executed a real property sale agreement that is legally and equitably enforceable against every Property owner and that mandates specific performance of the sale agreement by every Property owner.

The sale must conclude unless every Property owner who agreed to the sale withdraws from the Program before any Unit Property owner closes on a sale under the Program.

### **3.16 Policy for NYS to Pay Proceeds to Agent Designated by Seller**

It is HTFC policy to avoid undue procedural obstacles that delay, inconvenience, or impair completing transactions under the Program. HTFC, for this reason, accommodates reasonable seller requests when doing so does not expose HTFC to delay, liability, extra costs, or risk of loss.

HTFC can, under certain conditions, accommodate a seller who requests that all of the net proceeds from sale of a parcel under the Program be paid to an agent instead of the Property owner in the conveyance granting title to HTFC and who executed the contract of sale and rider.

If the terms of this procedure are fully satisfied, the seller must make the request in writing, acknowledge that payment to the agent will satisfy seller’s right to net purchase proceeds, and indemnify HTFC for any losses resulting from disbursement to the agent.

### **3.17 Tenant Appeal**

HTFC determines whether each tenant who applies is eligible to participate in the relocation assistance Program, and if so, the amount of relocation assistance each tenant is eligible to receive. The Federal Uniform Relocation Act (URA) requires HTFC to provide any displaced tenant who is dissatisfied with HTFC’s determination with specific appeal procedures. A dissatisfied tenant may either appeal denial of eligibility to receive relocation assistance under the CDBG-DR Program or appeal the amount of relocation assistance HTFC offers under CDBG-DR Program rules. The aggrieved tenant must, however, make the appeal to HTFC in writing.

### **3.18 Relocation of Tenant Who Waives Eligibility for Section 8 Housing**

The voluntary nature of the Program minimizes the impact on property owners, since the Property owners are not forced to sell their property to HTFC or to move. A tenant of a dwelling that the property owner decides to sell to HTFC as part of the CDBG-DR Program, however, is required to vacate that dwelling, and thereby becomes displaced because of the CDBG-DR Program. HTFC will not close on any parcel that is occupied.

Some properties in the CDBG-DR Program are Section 8 qualified low-income rental housing. Each tenant who is dislocated from subsidized housing will be relocated to an equivalent subsidized replacement dwelling, unless the tenant elects to withdraw from the Section 8 Program and relocate into a market-rate dwelling.

It is possible that some tenants may discontinue their participation with the Section 8 Program and choose to relocate into market-rate housing for a variety of reasons. Tenants relocating from one subsidized unit to another do not have the relocation costs that market-rate tenants are likely to incur since the moving expenses are paid, and the replacement dwelling is equivalent or better than the displacement dwelling under federal rules. Relocation counsel may be particularly important to tenants displaced from subsidized housing. Subsidized housing availability is sometimes inadequate to accommodate the number of tenants eligible for that assistance. A family that withdraws from the Section 8 Program to receive relocation assistance might be unable to locate a subsidized dwelling if that need arises again. Relocation assistance could easily be expended to meet needs other than housing rental payments such as utility bills, automobile repairs, medical expenses, clothing, and a host of less durable items. A family could quickly find that it cannot maintain the market-rate lease, and could become homeless.

### **3.19 Housing of Last Resort Relocation Assistance Payments**

A number of the Storm-damaged properties in the Program were rental properties occupied by low and very low-income tenants. Tenants may be displaced when the Property owner participates in the Buyout Program. Sometimes, it is not possible to locate an affordable comparable replacement dwelling for a displaced tenant. HTFC policy is to provide Housing of Last Resort (HLR) to any tenant displaced by this Program pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq., the “Uniform Act” or “URA” including the enabling regulations “Regulations” at 49 CFR 24). The HTFC Relocation Plan and its Policy and Procedure to assure that eligible tenants receive relocation assistance in compliance with the URA, NYS, and federal regulations recited therein provide relocation benefits under those circumstances.

HTFC policy is to provide HLR on a case-by-case basis, for good cause, giving consideration to the circumstances of the displaced tenant, the availability and location of comparable replacement housing, and the resources available to provide comparable replacement housing. The flexibility provided is subject to oversight by the Program Manager of each relocation advisor request for HLR relocation to render assistance when it is needed and for reasonable cost consistent with providing comparable replacement housing that complies with Program goals and meets tenant needs. HTFC’s policy is to invoke HLR replacement housing procedures as

infrequently as practical, and in those instances where replacement HLR is needed, to provide that assistance efficiently.

## PHASE 6: Closing

### 3.20 Closing Meeting

HTFC mails Offer Packages to Property owners in stages:

1. To LMI Property owner-occupants
2. To Property owners who have demonstrated “urgent need” (URG) due to hardship
3. To Property owners of other residential property.

Property owners will schedule a meeting so the Customer Representative can explain the timeline for responding to HTFC’s Contract of Sale and Rider (HTFC Offer), and verify and update Property owner information. Customer Representative will ask Property owners to bring property abstracts to the meeting. HTFC staff evaluates each signed HTFC offer. Customer Representative verify that Property owners executed documents properly, then forward documents to the appropriate recipients, verify the completion of required follow-up activities, and schedule closings appropriately to finalize property acquisition. HTFC executes the Property owner-signed HTFC offer promptly after it arrives to facilitate conclusion of the Buyout and/or Acquisition transactions as efficiently as practical.

Relocation Advisors explain benefits available to displaced residential tenants, assist with tenants’ relocation needs, and verify that eligible tenants receive the Notices and information required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42, § 4601 of the United States Code (42 U.S.C. §4601 et seq.), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (§401 of Title IV of Pub. L. 100-17), as amended, (“Uniform Act” or “URA”). The regulations that implement the URA are codified at 49 CFR 24 (“Regulations”).

HTFC policy precludes closing the purchase of any parcel that is occupied or that may be contaminated with hazardous materials.

### 3.21 Final Award Documentation

For all files that close (they execute a sale to the HTFC) there will be a complete review of the property file to ensure that all required program documents/files are present. The Customer Representative(s) will be responsible for reviewing their respective closed files. Additionally, HTFC will have a third party integrity monitor audit the files for completeness. This process will include the following:

Review Signed Offer Package to ensure it contains all required documents, including:

- Offer to Buy Real Estate

- VOB Award Statement
- Statement of Interest to Sell Real Property
- Individual Property Hazardous Materials Form
- IRS W-9 Form
- FEMA Declaration and Release Form
- CDBG Cost Allocation Statement
- Appraisal
- CDBG Statement of Determination of Fair Compensation
- HUD-1 Settlement Statement
- All Other Relevant Real Estate Sale Agreements and Documents

Review and confirm that application includes all required signed documents, including:

- Signed Program Application
- Government Issued Identification (for all owners)
- Proof of citizenship/eligible immigrant status (Passport, birth certificate, certificate of naturalization)
- Deed
- Property tax receipts (Most Current)
- Copy of any liens or encumbrances against the deed
- Documentation of the status of mortgage payments (mortgage statement)
- Proof of residency (utility statements or taxes at the time of storm)
- Household income information (Federal 2012 Tax Returns)
- DOB documentation
- Environmental Review

Both the Customer Representative and the third party integrity monitor will look to identify missing documentation and missing signatures, and note observations of any major errors or issues, if any. These issues will be summarized and escalated to the HTFC and Customer Representative Management in order to reach a resolution on these open items.

For properties in either program that decided to rescind their application to the program before closing there will be a document in the file called “Opt Out Form”. The date on the Opt Out form should be the last date that new documentation is added to the file. If the file includes an Opt Out form it should be noted on the top of the file checklists used.

### **3.22 Compliance and Monitoring**

The State of New York is required by HUD to monitor all grantees receiving Disaster CDBG funding. Therefore, the state will monitor all aspects of the New York Rising Buyout Program, including but not limited to ensuring that Property owners are in compliance with all program requirements in particular the flood insurance and the residency requirements.

## PHASE 7: Demolition and Remediation

Substantially damaged property demolition and cleanup implements NYS policy by bringing the properties that NYS buys into the condition established as the goal of this Program. This process is comprised of three distinct phases:

### 3.23 Pre-Demolition

- Property Management File (PMF) Completion Items 1-12.
- Development, Review, Procurement Issuance, and Contract Awards.
- Environmental Reviews.
- Asbestos Containing Materials (ACM) and Polychlorinated Biphenyls (PCB) Inspection. ACM-PCB are hazardous contaminants of particular concern in the Program because of widespread presence and potential to become airborne, but other hazardous materials may require environmental review, so the term “hazardous material” is used in correspondence with Section 11.

### 3.24 Demolition Phase

- The terms Hazardous Material “Remediation” and “Abatement” are ordinarily applied in connection with cleanup of Hazardous Material from soil or water and Hazardous Material preventing aerosolization by proper disposal or stabilization, respectively. For convenience, this document uses the term “Abatement” to include both remediation and abatement except where the context indicates otherwise.
- Hazardous Material Survey or Abatement.
- Securing of Required NYC Permits.
- Demolition and Site Restoration.
- Load Documentation.

### 3.25 Post Demolition & Demolition Close

- Property Management File (PMF) Completion Items 13-29.
- Collection of Load Documentation and Property Invoices.
- 60 Day Final Inspection.
- Submission for closeout.

This list is not exclusively sequential. Phases sometimes overlap to a degree, and several process tasks within a phase can be underway simultaneously.

#### Pre-Demolition

1. Program Demolition Team facilitates Phase I – Tier I & II assessments and Phase II Investigations as needed in accordance with 24 CFR §570.205.
2. Program Demolition Team works with the Program Environmental Team to obtain State Environmental Quality Review Act (SEQRA) Environmental Clearances including Wetland Delineation Studies.
3. The Buyout Case Manager transfers PMF data to Demolition Team after closing.

4. Program Demolition Team facilitates security protocols including fencing and boarding of properties and monitors work in accordance with contract scope of work and specifications.
5. Procurements are developed and reviewed in accordance with 24 CFR §85.36 procurement standards.
6. Procurements are let, submissions received, tabulated, “scored,” awarded, and executed in accordance with 24 CFR §85.36 Standards.
7. Program Demolition Team facilitates and monitors Hazardous Material Inspection.
8. ACM—PCB Inspections are completed and reports are submitted to Program Demolition Team for inclusion in PMF.
9. Program Demolition Team receives copies of all signed contracts, agreements, submission tabulations, report summaries, and solicitations.
10. Program Demolition Team reviews all submissions of required pre-demolition data or artifacts, certifies PMF 1-12 and issues a “Notice to Proceed” to initiate commencement of the demolition process.

### **Demolition Phase**

1. The General Contractor receives copy of Hazardous Material Inspection so that remediation or abatement work can commence.
2. Not all properties require Hazardous Material inspection. Storm-caused structural damage made some properties too dangerous for NYC Department of Buildings (DOB) inspectors to enter and inspect. Demolition of those properties is performed according to the standards applicable for sites contaminated with Hazardous Material and Hazardous Waste. Other properties are vacant with no structure or other improvement.
3. Program Demolition Team in its role of Project Management and Oversight monitors Hazardous Material abatement for safety, contract compliance, debris management protocols, and load documentation through General Contractor Load Tickets and Waste Manifests. The internment site for the debris is researched for compliance with federal and state licensing and documented by photograph and GPS Coordinates.
4. General Contractor initiates process for receiving NYC Demolition Permit
5. General Contractor facilitates Electric, Natural Gas, and Cable Television disconnects and facilitates notification of disconnects to DOB as part of permit requirements.
6. General Contractor secures permits and executes shutoffs of water and sewer in accordance with NYC DEP (NYC Rules, Title 15, Chapter 1) requirements.
7. Program Demolition Team in its role of Project Management and Oversight monitors Hazardous Material abatement for safety in accordance with OSHA-29 CFR 1926 (c) and EPA-40 CFR §61.145 requirements, and contract compliance. NYC DEC inspects the completed work prior to fill of excavation.
8. General Contractor completes the permit process and is issued a Demolition Permit.
9. General Contractor executes demolition and removes debris. Demolition methodology is dependent upon NYC DOB building inspection.

- a. Properties too dangerous to test for Hazardous Materials are assumed to be Hazardous Material and Hazardous Waste contaminated, and are demolished according to OSHA-29 CFR 1926 (c) and EPA-40 CFR §61.145 requirements. The debris from the demolition will be transported and interred as Regulated Asbestos Containing Material (RACM). Salvage from these structures is not permitted. National Emission Standards for Hazardous Air Pollutants for Asbestos (NESHAP). Polychlorinated Biphenyls (PCB).
  - b. Properties that were tested and abated of Hazardous Material or regulated waste will be demolished as Hazardous Material and Hazardous Waste-free structures and the debris removed as common construction debris. Salvage is an option after abatement processes are completed and certified by the Hazardous Material Inspector and Program Demolition Project Manager respectively.
10. In its Project Management and Oversight role, the Program Demolition Team monitors demolition processes for safety in accordance with OSHA (29 CFR §1926(c)) and EPA (40 CFR §61.145) requirements, contract compliance, debris management protocols, and load documentation through General Contractor Load Tickets and Waste Manifests. Team members research the interment site to confirm compliance with federal and state licensing and documents the location with photograph and GPS Coordinates.
  11. Program Demolition Team in its role of Project Management and Oversight inspects demolition site and gives verbal “Notice to Proceed” to start backfill process and site restoration (including erosion control seeding).
  12. Program Demolition Team in its role of Project Management and Oversight inspects lot restoration (including erosion control seeding) and releases contractor from the property. In addition, photographs of site with GPS Coordinates are taken by Program Demolition Team.
  13. Contractor completes post demolition requirements with NYC DOB and submits them to complete process with the City.
  14. Contractor forwards load documentation data and invoice to Program for closeout of demolition.

### **Post Demolition and Demolition Close**

1. After demolition is completed and General Contractor is released from the property, the Program Demolition Team will ensure that the street is marked with Property address in preparation for re-locating the parcel 60 days after the demolition is complete.
2. General Contractor forwards to the Program Demolition Team copies of all load tickets, landfill tickets, waste manifests, and invoices in preparation for closeout of demolition process.
3. The Program Project Manager and General Contractor re-inspect property 60 days after the completion of the demolition and site restoration to determine if settling has occurred and if seed germination was successful. The contractor will either be asked to remediate restored lot issues or noticed that all work associated with the demolition is complete.
4. Contractor submits final invoice within 30 days of the final inspection and provides a copy to the Program Demolition Team.

5. Program Demolition Team Project Manager takes final photographs of the site with GPS Coordinates.
6. Program Demolition Team Project Manager submits Demolition Field Process Checklist to satisfy Items 13-29 of the PMF, Contractor Completion Signature Page, and final site photographs for inclusion in the PMF.
7. Program Demolition Team completes the PMF and inserts required photographic documentation.
8. The Contract, Manager or Senior Project Manager then certifies the PMF.
9. Electronic Copies are made of the completed file, all procurement documentation including change orders, contract amendments, and all load documentation.
10. Forward PMF and all other relevant data to HTFC for closeout.

## **PHASE 8: Final Closeout and Deed Restriction Monitoring**

### **3.26 Grant Closeout**

Once the owners of all eligible properties have been contacted and acquisitions have been completed or declined, staff members will review the files after the clearing of all fixtures from the subject properties. Any program revisions that may have occurred will be noted in the Administrative Plan and all files will be kept in accordance with the State's standard file policies and procedures. Inclusive of the grant closeout will be a final review of the files, and confirmation that the documents reviewed per section 3.21, Final Award Documents, are present in the file

### **2.27 Record Retention and Audit Requirements**

Maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues received in sufficient detail to reflect all costs, direct, and indirect, of labor, materials, equipment, supplies, services and other costs and expenses of whatever nature, for which payment is claimed. Records will be maintained for a minimum of five (5) years beyond the date that the final audit of the Project is accepted by the State. Records for non-expendable property acquired shall be retained for a five (5) year period after the final disposition of property. Records shall be retained beyond the prescribed period if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records shall be retained until the litigation, audit or claim has been finally resolved.

### **3.28 Deed Restriction Monitoring**

NYS wishes to memorialize the covenants made in connection with the property in the CDBG-DR Program. NYS also wishes to give notice to all persons of the restrictions imposed upon the land purchased under this Program.

Every property in the Program is classified as either being within the Enhanced Buyout Area or

outside of the (EBA) in areas eligible for Acquisition (also known as the 100-year and 500-year floodplains). The covenants and restrictions for the two types of property are different as the former property is restricted to be held in green space in perpetuity and the latter property may be eligible for resilient re-development. The following procedure applies to recording covenants and restrictions regarding both types of property.

1. HUD funds granted to NYS pay for the Buyout properties. A condition of that funding is that property situated within the EBA be restricted to uses likely to give future benefit to the community and not likely to risk substantial future harm to the community. The covenants and restrictions concerning acquired parcels in the EBA prohibit almost all structures or other improvements and sale or other conveyance of the property in perpetuity (with few exceptions).
2. Parcels located outside of the EBA are also subject to a variety of covenants and restrictions. An important difference, however, is that covenants and restrictions concerning parcels located outside of the EBA do not remain effective in perpetuity, but for five years after closeout. The restriction period could be amended, however, because HUD granted NYS the power to designate a different expiration date.
3. The covenants and restrictions on land **outside of the EBA** that NYS purchases are described in a *Declaration of Covenants and Restrictions by New York State Homes and Community Restoration Division* (non-EBA Agreement) which is incorporated with the deed for each parcel of land located outside of the EBA purchased in this Buyout Program and recorded in the real property records office that serves the county where the property is found. NYS may elect to record the applicable deed restrictions periodically or at the conclusion of the Program instead of adding the deed restrictions to each deed delivered by the various Owners.
4. The covenants and restrictions on land **inside of the EBA** that NYS purchases are described in a *Declaration of Covenants and Restrictions by New York State Homes and Community Restoration Division* (EBA Agreement) which is incorporated with the deed for each parcel of land located inside the EBA purchased in this Buyout Program and recorded in the real property records office that serves the county where the property is found. NYS may elect to record the applicable deed restrictions periodically or at the conclusion of the Program instead of adding the deed restrictions to each deed delivered by the various Owners.
5. NYS must report to HUD annually regarding the use and current ownership of the land purchased in this Program according to the schedule described above.

## 3.29 Property Management- Restrictions of Reuse

### 3.29.1 Restricted Use of Enhanced Buyout Area Property

Any property acquired that is located in an Enhanced Buyout Area is dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. Except as provided in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (the “Disaster Act”), no new structure may be erected on such property and no subsequent application for federal disaster assistance may be made for any

purpose. Such property may be leased to owners of adjacent property or other parties, with the lease to be limited to the uses set forth above, in return for a maintenance agreement. In the event such property is sold, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for the uses set forth above in perpetuity.

### *3.29.2 Post-Settlement Transfer of Property Interest*

The HTFC understands that properties acquired with CDBG-DR funds retain a CDBG identity and must continue to meet a National Objective even if the use of the property changes after acquisition and demolition of the property.

If the use of the property after the acquisition is green space in perpetuity, then the demolition of the structure is the end activity and the property is green space.

Properties acquired that are outside of an Enhanced Buyout Area (Acquisitions in the 100 or 500 year floodplain), where there will be an activity on the property post-acquisition, must continue to meet CDBG regulations for activity and National Objective until such time there is a transfer of property interest that relieves the properties CDBG identity.

HTFC will follow the CFR 24 CFR 570.489(j) Change of Use of Real Property Acquired by CDBG-DR Voluntary Acquisition guidance from HUD for the reuse and/or disposition of property.

## 4.0 Administrative Policies

### 4.1 File Review Process

Applicants who are seeking further guidance on the **amount** in their award letter, any **calculation** included in the award letter or their **eligibility** should contact their Customer Representative.

After an applicant has received their Award Letter but before they receive a Final Award Determination or Final Eligibility Determination, an applicant may request a review of their file by contacting their customer representative.

Prior to any such review an applicant **must** have submitted all documents. Any questions regarding outstanding documents the applicant may contact their customer representative to discuss.

Once an applicant receives a Final Award Determination and a Final Eligibility Determination, the applicant may continue to closing.

An applicant may appeal in the Determination of Fair Compensation pursuant to the New York Rising Buyout Program Appeals Process described in 4.3.

Upon closing on your award, any further appeal is precluded.

### 4.2 Receipt Review Process

Property owners who wish to review their award have the right to request a receipt review in connection with their grant award. The applicants can provide receipts for actual work, labor materials and supplies in connection with the repair/rebuilding of their home. In the award letter all funds received for structural repair are considered to be a duplication of benefits. The applicant can offset this duplication by providing documentation (receipts), including receipts for permits, paid receipts of materials and paid invoices for contractors.

### 4.3 Appeals

If a Property Owner believes that the HTFC offer amount is incorrect the Owner may appeal the Fair Market Value (FMV) stated in the Determination of Fair Compensation on which the amount of the Offer is based. If the Property Owner disagrees with the FMV, but wants to continue in the Buyout/Acquisition Program(s), they must hire and pay for a New York State Certified Residential Real Estate Appraiser to appraise their property. Upon request the Customer Representative will provide a list of local Certified Residential Real Estate Appraisers licensed by the New York State Department of State, Division of Licensing Services.

The process begins by the Property Owner notifying their respective Customer Representative of the appeal in writing within 30 days of receipt of the Offer to Purchase. The appeal request must state the basis for the Property Owner's disagreement with the FMV determined by the New York State (NYS) Housing Trust Fund Corporation (HTFC) and should include all of the information the Owner wants considered. The appeal must include specific factual information

and any data that support the appeal to increase the offer price. The completed appraisal should be sent to their respective Customer Representative together with the invoice and proof of payment of the appraisal cost. The Customer Representative will deliver the appraisal to the HTFC. The Property Owner will not be reimbursed for their appraisal expense. The NYS HTFC will provide the initial appraisal and the second appraisal completed at your expense to an independent 3<sup>rd</sup> party for review.

The HTFC's appointed 3<sup>rd</sup> party, will review the appeal and issue a written decision within thirty (30) days of receipt of the appeal form the HTFC. A copy of the decision of the appeal will be mailed to the Property Owner and provided to the designated Customer Representative.

The date the Property Owner appraiser certifies as the effective valuation date must be the same as the FMV valuation date stated in the appraisal prepared for HTFC. For every Determination of Fair Compensation based on "pre-storm FMV," that date is October 28, 2012, immediately before Hurricane Sandy. For an offer based on "poststorm FMV," the FMV date is the "FMV Certification Date."

A Certified Residential Real Estate Appraiser with current New York State certification must prepare the appraisal. Every appraisal appeal report must include the items specified in the Scope of Work on the next page, and the Minimum Appraisal Content presented on the back side of this document.

#### **4.4 Accessibility – Reasonable Accommodation**

A person with a disability may require special accommodations in order to have equal access to the Program. The types of reasonable accommodations that can be provided include changes, exceptions, or adjustments to a rule, policy, practice, or service.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden," or result in a "fundamental alteration" in the nature of the program or service offered. See 24 CFR 8.4, 8.24, and 8.33 for further requirements and guidance.

Examples of reasonable accommodations include:

- Conducting home visits for application materials
- Providing time extensions
- Permitting an authorized designee or advocate to participate in the application process and any other meetings

The Program will encourage the Property owner to make his/her accommodation request in writing. However, the Program will consider the accommodation any time the Property owner indicates that an accommodation is needed whether or not a formal written request is submitted.

#### **4.5 Demonstrable Hardship**

A demonstrable hardship is a substantial change in a Property owner/tenant's financial situation

that will prohibit or severely affect their ability to provide a minimal standard of living or the basic necessities of life including food, housing, clothing and transportation without causing economic distress well beyond mere inconvenience as shown by objective evidence. A demonstrable hardship must be occurring after the named storms.

The demonstrable hardship must be of a severe, involuntary and unexpected nature. It must not be one that is generally shared by other Property owners or tenants affected by the named storms or within the impacted counties. Examples of a demonstrable hardships may include job loss, failure of a business, divorce, severe medical illness, injury, death of a family member or spouse, unexpected and extraordinary medical bills, disability, substantial income reduction, unusual and excessive amount of debt due to a natural disaster, etc. None of the listed examples above, individually or taken together, automatically establish a demonstrable hardship nor is the listing above exhaustive as there may be other factors relevant to the issue of demonstrable hardship in a particular case.

If a Property owner/tenant believes that they are in the state of demonstrable hardship and that the demonstrable hardship causes them to not comply with any of the program policies, they may present their existence of a demonstrable hardship to their Customer Representative and the program will evaluate on a case-by-case basis after review of all of the circumstances.

Persons claiming a Demonstrable Hardship shall be required to provide evidence of such claimed Demonstrable Hardship to customer representatives. The HTFC will determine what a Demonstrable Hardship is for purposes of this program and its decision is final.

## 4.6 Unmet Needs

In limited circumstances the demonstrable hardship policy may not be sufficient to cover gaps in funding the Property owner has experienced for circumstances outside of the Property owner's legal control. In these instances, the Program has developed an Unmet Needs policy that will provide a work-out option to support Property owners that do not have sufficient funds to repair or rebuild their homes despite receiving other federal resources for this purpose.

Eligible reasons:

- Contractor fraud
- Theft/vandalism
- Damage from a subsequent event (i.e. storm, fire, flood) which caused damages to the dwelling.

Ineligible reasons include, but are not limited to:

- Funds used to live outside the home while home being repaired. [IMA Program covers this.]
- Work by Contractor not quality, but home is habitable.

The list above is not intended to be comprehensive. The State reserves the right to request any and all forms of documentation that may be required to substantiate an applicant's claims of having encountered a circumstance that has prevented him or her from fulfilling the obligations detailed in the documents executed at closing.

## **4.7 Quality Assurance and Control**

Quality Assurance will ensure consistency of application review and compliance with regulations and Program policies. Furthermore, Process Controls and Procedures will be developed to ensure that all Property owners are being provided fair and quality services. Quality controls will be incorporated into all processes of the Program and recurring monitoring by the Program's Quality Assurance team will ensure adherence to all process controls and compliance with all policies and regulations. The Quality Control Manual will identify the roles and responsibilities of the QA Team as well as the Controls in full detail.

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

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

The Program requires substantial and effective measures to prevent fraud, ensure adherence to contractual obligations and federal, state and local laws and regulations, and ensure that quality services are provided in accordance with program policy. Fraud Prevention operations perform in concert to bolster safeguards by means of eligibility and applicant verification. The following methods will be implemented to provide safeguards and quality controls into the operational processes.

### **4.8.2 Identity Check**

The Program will require all eligible applicants to pass an identity check. The program has developed this verification in order to comply with Federal and State of New York requirements and program policy.

### **4.8.3 Anti-Fraud, Waste and Abuse Investigations**

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 applicant 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
7. Searches for New York State child support warrants (for relevant applicant types)

#### **Review of AFWA Check Findings**

After AFWA checks are completed, findings will be delivered to Customer Representatives who will receive reports notifying them of any flags that were identified. In their review of AFWA check findings, Customer Representatives will examine application information and applicant-provided documentation to seek to determine if this information is consistent with flags

identified through AFWA checks and to identify potential typographical/data input errors.

Examples of primary flag types include:

1. No Issues Identified
  - Without Relevant Findings – AFWA check did not identify a flag after performing relevant procedures.
  - Without Relevant Findings (with Caveats) – AFWA check identified potential flags that did not appear to be associated with the applicants using the sources/methodologies.
2. Flagged Issues
  - Risk Indicator – Potential risk-relevant information was identified for the applicant in question through one or more of the seven AFWA checks.
  - Unable to Verify – The AFWA check was unable to identify sufficient information to corroborate information provided by the applicant.
  - Discrepancy – A discrepancy was identified between information provided by applicant and information identified through one or more of the seven AFWA checks.
3. For Return to Customer Representative
  - Typographical Error – AFWA check identified a potential typographical error.

In their review of AFWA check findings, Customer Representatives will examine application information and applicant-provided documentation to seek to determine if this information is consistent with flags identified through AFWA checks and to identify potential typographical or data input errors.

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

Using relevant federal and state policy and procedure guidelines, Customer Representative will determine 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 could include the following:

- If the flagged issue does not affect the applicant's eligibility per State policy, the Customer Representative 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 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 will not be able to provide the information necessary to make a determination, the Customer Representative can recommend that follow up be conducted with the applicant or that the application be escalated for further scrutiny.

Suspected fraud received from interested parties will be investigated. The Program will conduct research to assist in determining whether a fraudulent event has occurred. If the Program concludes that it is a fraudulent event, it will compile a package, all relevant documentation, the conclusions and recommendations, and submit to the State for disposition.

If the Fraud team concludes that it is not a fraudulent event, it will compile a package including all relevant documentation and the conclusions and recommendations for the Property owner's file. The Property owner may proceed through the program.

## 4.9 Integrity Monitoring

In order to ensure program integrity, the New York State Division of Budget (Division) has entered into contract with PricewaterhouseCoopers LLP (PwC), as approved by the State Attorney General and the State Comptroller, to conduct the Integrity Monitoring for all CDBG-DR Storm Recovery fund dispersal. In their role as an external third party auditor Integrity Monitoring vendor, PwC is responsible for the following actions:

### Program Execution & Kick-Off:

- Ensuring that the Program has appropriate policies and procedures documented before program execution begins.
- Assisting the State in understanding the requirements outlined within Federal and other funding documents as it pertains to Integrity Monitoring.
- Facilitating an understanding of the transparency needs of the State.

### Program Controls:

Manual and automated program controls overlaid onto the Program's process flow at critical points to ensure the efficacy of application review and compliance with Federal and State Laws.

### Ongoing Auditing:

- Implementing and monitoring an integrity monitoring process
- Assisting the larger auditing community (OIG, OIA, New York State Comptroller, etc.) on recurring and "ad hoc" auditing.

Should PwC identify a problem with any one application, group of applications or the overall fund dispersal process, their team is responsible for promptly notifying CDBG-DR. Depending on the nature of the concern; the State will make a decision whether to communicate this information to their sub-recipients or other third parties. The purpose of this communication would be to redress problems or implement process improvements and propose solutions.

## **4.10 Recapture Policy**

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

If the funds are not used for activities identified as “eligible,” the money can be “recaptured” that is, it must be returned to HUD. In order to ensure that HTFC is able to fulfill its own contractual obligations to HUD, and equally important, that it is used for the intended purposes, HTFC requires all Property owners to enter into agreements with the State, stipulating each party’s responsibilities and the potential penalties that Property owners face if they are found not to have fulfilled their obligations.

The Program understands that the Property owners 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, the money must be used to help repair or replace damaged homes or reduce the risk of future damage through elevation or other mitigation measures.

The Federal government monitors CDBG-DR grantees, including HTFC, in order to confirm compliance with CDBG-DR requirements. In addition, grantees are required to establish quality control procedures and to internally monitor their own operations to guard against fraud or unintentional violations of program requirements. If a program violation is identified, HTFC may recapture funds from a recipient. In the event a violation is uncovered, HTFC will be required to make a formal determination of the violation and to notify the Property owner. The notice will outline the violation and provide the Property owner with an opportunity to challenge the determination.

If, after review, it is determined that the ineligible award resulted from fraud on the part of the Property owner, the funds will be recaptured. If the ineligible award resulted from an error, the decision to recapture will be decided on a case by case basis, based on the facts of the particular situation.

## **4.11 Conflicts of Interest and Confidentiality**

Conflicts of interest between Property owners, Program Administrator, Contractors, Program staff and other parties are strictly prohibited by federal law. An organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Program, or the person’s objectivity in performing contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

The conflict of interest regulations contained in the contract between the sub-recipient and the

HCR prohibit local elected officials, HCR staff, sub-recipient 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 who they have family or business ties, during their tenure or for one year thereafter.

#### **4.11.1 Conflicts of Interest**

The Program will require all Program staff to sign a Conflict of Interest Disclosure, requiring them to disclose any relationship with a Property owner or Contractor.

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).

Program staff of the State, Sub-Grantee/Program Administrator and Contractors who disclose such relationships will be placed in roles where there is no opportunity for them to display favoritism or collude in order to financially or otherwise benefit either themselves, the Property owner or Contractor. For example, a Customer representative may not perform work on the application of family.

HCR may consider granting an exception to the conflict of interest provisions per 24 CFR 570.489(h)(4) if HCR has determined that the sub-recipient 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 sub-recipient has complied with the requirements listed in 24 CFR 570.489(h)(4)(i) and (ii).

#### **4.11.2 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 Property owners 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 a Property owner to those with official Power of Attorney for the Property owner or for whom the Property owner 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.

## **4.12 Policy Change Control Process**

The Policy Change Control Process allows NYS to change a specific policy when it becomes necessary and in the best interest of the Program. All policy changes affecting the eligibility of Owners to a significant degree, determination of Duplication of Benefits, or grant calculation and disbursement must be approved in writing by NYS and memorialized in the NY Rising Buyout Program Policy Manual. Under no circumstances may policy changes be implemented without going through a formal change control process.

### **4.12.1 Changes Subject to the Policy Change Control Process**

All policy changes affecting the eligibility of Owners to a significant degree, determination of duplication of benefit, or award calculation and disbursement must go through the Policy Change Control Process. Under no circumstances may policy changes be implemented without going through this process.

Policy changes can be initiated by any member of Program staff but must be reviewed by the project managers, and they must be submitted in writing. The cost must be analyzed. The Program will review the change, and approve or deny the proposed changes as they believe appropriate. Program staff will evaluate cost, scope and schedule prior to making any policy changes.

Policy changes will be integrated into the Policy and Procedures Manual promptly after the Program staff makes a final determination to accept the change(s).

## **4.13 Record Retention**

Record retention is a requirement of the Program. Records will be maintained to document compliance with Program requirements and federal, state, and local regulations. Records will be

maintained in accordance with 24 CFR 570.3 which states they must be maintained for a period of 3 years following the close-out of the award to the state.

#### **4.13.1 Audit Trail**

The state's management information system provides immediate tracking and imaging of all Program documentation, including but not limited to, Property owner notification, eligibility verification documentation, financial funds disbursement documentation to ensure data security and Program oversight to create a clear audit trail of the Program.

All Property owner data will be secured in the state's management information system for a specified period of time.

Recordkeeping, including scanning, uploading to the state'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.

Documentation standards allow for program activities to be traced so that any possible audit issues are resolved.

Records will be maintained in hard copy and/or electronically.

All records will be copied, scanned, and filed for physical and electronic record.

In order to protect non-public personal information, data security measures will be in place, such as hardware and software data security protocols and physical security for hard copy files.



## 5.0 Acronyms and Definitions

### 5.1 Acronyms

<b>Acronym</b>	<b>Name</b>
AA	Allowable Activities
ABFE	Advisory Base Flood Elevations
BFE	Base Flood Elevation
CDBG	Community Development Block Grant
CRS	Community Rating System
DASNY	Dormitory Authority of the State of New York
DHAP	Disaster Housing Assistance Program
DHCR	Division of Housing and Community Renewal
DRGR	Disaster Recovery Grant Reporting System
DOB	Duplication of Benefit
ECR	Estimated Cost of Repair
FMV	Fair Market Value
FEMA	Federal Emergency Management Agency
HTFC	Housing Trust Fund Corporation
HQS	Housing Quality Standards
HUD	Department of Housing and Urban Development
IFB	Invitation for Bid
IRS	Internal Revenue Service
LEP	Limited English Proficiency
LMI	Low to Moderate Income
MPS	Minimum Property Standards
MBE	Minority Business Enterprise
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
HCR	Office of Community Renewal
OIA	Office of Internal Audit
OIG	HUD Office of Inspector General
POA	Power of Attorney
QA	Quality Assurance
QC	Quality Control
QPR	Quarterly Performance Report
RV	Recreational Vehicle
REO	Real Estate Owned Property
RFP	Request for Proposal
RFQ	Request for Qualifications

<b>RE</b>	Responsible Entity
<b>SAVE</b>	Systematic Alien Verification for Entitlements
<b>SBA</b>	Small Business Administration
<b>SEQR</b>	State Environmental Quality Review Act
<b>SFHA</b>	Special Flood Hazard Area
<b>SOW</b>	Scope of Work
<b>SSC</b>	Site Specific Checklist
<b>SSDI</b>	Social Security Disability Income
<b>SEQR</b>	State Environmental Quality Review Act
<b>TSA</b>	Transitional Shelter Assistance
<b>URA</b>	Uniform Relocation Act

## 5.2 Definitions

**100-Year Floodplain:** Also referred to as ‘base flood.’ This term, adopted by the NFIP as the basis for mapping, insurance rating, and regulating new construction, is the flood plain that would be inundated in the event of a 100-year flood. The 100 year flood has a one percent chance of being equaled or exceeded during any given year.

**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 Residential Building Code may require that the lowest floor be built above the ABFE. The ABFEs are based on Federal Emergency Management Associations (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.

**Base Cap:** The base cap amount for single-family repair and/or reconstruction coverage is \$300,000.

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

**Bi-Party Agreement:** Document between the Contractor and the Property owner that states the responsibilities of both parties before, during and after construction.

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

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

**Condominium:** A building or complex in which units of property, such as apartments, are owned by individuals and common parts of the property, such as the grounds and building structure, are owned jointly by the unit owners.

**Condominium Association:** The entity made up of the unit owners responsible for the maintenance and operation of:

- Common elements owned in undivided shares by unit owners
- Other real property in which the unit owners have use rights

**Contract for Deed** (also referred to as a Lease Purchase Agreement): Legal document that establishes items to be met in order for the deed to a piece of property to transfer from one

person to another, usually in exchange for monthly payments until the purchase price has been paid.

**Conveyance:** The legal process of transferring property from owner to another.

**Cooperative apartments (Coops):** Owner owns stock in the corporation that owns the apartment building. The building then “leases” the cooperative apartment to the buyer under a long-term proprietary lease. Coop owners pay monthly maintenance to the building corporation for items such as the expenses of maintaining and operating the building property, property taxes and the underlying mortgage on the building (if any).

**Disaster Housing Assistance Program (DHAP):** A rental assistance program that provides temporary rental payments directly to landlords to help families displaced by disasters. DHAP-Sandy will help families find intermediate housing as they rebuild their lives.

**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.

**Duplex:** A residential structure consisting of two separate dwelling units, side by side or one above the other.

**Duplication of Benefit (DOB):** Any payments the Property owner received for disaster assistance for the same loss that the Program is providing assistance. A duplication occurs when a beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need.

**Earth Movement:** Is a FEMA term where there are shifts to land caused by landslide, slope failure, saturated soil mass moving by liquidity down a slope, or sinking of the earth.

**Elderly Person:** [24 CFR 891.205] An elderly person is a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

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

**Environmental Code:** Properties located where federal assistance is not permitted are ineligible for Program assistance. Properties must be in compliance with Environmental Code 24 CFR Part 58.

**Estimated Cost of Repair (ECR):** Provides an estimate of the basic costs needed to repair the home.

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

(1) 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))

**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.

**Fair Market Value:** The hypothetical price that a willing buyer and seller will agree upon when they are acting freely, carefully, and with complete knowledge of the situation.

**Garden Apartments:** Multi-unit apartment complexes usually located on one or two stories with the entrances to individual apartments contained along a common walkway. These complexes usually have a common off-street parking lot as well as other common public spaces.

**Gift of Property:** A form of property transfer without exchange or payment.

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

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

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

**Invitation for Bid (IFB):** The method used for the sealed bid process. IFBs usually include a copy of the specifications for the particular proposed purchase, instructions for preparation of bids, and the conditions of purchase, delivery and payment schedule. The IFB also designates the date and time of bid opening.

**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.

**Lost Ownership:** Property owners who lost ownership of their homes due to foreclosure, or are pending foreclosure, are ineligible for Program assistance.

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

**Manufactured home:** Built in a factory and installed on the home site. They must meet HUD construction requirements. If built before the 1976 HUD Code, they are commonly called mobile homes.

**Minimum Property Standards (MPS):** Established certain minimum standards for buildings constructed under HUD housing programs. This includes new single family homes, multi-family housing and health care type facilities.

**Minority Business Enterprise (MBE):** A business that is owned and controlled (minimum of 51 percent ownership) by a member of a minority group.

**Mixed Family:** Is a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

**National:** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

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

**National of the United States:** A non-US citizen who holds allegiance to the US is not considered an alien. For practical purposes, this describes a few people who live on some islands in the South Pacific.

**National Environmental Policy Act (NEPA):** Establishes a broad national framework for protecting the environment. NEPA's basic policy is to assure that all branches of government give proper consideration to the environment prior to undertaking any major federal action that could significantly affect the environment.

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

**Notice of Opportunity to Rescind:** The Property owner has 3 business days to rescind the contract signing. On the fourth business day, the Property owner signs the form to either rescind the contract or to move forward with the program.

**Office of Community Renewal (OCR):** A department of New York State Homes and Community Renewal that oversees the New York Action Plan for disaster recovery programs

**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).

**Owner expenses:** Costs above the program's spending caps and/or costs associated with providing luxury items (marble counter tops, deluxe showers).

**Policy Change Control Board (PCB):** will review the change, and approve or deny the proposed changes as they believe appropriate. The PCB will evaluate Cost, Scope and Schedule prior to making any policy changes. The PCB will be represented by Public Relations, Training, Information Technology, Anti-Fraud Waste and Abuse, QA, Contracting & Procurement, Federal Compliance and Program Directors.

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

**Program Eligible Expenses:** Replacement or repair of "non-luxury" items within the spending cap.

**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

**Purchase Contracts:** Contract for deed is not eligible unless the Property owner converts his/her contract to full ownership prior to receiving funding assistance from the program.

**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.

**Reconstruction:** The labor, materials, tools and other costs of rebuilding.

**Recreational Vehicle (RV):** A motorized wheeled vehicle used for camping or other recreational activities.

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

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

**Request for Qualifications (RFQ):** A procurement document designed to solicit a quote for services defined.

**Responsible Entity (RE):** Under 24 CFR Part 58, the term "responsible entity" (RE) 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.

**Reverse Mortgage:** A special type of home loan that lets a Property owner convert the equity in his/her home into cash. To qualify, the Property owner must be at least 62 years of age, must occupy the property as their principal residence, and must have sufficient equity in the property.

**Real Estate Owned Property (REO):** A property owned by a lender—typically a bank, government agency, or government loan insurer—after an unsuccessful sale at a foreclosure auction.

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

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

**Special Flood Hazard Area (SFHA):** The base floodplain displayed on FEMA maps. It includes the A and V zones.

**Scope of Work (SOW):** The Scope of Work will be prepared after a thorough on-site inspection and documented into a project specific work write-up report. The work write-up will identify needed repairs to bring the home up to the Program’s minimum property standards.

**Subordination Agreement:** A written contract in which a lender who has secured a loan by a mortgage or deed of trust agrees with the property owner to subordinate the earlier loan to a new loan (thus giving the new loan priority in any foreclosure or payoff).

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

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

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

**Trust:** A legal vehicle to hold property subject to certain duties and to protect it for another individual(s).

**Two-Family Homes:** Owner occupying one unit and a tenant occupying the other.

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

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

## **EXHIBIT 1 - Citizen Participation Plan**

# **STATE OF NEW YORK CITIZEN PARTICIPATION PLAN CDBG-DISASTER RECOVERY HURRICANE SANDY, HURRICANE IRENE, and TROPICAL STORM LEE**

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 development process. The State will attempt to provide all citizens with the opportunity to participate, with emphasis on low and moderate income individuals, and access by non-English speaking or those requiring special options due to disabilities, and in CDBG-DR targeted communities.

New York State developed the Citizen Participation Plan to meet the requirements of the CDBG Disaster Recovery (CDBG-DR) funding for Hurricane 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) and notice of specific waivers. The State will ensure that any local governments 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, the State has laid out targeted actions to encourage participation and allow equal access to information about programs by all citizens, especially 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. The State also encourages the participation of statewide and regional institutions and other organizations (including businesses, developers, and community and faith-based organizations) that are involved with or affected by the programs or activities covered by the Action Plan.

## **I. Public Notices and Comment Period**

While the citizen participation waivers provided by HUD permit a more streamlined public process, the State Citizen Participation Plan will ensure 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. Although the waiver removes the requirement that a grant Property

owner must hold public hearings or meetings to disseminate information and collect citizen comments, the State has and will continue to coordinate outreach meeting 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 also invite public comment for any future Substantial Amendments for a minimum seven (7) days, posted prominently and accessed on the DHCR official website. The State will use means such as press releases, posting notices on the Governor's website and links on other agency websites as appropriate, to maximize access of program information to the impacted citizens and businesses.

## **A. 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
- Change in the planned beneficiaries

Those amendments which meet the definition of a Substantial Amendment are subject to public notification 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 New York DHCR official website. Citizens will be provided with no less than seven (7) days to review and comment on the proposed amendment. Written comments may be submitted to

**New York State Homes and Community Renewal**  
**Attention: Alison Russell**  
**The Hampton Plaza, 2nd Floor**  
**38-40 State Street**  
**Albany, New York 12207-2804**  
**Comments may also be e-mailed to: [DRActionPlan@nyshcr.org](mailto:DRActionPlan@nyshcr.org)**

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 to the DHCR official website.

Non-substantial Amendments to the Action Plan will be posted on the DHCR official 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.

## **B. Performance Reports**

The State must submit a Quarterly Performance Report (QPR) 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 the Department of Community Affairs' 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.

## **II. 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. The level and type of technical assistance shall be determined by the applicant/recipient based upon the specific need of the community's citizens.

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

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

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

All UGLGs which receive CDBG-DR funds must have a written and adopted Citizen

Participation Plan which:

- provides for and encourages citizen participation, with particular emphasis on participation by persons of low- and moderate-income who are residents of slum and blighted areas and of areas in which funds are proposed to be used;
- provides citizens with reasonable and timely access to local meetings, information, and records relating to the State's proposed method of distribution, as required by regulations of the Secretary, and relating to the actual use of funds under Title I of the Housing and Community Development Act of 1974, as amended, and the unit of local government's proposed and actual use of CDBG funds;
- provides for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;
- provide 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:

#### **IV. Performance Hearings**

Prior to close out of the disaster recovery 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 must 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.

#### **V. Complaint Procedures**

Each UGLG, State Agency/Authority, or Sub-recipient funded with CDBG-DR funds must have

written citizen and administrative complaint procedures. The written Citizen Participation Plan must 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, State Agency/Authority or 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 must be filed with the Chief Elected Official, Agency Head, or Executive Director 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 will be forwarded to the Office of Community Renewal.

The complainant must be made aware that if she or he is not satisfied with the response, a written complaint may be filed with the Office of Community Renewal. All citizen complaints relative to Fair Housing/Equal Opportunity violations involving discrimination will be forwarded to the following address for disposition: Office of Fair Housing and Equal Opportunity, The Hampton Plaza, 38-40 State Street, Albany, NY 12207-2804.

The Plan must also state that persons wishing to object to approval of a Disaster Recovery application by the State may make such objection known to the Office of Community Renewal in writing. The State will consider objections made only on the following grounds:

1. The applicant's description of needs and objectives is plainly inconsistent with available facts and data;
2. The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant; and
3. The application does not comply with the requirements set forth in the Disaster Recovery Plan and amendments to the plan or other applicable laws.

Documentation must be kept at the local level to support compliance with the aforementioned requirements.