POLICY MANUAL

NY Rising Small Business Recovery Program

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Version 1.4

Prepared by
New York State Homes and Community Renewal
Housing Trust Fund Corporation
Office of Community Renewal

The policies stated in this manual are current as of February 14, 2014. This manual represent 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 or to contact the info@stormrecovery.ny.gov to ensure that you have the latest version of GOSR's policies. There may be times, however, when a policy will change before the manual can be revised.

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NY Rising Small Business Recovery Program
Version Control

Version Number	Date Revised	Description of Revisions

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State of New York's Program Goals

Introduction

In the wake of Hurricane Sandy, along with other natural disasters that occurred across the nation in 2011, 2012, and 2013, 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 stipulated that these funds be used

"… for 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 of 1974 (42 U.S.C. 5121 et seq.)(Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013."

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

In reaction to Hurricane Sandy, and in anticipation of receiving federal CDBG-DR funding, New York State (NYS or the State) developed the New York State Small Business Storm Recovery Program along with several other Disaster Recovery (DR) initiatives as outlined in the State of New York Community Development Block Grant Program Disaster Recovery Action Plan (Action Plan). The Program is designed to help Small Businesses in NYS that were directly impacted by Superstorm Sandy, Hurricane Irene, or Tropical Storm Lee (the Storms) to recover and rebuild, and just as importantly, to stimulate economic growth in affected communities.

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

Policy Manual Overview

This Policy Manual (Manual) is designed to outline the major program policies that the State and its Agents will use to direct the operation of the Program. This Manual is intended to serve as a resource for the NYS residents and other parties interested in the details of how the Program will be operated, including basic information on who will be served, what kind of assistance will be offered and what are the obligations for Program recipients. The manual serves as a general reference guide for administrative staff and other interested parties, including Business Owners, contractors, UGLGs, and any non-profit organizations that are involved as Sub-Recipients or consultants.

As outlined in the Action Plan and described in more detail throughout this Manual, the Program is designed to provide grants and/or loans (with 7-year terms) for the repair or replacement of needed equipment, replacement of lost inventory; provide working capital; rehabilitate and reconstruct commercial facilities; and provide mitigation assistance for damage or destruction as a result of the Storms. This effort is intended to help individuals and businesses that were hard hit by the storm to recover, as well as to help ensure that communities suffering damage are repopulated and revitalized as quickly as possible.

The Manual is NOT intended to be full digest of all of the internal program procedures that must be put in place before the State and its Agents. For every Program policy that is established and set forth in this Manual, the State 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 available in a corresponding Procedures Manual. This 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

In support of the Department of Housing and Urban Development's (HUD) recovery objective, NYS has specifically designed its DR programs to help impacted residents and communities to recover from the damage that has been inflicted by the Storms of 2011 and 2012. As set forth in the Federal Housing and Community Development Act, the Primary Objective of the general CDBG program "is the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of Low and Moderate Income (LMI)". CDBG funding appropriated in response to disasters must meet those general goals of the CDBG program. For example, the State is further required to ensure that 50 percent of the funds benefit LMI persons, including grants and loans that the State provides to small businesses for equipment acquisition or repair, and for the creation and retention of jobs available to LIM persons.

CDBG-DR funds must not only contribute to the development of viable communities, they must respond to a "disaster-related impact" in a county covered by a Presidential disaster declaration. . For NYS a minimum of 80% of the funds awarded must be expended in the most impacted areas of Nassau, Suffolk, Rockland and Westchester counties.

All CDBG-funded activities must meet one of the three National Objectives required under the authorizing statute of the CDBG program:

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

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

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

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

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

Building back better and smarter – As New Yorkers work to repair the grave damage wrought 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, but will instead invest in additional mitigation measures to prevent similar damage from occurring in the future.

State-led, community-driven recovery – The State is collaborating closely with local governments and other organizations to ensure a coordinated and holistic response, while looking to individual communities to develop forward-looking local recovery plans that meet their specific needs.

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

Leveraging private dollars – The 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.

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

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

Outreach

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

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

- Seasonal Businesses

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

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

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

By Phone:

- Outbound phone calls to impacted residents and potentially eligible Business Owners, including those who have registered with the State to express an interest in receiving assistance, as well as to those known to have registered for disaster aid with the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), and other sources.

- Access to a State-supported NY Rising Recovery hotline, **1-855-NYS-SANDY**, which provides trained representatives who can answer questions about the programs, guide potentially eligible Business Owners through the application process, and provide updates on the status of applications.

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

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

Through Events: Coordinated engagement and participation by Program staff and partner organization at community forums, town halls, Chamber of Commerce, Business Associations meetings and other locally-supported 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 map to better illustrate the location of interested and potentially eligible applicants 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, advertisements and other such material to support and enhance the operation of the Program. Outreach will leverage alternative language delivery, including, but not limited to, Spanish, Russian, and Chinese.

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

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

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

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

Communication Plan

A variety of outreach activities are currently underway to inform potentially eligible Business Owners of available assistance. A formal communication plan is currently being documented in order to comprehensively capture activities occurring across all recovery programs.

Citizen Participation Plan

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, Irene, and Lee recovery program(s). The Plan sets forth policies and procedures for citizen participation, in accordance to federal regulations, which are designed to maximize the opportunity for citizen involvement in the community development process. The State will attempt to provide all citizens with the opportunity to participate, with emphasis on LMI individuals, individuals with limited English proficiency, individuals requiring special accommodations due to disabilities, and individuals in CDBG-DR targeted communities.

The State Citizen Participation Plan will ensure there is reasonable and timely access for public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG-DR grant funds In following HUD's guidance in the November 2013 Federal Register, substantial Action Plan Amendments will now include a thirty-day (30) public comment process with at least one (1) public hearing. The Action Plan and any Substantial Amendments will be posted prominently on the Governor's Office of Storm Recovery (GOSR) official website. The State also has and will continue to coordinate outreach meetings with state entities, local governments, non-profits, private sector and involved associations. The State will use means such as press releases, posting notices on the New York State Governor's website and/or GOSR's website to maximize access of program information to the impacted citizens and businesses.

The New York Citizen Participation Plan for CDBG-DR Sandy, Irene, and Lee Recovery can be located in Exhibit 1 of this Policy Manual.

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1.0 NY Rising Small Business Recovery Programs

NYS has created two types of assistance under the NY Rising Small Business Recovery Program; small business grants and small business loans. Both types of assistance can be used for the repair or replacement of needed equipment, replace lost inventory, renovate facilities that were damaged/destroyed, mitigating damaged properties for future resilience. Working capital requests are limited to grant assistance only.

1.1 Types of Assistance

A Business Owner may apply to receive both grant and loan assistance. The Program also offers mentorship assistance to small business owners in addressing particular questions or concerns. All assistance is limited to activities that are a direct result of either Superstorm Sandy, Hurricane Irene or Tropical Storm Lee.

1.1.1 Grants

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

1.1.1.1 Small Business Grants

All Business Owners identified as eligible for the Program may receive a grant of up to $50,000 to cover eligible, unmet needs to enable an affected business to repair or replace damaged property, assets and inventory, provide working capital or mitigate damages.

1.1.1.2 Preliminary Award Initiative

All Business Owners have the opportunity to apply for a preliminary Award payment of $10,000 to assist with immediate non-construction related business needs while a full Program application is completed. Business Owners have 60 days from receipt of a preliminary Award to complete a full Program application. Business Advisors will follow up and notify Business Owners in advance of the 60 day deadline to ensure completion of a full application within the prescribed timeframe. Total Program assistance available to each Business Owner will be calculated net of any preliminary Award payment received.

1.1.1.3 Coastal Fishing Industry Grants

Commercial and recreational fishing businesses may be eligible for an additional $50,000 to cover eligible unmet needs to enable the affected business to repair or replace damaged property, assets and inventory and/or provide the working capital necessary to help the business prepare

for the upcoming fishing season. Businesses are not eligible for both the Coastal Fishing Industry Grants and the Seasonal Business Grants.

1.1.1.4 Seasonal Business Grants

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

1.1.1.5 Economic Hardship Grants

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

Applicants must meet one of the following criteria in order to be eligible for Economic Hardship assistance:

- Experienced significant employment loss as documented by comparing the NYS-45 employment report from comparable quarters of consecutive years (e.g. Q3 2013 and Q3 2012);
- Documented public or employee correspondence regarding impending employment reductions;
- Self-reported work reductions within the next six month period as indicated in the application;
- Decrease in business revenues of 30% or greater as documented by comparing the 12 month period prior to the storm to the 12 month period after the storm. (e.g. September 2011-September 2012 compared against October 2012 – October 2013 for Hurricane Sandy applicants); or
- If the business has not yet reopened since the storm.

Significant employment loss is defined as:

- <u>For businesses with 30 employees or less:</u>
    - Loss of 2 employees for LMI Business Owners **or** businesses which have a majority of LMI employees
    - Loss of 3 employees for all other businesses
- <u>For businesses with 31 employees or more:</u>
    - Loss of 7 percent of the total employment for LMI Business Owners **or** businesses which have a majority of LMI employees
    - Loss of 10 percent of all employees for all other businesses

The Underwriting Agent will review and verify information provided by Business Advisors in order to make a determination for economic hardship assistance eligibility.

1.1.1.6 Mitigation Grants

In conjunction with repairs to an eligible, impacted business, mitigation grants of up to an additional $100,000 may also be provided to cover expenses such as elevating key equipment, installing permanently affixed back-up generators (if applicable), flood-proofing or elevating businesses to help prevent damage in future disasters. The need for such mitigation must be directly tied to damage from the Storms. Mitigation grants may be used for required and optional mitigation activities as outlined in Section 3.4.3.

1.1.2 Small Business Loans

Low-interest loans of up to $1,000,000 may also be available to eligible applicants to repair or replace needed equipment, replace lost inventory, renovate facilities that were damaged/destroyed.

1.1.3 Assistance Activities

Both types of assistance, grants and loans, can be utilized to fund a variety of eligible activities. Examples of activities include the repair or replacement of needed equipment, replacement of lost inventory, renovation of facilities that were damaged/destroyed, mitigating damaged properties for future resilience or providing working capital. All eligible activities are classified into one of two categories in order to determine the required level of environmental review associated with that activity. All activities are classified as either Exempt or Non-Exempt. Exempt activities are exempt from requiring an environmental assessment and site visit; environmental review for exempt activities can be completed through a "desk" environmental review. Non-Exempt activities require a full environmental assessment with a possible site visit to determine if the activity may result in the creation of a significant environmental impact. Activities classified as Exempt may be funded separately from activities classified as Non-Exempt in an effort to facilitate the provision of Awards to Business Owners as quickly as possible. More information on Exempt and Non-Exempt activities and the environmental review process can be found in Sections 3.4 and 3.7 respectively.

1.1.4 Mentorship Assistance

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

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

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

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2.0 NY Rising Small Business Recovery Program Process

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3.0 Policies for the NY Rising Small Business Recovery Program

3.1 Application Submission

All Business Owners will be required to complete the New York State Small Business Storm Recovery Program Application and submit supporting documentation.

Business Owners may submit applications by following the steps below:

1. Identify your nearest SBDC: http://stormrecovery.ny.gov/business-centers
2. Call an SBDC to schedule an appointment to have an initial phone consultation with a Business Advisor.

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

During the initial phone consultation, a Business Advisor will provide an overview of the Program, review basic eligibility guidelines, discuss documentation required to apply and answer any questions in preparation to submitting an application. Upon conclusion of the initial phone consultation, if a Business Owner decides to submit an application, the Business Advisor will schedule an in-person initial meeting to collect required documentation and begin the application process.

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

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

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

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

Mandatory Documents for All Applicants:

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

- ☐ Any ONE of:
  (a) US Passport **or**
  (b) New York State Enhanced Driver's License **or**
  (c) Driver's License or State Identification Card and a Birth Certificate **or**
  (d) Other Documentation of Legal Residence
- ☐ IRS W-9
- ☐ SBA Statement of Personal History (SBA Form 912)
- ☐ *Non-profits only*: List of all non-profit board members and individuals with signing authority

Business Identification

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

Lease/Utilities/Insurance

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

**If requesting working capital assistance, please provide documentation for the three consecutive months prior to the storm.*

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

- ☐ Official comprehensive proof of loss statement/reports:
  a. SBA DCMS Loss Verification Report
  b. FEMA Loss Report
  c. Insurance Claim Loss Reports
- ☐ Local record of storm impact **with a** Business Advisor site visit and write-up:
  a. Proof of Storm Impact –(Any ONE of the following)
     i. Business Address look up on Surge Map (Available for Superstorm Sandy and Hurricane Irene applicants only)
     ii. Letter from Village/Township
     iii. Letter from Long Island Power Authority (only for businesses located

outside of the surge zones that experienced losses due to power outages)

iv. Letter from Village/Township Department of Transportation (only for businesses located outside of the surge zones that experienced losses due to road closures)

v. DEC Letter (Commercial Fishing Businesses only)

vi. Pictures of storm damage

b. Business Advisor Site Visit and Write Up

- ☐ Pre-storm Proof of Ownership
  - a. Pre-storm invoices or receipts
  - b. Pre-storm pictures
  - c. Tax Return Depreciation schedules

Articulation of Need

- ☐ Proof of Costs Already Spent (including but not limited to):
  - (a) Receipts
  - (b) Vendor purchase agreements
  - (c) Cancelled checks for paid invoices
  - (d) Purchase orders
- ☐ Proof of Costs Not Already Spent (including but not limited to):
  - (a) Third party cost estimates
  - (b) Other independent evidence of projected costs

Business Viability

- ☐ Any ONE of:
  - (a) Proof that business is open **or**
  - (b) Actively trying to re-open **with** a Business Plan (Determination made by the Business Advisors)

Business Tax/Credit Forms

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

Other Assistance

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

Additional Mandatory Documents for Special Businesses:

Coastal Fishing Businesses (if applicable):

- ☐ License /permit or affidavit from New York State Department of Environmental Conservation (NYSDEC) from 2011, 2012 showing business involvement in commercial or recreational fishing

Seasonal Businesses (if applicable):

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

Additional Mandatory Documents for Loan Assistance:

Personal tax/credit forms

- ☐ Signed IRS Form 4506-T for personal tax returns for all Business Owners
- ☐ SBA Personal financial statement (SBA Form 413) for all Business Owners

Mandatory Documents for Preliminary Award Initiative:

Business Owners who apply for the Preliminary Award Initiative, are required to complete a full application within 60 days of receipt of preliminary Award.

Owner Identification

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

Business Identification

- ☐ Voided check for business bank account
- ☐ Completed ACH form (available online at http://www.stormrecovery.ny.gov/)

Program Forms

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

3.1.1 Initial Meeting

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

During the initial meeting, the Business Owner's assigned Business Advisor will provide a thorough program overview which includes outlining types of assistance available, program phases, eligibility requirements, eligible activities; review the Business Owner's application; collect documentation; review and execute required Program forms (consent, affidavit and disclosure documents); explain next steps in the application process and answer any questions that the Business Owner may have.

3.1.2 Threshold Eligibility Determination

All applications will undergo a threshold eligibility review to determine Business Owner eligibility for the different types of assistance offered by the Program. Business Advisors will

also conduct a thorough completeness review and initial business Viability review (a business will be considered viable if it is currently open or actively working to reopen). Business Owners with ineligible applications will be notified in writing and given the opportunity to appeal this determination. See Section 4.1 for more information on the appeals process.

3.1.3 Completeness Review

A Business Advisor will review and organize the application and documents submitted by the Business Owner. The Business Advisor will determine if all required information and documents have been submitted and identify any additional information and documents needed. If the application is deemed eligible for further processing, the Business Owner will be contacted by phone or email to discuss next steps in the process.

3.1.4 Missing Documentation Notification

Business Owners will be given the opportunity to submit missing and deficient information in order to continue processing their application. Business Advisors will make reasonable efforts to promptly contact Business Owners who have submitted incomplete applications or are unresponsive for more than 14 days. Additionally, a letter will be sent to the Business Owner identifying any outstanding required documentation.

3.2 Prioritization

Federal regulations require that 50 percent of CDBG-DR funding is expended for LMI households. As a result, the program established the following priority groups. There are no additional priorities/weights within the following groups nor will a Business Owner receive additional priority for meeting multiple criteria.

3.2.1 Priority Groups

- **Low- and Moderate-Income Business Owners**

  An application will be considered part of the "Low- and Moderate-Income Business Owners" priority group if the Business Owner's family income is 80% or less of Area Median Income as determined by HUD at the time of the application submittal, and the business qualifies as a microenterprise. .

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

  2013: http://www.huduser.org/portal/datasets/il/il13/index_il2013.html

  2014: http://www.huduser.org/portal/datasets/il/il14/index_il2014.html

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

An application will be considered part of the "Businesses that provide Economic Opportunities to Low- and Moderate-Income Persons" priority group if 51% or more of the business' retained employees are low- to moderate-income persons or if 51% or more of created positions are for low- to moderate-income persons.

- **Businesses that have not re-opened due to damage or impact from the storm**

  An application will be considered part of the "Businesses Not Yet Re-opened" priority group if the business was open and operating at the time of the storm, but has not yet re-opened due to damage suffered as a result of the Storm(s).

- **Coastal Fishing Industry Businesses**

  An application will be considered part of the "Coastal Fishing Industry Business" priority group if the business receives the majority of its income directly related to commercial culture, harvest, packing dealing, shipping and/or processing and/or recreational fishing.

- **Seasonal Businesses**

  An application will be considered part of the "Seasonal Business" priority group if a minimum of 70 percent of the business' annual income is earned during a six month period.

3.2.2 Priority Process

Applications will be prioritized at the commencement of the Program. Initial meeting slots will be opened to priority applicants before non-prioritized applicants. After this initial prioritization, the majority of the meeting slots will be reserved for priority group applicants until nearly all of the priority group applicants in the queue have been processed. The Program Administrator will monitor applicant progress throughout the entirety of the Program to be sure priority applicants are being processed in a timely manner.

All applications will be processed and a determination of eligibility will be made. However, the priority groups will assist the Program in ensuring that recovery funds will be distributed in accordance with the federal regulations.

3.3 Eligibility Determination

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

3.3.1 Summary of Eligibility Criteria

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

3.3.2 Business Located in Eligible County

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. The New York City counties (shown in grey text) are not eligible for assistance under the NY Rising Small Business Recovery Program. New York City will administer its own CDBG-DR programs directly.

To be eligible for assistance, an applicant must have been operating and located in a county designated for FEMA Individual Assistance Program (IAP), including:

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

3.3.3 Business Damaged from Qualifying Storm Event

All businesses must have been damaged as a direct result of Hurricane Sandy (10/29/12), Tropical Storm Lee (9/7/2011), and/or Hurricane Irene (8/28/2011) as documented through an

official proof of loss statement or a local record of storm impact along with a Business Advisor site visit and write-up. Only applicants that suffered physical property damage resulting from wind or water storm related damages are eligible for working capital assistance. Applicants that suffered property losses (such as inventory) caused by power outages or road closures as a result of the storm are not eligible for working capital assistance, but may submit for assistance regarding such property losses.

3.3.4 Eligible Business

If a business is deemed to be a small business under the SBA or a non-profit organization, it may be eligible for assistance. Any business not classified as either a small business or a non-profit organization will not be eligible for assistance. While all businesses who meet the criteria below are eligible for assistance, the State is placing an emphasis on assisting businesses with 100 or fewer employees.

All Applicants must:

- Meet the U.S. Small Business Administration's definition of a small business **or** be a non-profit organization
    - The SBA, defines a "small business" as:
        - Meeting SBA thresholds either in terms of the average number of employees over the past 12 months, or average annual receipts over the past three years based on a particular NAICS code for the industry in which it operates. More information can be found at http://www.sba.gov/tools/size-standards-tool?ms=nid4060
            - "Annual receipts" of a concern that has been in business for three or more completed fiscal years means the total receipts of the concern over its most recently completed three fiscal years divided by three.
            - "Receipts" is most easily calculated by taking the "total income" (or in the case of a sole proprietorship, "gross income") and adding the "cost of goods sold" as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations).
            - You can find additional information on how to calculate annual receipts or total employees at sba.gov or in part 121 of title 13 of the CFR.
        - Is organized for profit
        - Has a place of business in the US

    - Operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor
    - Is independently owned and operated
    - Is not dominant in its field on a national basis

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

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

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

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

- The assisted property should wholly commercial in character. Businesses that are home-

based businesses may be rehabilitated only where it can be clearly shown that program funds are not used to assist the property for residential use.

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

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

Seasonal businesses must also meet the following additional criteria:

- Demonstrate that a minimum of 70 percent of the business' annual income is earned during a six month period (businesses below this mark will be considered on a case-by-case basis);
    - Examples of potentially eligible applicants include, but are not limited to: Drive-In Motion Picture Theatres, Historical Sites, Zoos and Botanical Gardens, Nature Parks, Amusement and Theme Parks, Amusement Arcades, Marinas, Hotels and Motels, Bed-and-Breakfast Inns, RV Parks and Campgrounds, Restaurants, Scenic and Sightseeing Transportation, and Gift, Novelty and Souvenir Stores.

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

- Established under Section 501(c)(3) of the Internal Revenue Code, or potentially other not-for-profits as determined by the State, if there is a demonstrated economic benefit

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

- Designated stations along critical evacuation routes must agree to adopt measures to mitigate impacts to the liquid fuel supply chain during future disasters. Risk mitigation measures include processes or methods to ensure that fueling stations along critical evacuation routes remain functional, or quickly restore functionality, during power outages. Examples of such mitigation measures include installation of wiring necessary to connect portable emergency generators or installation of a permanently affixed back-up

power generator. More information regarding designated station, mitigation requirements and potential additional grant funding for these such mitigation efforts can be found at http://stormrecovery.ny.gov/fuel-ny

Ineligible Applicants:

The following are ineligible for assistance under the Program:

- Business Owners who lost ownership of their damaged property due to foreclosure, or are pending foreclosure for the damaged property are ineligible for assistance.
- Properties located where federal assistance is not permitted are ineligible for assistance. Properties must be in compliance with Environmental Code 24 CFR Part 58.
- Casinos or other gambling establishments.
- Facilities not open to the general public that serve a predominantly higher income clientele.
- Private utilities.
- Professional sports teams.
- Tobacco retailers whose income from tobacco sales is 35% or more of gross, in-store, non-fuel sales.
- Entities engaged in operating or managing adult entertainment businesses (per the discretion of the State).
- Entities engaged or involved in religious activities.
    - Portions of a structure used for both religious and secular uses (such as homeless shelter, food pantry, adult literacy center or child care center) or tools, equipment, etc. utilized solely for secular uses may be eligible
- Entities engaged in lobbying or political activities.
- Entities who have received federal assistance in the past and where required flood insurance has not been maintained.
- Businesses with gross revenues or gross receipts of less than $25,000 which are not the Business Owner's primary source of income.
- Residential property owners.*

  *In certain circumstances, owners of vacation rental properties may be eligible if they qualify as a small business and the rental properties are not considered a Second Home. A Second Home is defined as: If during the tax year an owner uses the unit for personal

purposes the greater of 14 days, or 10% of the total days rented to others at a fair rental price. If the property is never used by the owner for personal purposes and is rented year round, the property owner should apply to the Homeowner Program.

3.3.5 Existence as a Business Entity

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

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

3.3.5.1 Existence, Open and Operational

- 2010, 2011 and 2012 Federal Tax Returns.
- Proof of authority to do business in New York State where required by law such as a Certificate of Incorporation, Articles of Organization, or Partnership Agreement and Certificate of Doing Business under an Assumed Name and any required licenses.
- Proof of loss statement from SBA (DCMS Loss Verification Report), private insurance carrier, FEMA and/or public insurance adjuster. If one of these is unavailable, a letter from a municipal government official or local utility company (if power was lost) accompanied by an estimate of loss may be considered.
- Utility bill dated immediately prior to the time of the disaster.
- If the business is making material changes to overall strategy, they need a business plan. For loans, they must provide a business plan if they are making material changes to strategy or have negative cash flow.

3.3.5.2 Existence with an Anticipated Opening

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

- Federal Tax Return from the year of the storm.
- Proof of authority to do business in New York State where required by law such as a Certificate of Incorporation, Articles of Organization, or Partnership Agreement and Certificate of Doing Business under an Assumed Name and any required licenses.
- Business plan.

- Lease on facility/mortgage.
- Losses reported on tax return for the year of the storm the business was affected by.

3.3.5.3 Not-for-profit Business

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

- Ruling or determination letter recognizing exempt status and certificate of incorporation for not-for profits.
- Proof of loss statement from SBA (DCMC Loss Verification Report), private insurance carrier, FEMA and/or public insurance adjuster. If one of these is unavailable, a letter from a municipal government official or local utility company (if power was lost) accompanied by an estimate of loss may be considered.
- Utility bill dated immediately prior to the time of the disaster.
- Lease on facility/mortgage.

3.3.6 Meeting a CDBG National Objective

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

3.3.6.1 Low and Moderate Income Objective

- **Low and Moderate Income Objective**
    - *Low and Moderate Income Microenterprise Business Owners*
      A business qualifies as a microenterprise if the business has 5 or less employees (based on head count), including owner(s), at the time of application. At least 51% of the Business Owners must meet the HUD LMI Income Limits in order to qualify under this National Objective.
        - Determining Low-and Moderate-Income status of microenterprise Business Owner - In determining income, the Program will use the most recent signed Federal Income Tax Returns (either form 1040 or 1040EZ) for the microenterprise Business Owner. The Program will consider the microenterprise Business Owner income-qualified if the owner's adjusted

gross income is at or under the HUD-established income limit for his/her family size.

- *Low and Moderate Income Jobs*
  A business meets this National Objective when it will create or retain jobs, at least 51% of which will be made available to low- and moderate-income persons.

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

  - For an activity that retains jobs, the Applicant must document that the jobs would actually be lost without the CDBG-DR assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided:
    - The job is known to be held by a LMI person; or
    - The job can reasonably be expected to turn over within the following two years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a LMI person upon turnover.
  - Jobs will be considered to be available to LMI persons only if:
    - Special skills that can only be acquired with substantial training or work experience or education beyond high school are ***not*** a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and
    - The Applicant takes actions to ensure that LMI persons receive first consideration for filling such jobs.

Under this National Objective, the State will report and maintain documentation on the number of businesses assisted, the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. As such, Applicants are required to provide such information to the State.

3.3.6.2 Urgent Need Objective

Under the CDBG-DR Federal Regulations, HUD has determined that an Urgent Need exists within the presidentially declared counties. An Urgent Need exists because existing conditions pose a serious and immediate threat to the health/welfare of a community, the existing conditions

are recent or recently became urgent (within 18 months), and the Sub-grantee or State cannot finance the activities on its own because other funding sources are not available. To the extent allowed under federal regulation, all Business Owners which cannot meet the LMI National Objective will be placed into the Urgent Need category, wherever possible under the requirements of this National Objective.

Under this National Objective, the State will report and maintain documentation on the number of businesses assisted and the creation and retention of total jobs.

3.3.7 Owner of Subject Business

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

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

- Written approval from all other owners to apply for assistance. The approval must also contain the projected use of any funds received.
- Written approval from the business' Board of Directors (if applicable) to apply for assistance. The approval must also contain the projected use of any funds received.

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

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

3.3.7.1 Business Owners with Criminal Convictions or Charges

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

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

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

- ☐ The charge(s) occurred greater than 10 years from the date of application for assistance

- ☐ The applicant provides documentation of sentence(s) served to their Business Advisor

3.3.7.2 Deceased Business Owners

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

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

3.3.8 Citizenship and Eligible Immigrants

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

- U.S. Citizen
    - A valid U.S. Passport, or
    - An enhanced driver's license, or
    - Government issued identification and birth certificate, or
    - Certificate of Naturalization
- Eligible Immigrant
    - Will be verified through the US Department of Homeland Security's SAVE Program, an online verification system to validate that Business Owner is an immigrant eligible for federal benefits.

3.3.9 Eligible Small Business Assistance Activities

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

- Repair/replacement of damage to real property, including, but not limited to:
    - Roof repair / replacement
    - Window / door repair / replacement
    - Siding repair / replacement
    - Flooring repair / replacement
    - Drywall / finishing to pre-event condition
    - Insulation
    - Bathroom repair / rehabilitation

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

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

3.3.9.1 Working Capital

Working capital for this program is defined as rent/mortgage costs, employee salaries, and utility costs (gas, electric and water). Working capital may be provided for an eligible applicant in combination with funds for the eligible, unmet needs or as the only source of assistance as determined and approved by the State. The maximum amount of working capital assistance available is determined by the level of damage incurred by the business as described below:

- Applicants that suffered physical property damage resulting from (wind or water) storm damage may receive assistance of 6 months of eligible expenses, up to a maximum of $50,000.

- Applicants that incurred indirect damage caused by documented power outages, road closures or inability to conduct business due to storm related damages (loss of potable

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

- Applicants that incurred indirect damage caused by documented power outages or road closures or inability to conduct business due to storm related damages (loss of potable water, threat to health/safety, etc.) for greater than 48 hours, but less than 120 hours (5 days) may receive assistance of 6 months of eligible expenses, up to a maximum of $10,000.

- Applicants that incurred indirect damage caused by documented power outages or road closures or inability to conduct business due to storm related damages (loss of potable water, employee inability to work, threat to health/safety, etc.) for less than 48 hours **are not** eligible for working capital assistance, but may request assistance for physical property losses (such as refrigerated inventory losses).

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

All applicants applying for working capital assistance must provide documentation of the following costs (in addition to mandatory application documents) for the 3 consecutive months* prior to the storm:

- ☐ Rent/Mortgage as evidenced by an executed Lease/Mortgage or proof of payment
- ☐ Employee wages as evidenced by the 3rd Quarter NYS-45 (NYS Employee Wage Reporting Form)
- ☐ Electricity, Water and Gas Utilities as evidence by Utility Service Provider Bills

**All expenses submitted must be for the same consecutive 3 month period.*

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

- Business Owner Income/Wages/Draws: Business Owner Income/Wages/Draws are **not** an eligible working capital expense

- Home-based Businesses: Home-based businesses are eligible for the percentage of the home's mortgage and utility expenses as noted on the business' most recent tax return.

- Seasonal Businesses: Seasonal businesses should provide working capital documentation for the most recent 3 consecutive months (prior to the storm) within business' 6 month revenue generation season

- Coastal Fishing Businesses: Boat and/or slip rental/mortgage and fuel expenses are eligible working capital expenses for costal fishing businesses.

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

3.3.9.2 Reimbursements

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

To be eligible for reimbursement payments, itemized receipts or an invoice with proof of payment (receipts, cancelled checks or credit/debit card statements showing charges), must be provided for all activities requesting reimbursement. In select cases, items with alternative documentation may be eligible for reimbursement at the sole discretion of Program staff.

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

- Be located outside the floodway **or** be covered by flood insurance prior to receiving assistance (the property is not required to have been covered by flood insurance at the time of the disaster).
    - The floodway is defined by FEMA as the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The floodway is located within a floodplain and is determined using the advisory base flood elevations.
- A site inspection is required to verify the work has been completed and complies with Program requirements

3.3.9.3 Ineligible Activities

Program funds will **NOT** cover the following items (list subject to change).

- Costs associated with refinancing of existing debt (except for outstanding credit card balances for eligible activities)
- General government expenses
- Political activities
- Replacement of lost business revenue
- Tax arrearages
- Purchase of construction equipment and tools purchased specifically for clean-up activities (rental fees for equipment and tools used for clean-up are eligible)

- Losses related to a residential purpose regardless of the ownership structure
- Any assistance to a business that does not meet a CDBG National Objective

Applicants that suffered revenue losses without physical damage are not eligible for grant or loan consideration, but may receive Business Mentor NY or SBDC assistance to identify business improvement opportunities, re-capture/expand markets or develop a revised business model.

3.4 Types of Activities

In an effort to facilitate funding to Business Owners and comply with HUD guidelines, activities receiving assistance are classified in order to determine the level of required environmental review. Exempt activities are exempt from requiring an environmental assessment and site visit; environmental review for exempt activities can be completed through a "desk" environmental review. Non-Exempt activities require a full environmental assessment with a site visit to determine if the activity may result in the creation of a significant environmental impact. As a general guideline, any activity that requires or is dependent upon construction / reconstruction should be considered a Non-Exempt activity until further analysis can be completed. Business Advisors will assist Business Owners in classifying activities as Exempt or Non-Exempt.

3.4.1 Exempt Activities

Exempt activities include:

- Working capital (rent/mortgage, utilities and employee wages)
- Physical and personal property
- Repair, replacement, or reimbursement of machinery, equipment, inventory not dependent on construction / reconstruction
- Repair, replacement, or reimbursement of machinery, equipment, inventory dependent on construction / reconstruction, only if the applicant is not requesting assistance for construction / reconstruction activities.
- Other activities, determined not to have a significant effect on the quality of the human environment.

Examples include:

- Machinery
- Moveable equipment
- Furniture
- Fixtures
- Supplies
- Tools
- Inventory
- Appliances
- Clean up costs (includes rental fees of equipment or tools and wages paid to workers

only)
- Inspections of properties for hazards or defects
- Purchase of insurance, such as flood insurance
- Engineering and/or Architectural design

3.4.2 Non-Exempt Activities

Non-Exempt activities can include:
- Any construction / reconstruction activities
- Activities requiring or dependent upon construction / reconstruction, if the applicant is requesting assistance for construction / reconstruction activities

Examples of construction / reconstruction activities include:
- Roof repair / replacement
- Window / door repair / replacement
- Siding repair / replacement
- Flooring repair / replacement
- Drywall / finishing to pre-event condition
- Insulation
- Bathroom repair / rehabilitation
- Foundation repairs
- Kitchen cabinet replacement
- Well / septic replacement or connection to municipal system
- Electrical system repair / replacement
- Accessibility modifications
- Dock and boat slip repairs / reconstruction
- Environmental hazard mitigation costs including testing and clearance requirements

Examples of activities classified as non-exempt because they are dependent on construction / reconstruction in which the applicant is requesting assistance for construction / reconstruction activities:
- Machinery or equipment requiring construction or demolition during installation
- Refrigerated inventory that requires a working refrigerating unit that is currently non-operational and requires construction to fix
- Inventory that requires storage that must be constructed/reconstructed (either a structure or a permanent fixture)
- Installation of a permanent fixture (like a service bar) that requires electrical or plumbing fitting
- Any other activities that require construction happen prior to having the activity be effective

Select activities initially classified as Non-Exempt may convert to Exempt or Categorically Excluded upon further analysis and determination by the State or one of its Agents.

3.4.3 Mitigation Activities

Depending on the level of damage incurred and geographic location, some businesses may be required to implement certain mitigation efforts. All businesses, regardless of the level of damage incurred or geographic location, may implement optional mitigation efforts. Program assistance for mitigation activities is capped at $100,000.

3.4.3.1 Required Mitigation Activities

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

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

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

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

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

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

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

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

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

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

3.4.3.2 Optional Mitigation Activities

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

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

Ineligible measures include but are not limited to:

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

3.5 Inspections

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

3.5.1 Initial Inspection

The initial property inspection establishes an assessment of value for property damage incurred by business. The assessment of value serves as the basis towards receiving funding for rehabilitation, reconstruction or replacement. Every project which includes property damages will have a work write-up performed on the initial inspection. The work write-up will document that the business was damaged from one of the Storms, provide information regarding damage received and provide a resulting assessment of value of future work or work that has already been completed (if applicable).

Only repairs for damage that are reasonably necessary for the operations of the business will be included in the inspection and resulting assessment of value. If the business sustained significant damage, the assessment of value will be the lesser of the estimate to rehabilitate (repair) or reconstruct (rebuild). Estimates for mitigation repairs will not be included in the initial inspection. The inspection will also complete an Environmental Considerations Questionnaire when on site to identify any potential environmental hazards. Please note the Environmental Considerations Questionnaire is different from the environmental review discussed in Section 3.7.

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

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

3.5.1.1 Home-based Businesses

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

3.5.1.2 Leasehold Businesses

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

3.5.1.3 Businesses with Bulkheads, Docks or other unique construction considerations

Businesses that require bulkhead, dock or other unique construction repairs will receive an additional initial inspection by a professional familiar with such construction in order to provide an accurate assessment of value based upon the unique nature of such work. This additional assessment of value for will be added to an applicant's initial inspection to determine a comprehensive assessment.

3.5.1.4 Businesses with Value-Added Inventory

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

3.5.2 Final Inspection

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

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

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

Until problems are correct, the Program will not disburse the final payment and may take any

necessary legal recourse.

3.6 Estimated Costs for Reimbursement or Repair

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

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

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

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

3.7 Environmental Review

All activities submitted for Program assistance require environmental review. An environmental review consists of a statutory checklist of required review items. Small Business properties with environmental conditions will not be permitted to proceed with any construction or construction-related activities unless the condition is corrected. No work can start on a site until the environmental review is complete.

Specific instructions concerning environmental review requirements will be made available to all

recipients, sub-recipients, or contractors. CDBG-DR funding from HUD is contingent on compliance with the National Environmental Policy Act (NEPA) and related environmental and historic preservation legislation and executive orders. All environmental review activities will be carried out and documented.

3.7.1 Roles and Responsibilities

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

- GOSR assumes the role of the Responsible Entity (RE), responsible for undertaking compliance efforts for the Program which includes both Tier 1, Target Area Assessment, and Tier 2, Site Specific Project, reviews.
    - 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 GOSR. Once these reviews have been completed there can be a commitment of funds
- GOSR will submit any requests for release of funds directly to HUD for review and approval.
- GOSR will be responsible to complete 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).
- GOSR will review all environmental draft documents as outlined in the required documentation and sign all documents requiring RE or agency official signatures.
- The construction manager and/or program manager is responsible for working in good faith with the GOSR where additional documentation may be necessary to resolve an outstanding compliance factor.
- If it is determined that a property requires abatement for environmental hazards the Business Owner is responsible for finding a contractor. An ECR will be provided to the Business Owner to complete the remediation. Award amount will be determined by unit pricing for abatement activities.
- GOSR will issue a Release of Funds (ROF).

3.8 Verification of Benefits (VOB)

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 as to which he has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, DR funds issued through the CDBG program may not be used for any costs for which other disaster recovery assistance was previously provided for the same purpose.

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

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

3.8.1 Potentially Duplicative Assistance

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

Examples of potentially duplicative assistance include:

- National Flood Insurance Program (NFIP)
- Private Insurance
- Federal Emergency Management Agency (FEMA)
- Small Business Administration (SBA)
- Empire State Development (ESD)
- Governor's Office of Storm Recovery (GOSR)
- New York State Energy and Research Development Authority (NYSERDA)

Applicants are required to report all assistance reasonably anticipated. "Reasonably anticipated funds include assistance that has been awarded, but has not yet been received," but do not include a situation where the funding source and/or the amount is in question. 78 Fed. Reg. at

71062.

Benefit determinations will undergo a 2nd level of review and approval. The Business Advisor will contact the Business Owner to review and clear any discrepancies and once approved, the business will proceed to the next step of the process.

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

3.8.2 Declining SBA Assistance

If a Business Owner applies to the SBA and is approved, but declined assistance, they must communicate why the assistance was declined by completing the SBA Loan Declination Form. Per federal guidance, the State will review and approve / deny the justification provided based on a necessary and reasonableness determination.

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

3.8.3 Non-duplicative Expenditures

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

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

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

3.9 Underwriting

3.9.1 Grants

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

and eligible for assistance.

Personal resources and business assets will not be counted towards unmet need when determining eligibility for either grant or loan assistance. Applicants requiring loan assistance will undergo a review of additional Viability standards that will occur as part of the loan underwriting process.

3.9.2 Working Capital

Due to the overwhelming need to strengthen small businesses and revitalize storm affected communities, working capital for this program is defined as utility costs (gas, electric and water), employee salaries, and rent/mortgage costs. For businesses requesting working capital assistance, Business Advisors will determine an estimated monthly working capital need as the monthly average of the 3 consecutive months prior to the storm of working capital costs. Seasonal businesses should provide the most recent pre-storm 3 consecutive months within the 6 month period of when at least 70% of their revenue is generated.

Required documentation for working capital need includes 3 consecutive months of:

- ☐ Rent/Mortgage as evidenced by an executed Lease/Mortgage or proof of payment
- ☐ Employee Wages as evidenced by the NYS-45 (NYS Employee Wage Reporting Form)
- ☐ Electricity, Water and Gas Utilities as evidence by Utility Service Provider Bills

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

Open and operational businesses may receive a lump sum payment directly to the applicant for working capital need. Currently closed businesses must reopen and submit for reimbursement of working capital expenses to receive working capital award funding.

3.9.3 Loans

The assistance approval guidelines to be used for the underwriting of loans will be a combination of traditional underwriting methods, as well as "benchmark" ratios analysis. The analysis will determine the business' Viability as an ongoing business based on the historic and projected cash flows. The Underwriting Agent will review all pertinent information, such as historic business tax returns and business plans, if needed, to make a viability determination.

The Underwriting Agent will consider loan requests based on an analysis of the business' cash flow capacity to meet existing and proposed debt service based on global cash flow. Additionally, the Underwriting Agent will evaluate projected cash flows to determine their reasonableness based on the historic results and assumptions provided by the applicant. If the Underwriting Agent determines the projected cash flows reasonable and supportive, they may be considered in the evaluation of the applicant's ability to meet current and proposed debt service. Upon completion of the underwriting process, the State reviews the underwriting determination notifies Business Owners regarding approval or denial of a loan request.

3.10 Total Award Determination

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

3.10.1 Preliminary Project Budget

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

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

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

All Preliminary Project Budgets will be broken into the following categories:

- Program eligible expenses – repair / reconstruction / rehabilitation / replacement / working capital within the Program Maximum Benefit.
- Owner Expenses – costs above the Program's maximum benefit and / or costs associated

with providing ineligible expenditures.

3.10.2 Program Maximum Benefit

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

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

3.10.2.1 Grants

Eligible applicants will first be considered for a grant up to their determined Program Grant Maximum Benefit. If any eligible, uncompensated needs remain after a grant Award is determined, applicants can then be considered for a low-interest loan to cover remaining unmet needs.

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

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

3.10.2.2 Loans

All businesses may be considered for funding from the Small Business Loan Program up to a maximum loan amount of $1,000,000, if the documented, eligible unmet need exceeds the Business Owner's grant Award and the business demonstrates an ability to repay the loan.

3.10.2.3 Total Program Maximum Benefit

Total Program Maximum Benefit is capped at $1,250,000. In order to receive the Total Program Maximum Benefit, a business would have to show sufficient documented, eligible unmet need, demonstrate an ability to repay the loan and meet all conditions required for each type of grant assistance: small business, seasonal or coastal fishing business, demonstration of economic hardship and mitigation.

3.10.3 Award Calculation

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

Calculation of an Award begins with the Preliminary Project Budget (Section 3.10.1). The Business Owner will submit a request of assistance based upon the Preliminary Project Budget. Depending on the Business Owner's eligibility for types of assistance, the Program Grant Maximum Benefit will be determined. If the Preliminary Project Budget exceeds the Program Grant Maximum Benefit, the Business Owner may apply for a loan to cover the remainder of the unmet need or must demonstrate (for remaining unmet needs $10,000 or greater), through development of a simple business plan, how the business will continue operations with remaining unmet need.

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

If the Final Unmet Need Amount does not exceed the Program Grant Maximum Benefit, the Final Unmet Need Amount becomes the Maximum Award Amount. If the unmet need exceeds the Program Grant Maximum Benefit, the Grant Maximum Benefit amount becomes the Maximum Grant Award Amount. If an applicant has remaining Final Unmet Need after the Maximum Grant Award has been determined the remainder may be awarded as a loan, if the Business Owner is approved based upon loan underwriting by the Underwriting Agent.

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

EXAMPLE:

1. Identify Business Owner's Request for Assistance	$100,000
2. Identify All Potentially Duplicative Assistance	$35,000
3. Deduct Assistance Determined to be Duplicative	$30,000
4. Final Unmet Need (Step 1 minus Step 3)	$70,000
5. Maximum Grant Program Benefit	$50,000
6. Maximum Grant Award Amount (lesser of Step 4 or 5)	$50,000
7. Loan Amount (Step 4 minus Step 6)	$20,000
8. Total Program Award	$70,000

3.10.4 Exceptions

The Program may consider exceeding the Program Grant Maximum Benefit to cover the business' unmet need on a case-by-case basis. This type of allowance will be made particularly for LMI Business Owners or businesses that serve a public benefit.

3.11 Requests for Construction (Non-Exempt) Assistance

3.11.1 In-Progress Construction Projects

Any business requesting construction assistance is required at the time of application to stop all construction or construction related work in order to be eligible for construction or construction related assistance for costs incurred after the time of application. Once a business applies for construction assistance any in-progress projects are subject to environmental review and may not proceed until environmental review is successfully completed. The project may also be subject to Davis Bacon Wage Requirements (if over $2,000). In order to be eligible for assistance Business Owners with in-progress construction projects must also meet all additional program requirements including but not limited to Contractor pre-qualification; scope of work, contract and contract rider documentation; and securing additional funds for the project. Any rehabilitation and/or demolition activities may also be covered by the Uniform Relocation Act and/or Section 104(d) of the Housing and Community Development Act.

3.11.2 Verifying and Securing Business Owner Funds

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

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

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

If Applicant does not have sufficient funds to complete the scope of work, the Business Advisor will send Business Owner file into a special assessment pool, for possible loan assistance from the Program.

If required Business Owner funds are not paid to the Contractor, the grant would be in default and applicant may be required to repay any disbursements made to date.

3.11.3 Selecting Architects, Engineers and Contractors

Before a local building department approves and issues building permits, they may require that a licensed architect and/or engineer (design professional) submit stamped plans and/or other submissions. The Business Owner may want to consult with an architect and/or engineer prior to or once they receive their award letter. Architects and/or engineers can perform a number of services, such as getting construction plans approved by the building department, helping the Business Owner find a Contractor, assisting with leveling construction bids, monitoring construction progress and quality, advising the Business Owner during construction, and ensuring the Contractor performs well. The cost of hiring a licensed architect or engineer for professional design services related to construction is considered an exempt activity.

If requested assistance includes construction work, the Business Owner will be required to submit a scope of work created by the design professional prior to permitting for the Program's approval. The scope must:

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

Business Owners will select their own Contractor. For any projects over $2,000, the selected Contractor and all related sub-Contractors must be willing to comply with Davis Bacon requirements and all other Program requirements including pre-qualification criteria and any reporting requirements. All Contractors will be pre-qualified to ensure they meet the State's eligibility requirements in order to be paid for work completed on behalf of participating Business Owners. Contractors must submit a Contractor Qualification Statement (AIA Form A-305) to the applicant's Business Advisor demonstrating they meet the following pre-qualification criteria:

- ☐ Not listed on Federal Debarment List
- ☐ Minimum of 3 years of experience constructing projects of similar use, size and scope
- ☐ Minimum insurance requirements as determined by the Program
- ☐ Minimum bonding requirements for performance and payment per HUD guidelines.
- ☐ Local municipality minimum requirements, such as business licenses
- ☐ Licensing requirements for the type of work anticipated (if applicable)
- ☐ Comply with Davis Bacon requirements (for project over $2,000)

The Business Owner will be responsible for negotiating all costs of construction with their Contractor. However, the Business Owner shall be responsible for any costs incurred in excess of their grant award.

Business Owners seeking assistance for reconstruction/construction activities only may close upon signing a contract with a design professional. Business Owners who do not need a design professional for their project (e.g., those already in construction, those with very small projects)

may close upon signing a contract with a contractor.

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

3.11.4 Minimum Design Standards

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

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

3.11.5 Construction Contract Approval

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

Contract documents include:

- **Scope of Work:** A final work write up will be developed by the Business Owner with assistance from a design professional, presented to the Program and will become the basis for all work to be completed by the Contractor on behalf of the Business Owner. At a minimum, this scope of work should include that the project will address all the repair needs identified during the Program's ECR damage assessment and comply with any required mitigation efforts.

- **Construction Contract and Contract Rider:** A document between the Contractor and the Business Owner that states the responsibilities to each other and the Program before, during and after construction. The rider requires the Contractor to certify that she/he has residential construction experience, appropriate licenses, payment and performance bonding capacity, insurance certificates, agrees to the scope of work submitted, and agrees to comply with all applicable Program and Davis Bacon requirements (if applicable). This document is available from the Business Advisor.

3.11.6 Construction Change Orders

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

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

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

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

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

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

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

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

3.11.7 Punch List Completion

As in all construction projects, a punch list will be developed towards the end of the job. A

punch list is a listing of items written as specifications, which constitute the work necessary to complete the contract.

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

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

3.12 Financing Terms

The business will be assisted with funds from the NY Rising Small Business Recovery Program to facilitate the disaster recovery efforts necessary for the business. To ensure the proper utilization of these funds, the Business Owner will be required to accept the grant assistance as a grant and any loan assistance as a 7-year term loan. All grant and loan Awards are subject to potential recapture, if it is determined by the State that an application or Award does not comply with Program policies. More information regarding recapture is provided in Section 4.6.

Grants will not require repayment nor will interest accrue on the funds. The term loan will require repayment and interest will accrue. The loan terms and recapture provisions for both the grants and loans are discussed later in this section.

3.12.1 Grant Agreement

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

- All information provided is true, correct, and complete in all material respects and accurately represents the financial condition of the applicant, as of the date submitted.
- There has been no material adverse change in the financial condition, assets or business prospects of the Business Owner or any change in the ownership or management of the Business, since the date on which Business Owner submitted the Application, except to the extent disclosed to the Grantor, in writing, prior to the date hereof.
- The Business Owner has good and marketable title to all assets reflected in the business' financial statements and business' assets are not subject to any liens or encumbrances, except as already disclosed in the Financial Information.
- All licenses, permits, and /or other approvals necessary to operate the business are in full force and effect and will continue to be so.
- Business Owner will maintain all types and amounts of insurance as are typical and customary in the same or any type of similar business.

- There is no currently pending or, to Business Owner's knowledge, threatened litigation, arbitration or other proceeding involving Business or Business Owner before any court, commission or other administrative authority.
- The Business Owner will not sell, lease, pledge, encumber (except by purchase money lien on property acquired after the date of this Agreement) or otherwise dispose of any of the business' property or assets, except in the ordinary course of business.
- If the property is located in the 100 year flood plain the Business Owner is required to keep the property insured by a flood insurance policy and that they must advise all subsequent purchasers of the property that they too must keep the property covered by a flood insurance policy.
- The Business Owner must immediately notify the program if they receive any additional payments that could be considered to be duplication of benefits and that said payments must be returned to the program up to the amount of the grant agreement.
- That the Business Owner will provide evidence, upon request, as to how the funds were spent.
- Provides a right of entry for inspections of the property to have the right of access and to enter in and onto the Property for the purpose of performing property, environmental and historic preservation review inspections, making assessments, testing (including taking sample materials for any specialized testing) and any inspection-related Program activities

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

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

3.12.1 Loan Guarantee

All persons or entities holding a 20% or greater ownership interest in the business must guaranty the loan. The Program may require the guaranty of the holders of less than 20% of the ownership interest in the business if appropriate to the circumstances of the assistance or if the ownership represents a controlling interest in the business. Normally, the Program will not require the guaranty of the holders of ownership interests less than 5% unless that interest is also a controlling interest. Any guaranty required will be unlimited unless a specific limitation is

contained in the loan approval.

The Program may also require the guaranties of other individuals or entities if appropriate. For example, when the guaranty of the Business Owners is weak or when a key management person would be vital to repayment ability, the Program may require additional entities or individuals to guaranty the loan, either unlimited or limited, regardless of ownership.

The guaranty of a non-owner spouse may not be required unless the spouse has offered to guaranty the assistance or the law requires the spouse's guaranty in order to perfect a lien on collateral. In the event the guaranty of a non-owner spouse is required to perfect a lien on collateral, the guaranty should be limited to the spouse's interest in the collateral.

If the operating company is not a borrower on the loan, the operating company shall be a guarantor of the loan.

3.12.2 Loan Terms

The interest rate shall be held at 2 percent annually. Interest shall be computed on the basis of three hundred sixty (360) days for the actual number of days elapsed. Interest shall accrue from the date of advance of funds until receipt of payment.

The maturity of each loan shall be 7 years.

No principal payments will be required for the first three (3) months. Interest-only payments will be required for this period. Equal principal and interest payments will be required for the remaining term in order to fully amortize the loan. Interest will begin accruing 30 days after the loan is issued.

In the event that there is a default in the payment of a loan or a violation of any other term, covenant or agreement contained in the grant or loan documents, the interest rates and fees for all loans shall be clearly and fully disclosed to the borrower. In the event of a default, the interest rate shall increase as determined by the loan agreement.

3.13 Subrogation

Subrogation is the process by which duplicative assistance is paid to the Business Owner after receiving an Award and is remitted to the Program in order to rectify a DOB.

3.13.1 Assignment Relating to Funds Received under CDBG-DR Program

In consideration of the Business Owner's Award of funds or the commitment by New York State to evaluate the Business Owner's application for the Award funds under the NY Rising Small Business Recovery Program, the Business Owner will assign to the Program all of their 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 or economic damage to the business that was the

basis of the calculation of the Business Owner's Award to the extent of the grant and loan 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 Business Owner assigns are specific to the business with respect to which the grant and loan proceeds were paid which is described in the Business Owner's application with the Program arising out of damage to the business originally caused by the Federally Declared Disaster but also including Proceeds received for damage to the business caused by any subsequent event that occurred until the commencement of the project utilizing Program funds. The Policies include, but are not limited to, policies characterized as damage, flood or any other type of casualty or property damage insurance coverage held by the Business Owner and which provides coverage for damage to the Property.

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

3.13.2 Cooperation and Further Documentation

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

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

3.13.3 Authorization for Program to Contact Third Parties

The Business Owner explicitly allows the Program to request of any company with which the Business Owner held Policies or FEMA or the SBA any non-public or confidential information needed by the program to monitor/enforce its interest in the rights assigned to it under the Subrogation Agreement and to give the Business Owner's consent to such company to release said information to the NY Rising Small Business Recovery Program.

3.14 Closing Meeting

Once the application has been determined to be complete, documentation for all requested activities has been provided, the Verification of Benefits analysis has been performed, the waste, fraud and abuse review has been completed, and the Award amount has been determined by the Program, the closing team will contact the Business Owner to discuss next steps. Next steps may include submitting any missing documents or anything else that the Business Owner will need to provide so that an award closing can take place. A formal closing meeting is not required by the program, however if the Business Owner needs any assistance to complete any of the documents or requires a notary to complete the documents, the Business Owner should contact their Business Advisor to schedule a meeting at their SBDC.

If the application includes assistance for non-exempt activities, the award will reflect such assistance, but funding for non-exempt activities will not occur until the project successfully completes an environmental review and any required inspections.

If the Business Owner expresses a desire to receive services such as technical assistance or mentorship related to closing, the Business Advisor will inform them of where / how they may obtain these services.

Documents that will need to be signed at the time of the closing include, but are not limited to, the following:

- ☐ **Award Acceptance Agreement**
- ☐ **New York Small Business Storm Recovery Program Grant Agreement**
- ☐ **New York Small Business Storm Recovery Program Loan Agreement (if applicable)**
- ☐ **Subrogation Agreement** ensuring that any Awards made to the Business Owner after the closing such as Flood Insurance, SBA, etc. for damage that was addressed by the Program's Award are subject to the duplication of benefits calculation and consequently may be owed to the Program.

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

3.15 Disbursement of Funds

Disbursement of funds is determined by the activities conducted (exempt vs. non-exempt) and if the Business Owner is seeking reimbursement for costs already incurred. Prior to the final disbursement of any funds, the Business Owner must submit receipts for all uses of funds in order to document work completion and use of funds for eligible activities. Exceptions to the

disbursement of funds policy may be made by the State on a case by case basis.

3.15.1 Exempt Activities

Awards for exempt activities are not subject to further environmental review, will be disbursed after the Business Owner has completed the closing process and may be disbursed in multiple draws. Businesses may also receive an initial reimbursement for costs already incurred, and return to receive their remaining funds once the appropriate documents have been submitted for the balance of their award.

3.15.1.1 Reimbursement for Exempt Activities

For Awards including an exempt activity reimbursement:

- Documentation for reimbursement payments must be provided. Acceptable examples of documentation include itemized receipts or invoices with proof of payments (invoice with receipts, cancelled checks or credit/debit card statements showing charges).
- In select cases, such as reimbursement for value-added inventory, alternative forms of documentation (such as an agricultural inventory loss valuation) may be eligible for payment at the sole discretion of Program staff.
- Reimbursement funds will be disbursed directly to a Business Owner or to 3rd party accounts payable.

3.15.1.2 Funding for Future Exempt Activities

For Award disbursements related to exempt activity future costs:

- Documentation must be provided prior to (used to determine an award) and following (used to fund the award) for any purchases or completion of work.
    - Examples of acceptable documentation prior to purchases or work being completed include purchase contracts and/or itemized estimates for work to be completed.
    - Examples of acceptable documentation following purchases or work being completed include itemized receipts or invoices with proof of payments (invoice with receipts, cancelled checks or credit/debit card statements showing charges)
- All assistance provided for future costs may be subject to inspection prior to final Award disbursement.
- Reimbursement funds will be disbursed directly to a Business Owner or to 3rd party accounts payable.

3.15.2 Non-Exempt Activities

Awards for non-exempt activities are subject to environmental review will be disbursed only after the Business Owner has completed the closing process and completed the environmental

review process. Funding of non-exempt activities Awards will be made as periodic reimbursements as work is completed.

3.15.2.1 Reimbursement for Non-Exempt Activities

For Awards including non-exempt activity reimbursements:

- No funds will be disbursed until a successful environmental review for the project is completed
- Documentation for reimbursement payments must be provided. Acceptable examples of documentation include contractor invoices, itemized receipts, invoices with proof of payments (invoice with receipts, cancelled checks or credit/debit card statements showing charges), any and all unconditional lien waivers for funds paid to date (if applicable) and written confirmation by the business owner is received that all work completed is satisfactory.
- All construction projects will include a 10% hold back of the total project costs. The 10% hold back will be funded in the final disbursement. Final disbursements will not be funded until a final inspection is successfully completed, any or all unconditional lien releases are provided and written confirmation by the business owner is received that all work completed is satisfactory.
- Reimbursement funds will be disbursed directly to a Business Owner or to 3rd party accounts payable.

3.15.2.2 Funding for Future Non-Exempt Activities

Funding for future non-exempt activities will be made as periodically as work is completed.

- No funds will be disbursed until a successful environmental review for the project is completed
- Documentation for payments must be provided including contractor invoices, any and all unconditional lien waivers for funds paid to date and written confirmation by the business owner is received that all work completed is satisfactory.
- Periodic inspections may be required to verify progress of work completed.
- All construction projects will include a 10% hold back of the total project costs. The 10% hold back will be funded in the final disbursement. Final disbursements will not be funded until a final inspection is successfully completed, any or all unconditional lien releases are provided and written confirmation by the business owner is received that all work completed is satisfactory.
- Reimbursement funds will be disbursed directly to a Business Owner or to 3rd party accounts payable.

3.16 Final Documentation and Award Close Out

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

3.17 Compliance and Monitoring

The State of New York is required by HUD to monitor all grantees receiving CDBG-DR funding. Therefore, the state will monitor all aspects of the New York State Small Business Storm Recovery Program, including but not limited to

- Creation and retention of total jobs
- Number of jobs created within certain salary ranges
- Types of jobs
- North American Industry Classification System (NAICS) code for businesses assisted

Business Owners are required to maintain applicable compliance throughout the Recapture Period for all grant (3 years) and loan (7 years) Awards funded.

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

- Maintenance of Insurance, including Flood Insurance*
- Maintenance of all licenses, permits and/or other approvals necessary to operate
- Provide information about:
    - Creation and retention of jobs
    - Number of jobs created within certain salary ranges
    - Types of jobs
- Not sell, lease, pledge or encumber property or assets, except in the ordinary course of business
- For working capital loans only:
    - Provide within 120 days of business fiscal year copies of
        - Annual, unaudited financial statements
        - Federal and New York State Tax Returns

*Flood insurance is only required for instances where federal funding supports the reconstruction or rebuilding of real property. In these instances, flood insurance will be required for the length of the terms of the loan, and in perpetuity for grants. Flood insurance will not be required on equipment.

4.0 Administrative Policies

4.1 Appeals

If the Business Owner believes that the program's determination of their award calculation or eligibility status is incorrect, the Business Owner can request an appeal.

An Applicant has a right to appeal the following:

- Final Eligibility Determination
- Final Award Determination

In order to appeal, an applicant **must** submit an appeal to their Business Advisor within 60 days from either their Final Eligibility Determination or their Final Award Determination. The appeal must include the type of appeal request (eligibility or award), narrative on why the appeal is being requested, and any supporting documentation to support the appeal.

A written determination will be issued by the State in response to the appeal.

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

4.2 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 business visits
- Providing time extensions
- Permitting an authorized designee or advocate to participate in the application process and any other meetings

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

4.3 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 Business 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 Quality Assurance Team as well as the Controls in full detail.

4.4 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 methods described herein will be implemented to provide safeguards and quality controls into the operational processes.

4.4.1 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 (signatories only for non-profit organizations) and may consist of up to seven components as listed below. Non-applicant business owners will only be checked for debarment per HUD funding guidelines.

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)

4.4.2 Review of AFWA Check Findings

After AFWA checks are completed, findings will be delivered to Business Advisors who will receive reports notifying them of any flags that were identified. In their review of AFWA check findings, Business Advisors 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.

4.4.3 Adjudication and Escalation of AFWA Findings

Using relevant federal and state policy and procedure guidelines, Business Advisors 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 Business Advisors could include the following:

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

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 performed in concert 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.

4.4.3 Additional Investigations

Suspected fraud received from the hotline or other interested parties will be investigated. The Fraud team will conduct research to assist in determining whether a fraudulent event has occurred. If the Fraud team 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 Business Owner's file. The Business Owner may proceed through the Program.

4.4.4 Detecting and Preventing Duplication of Benefits

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

- Certification that Business Owners have and will notify the State of all potential DOBs;

- Verification of specific DOBs through various available sources;
- Enforcement of certification to the fullest extent of the law.

4.5 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 funds dispersal. In their role as an external third party auditor, 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 (HUD Office of Inspector General (OIG), 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 address problems and implement process improvements or propose solutions.

4.6 Recapture Conditions

The New York State Housing Trust Fund Corporation (HTFC) under GOSR is responsible for ensuring that the 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" to 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 Business Owners to enter into agreements stipulating each party's responsibilities and the potential penalties that Business Owners face if they are found not to have fulfilled their

obligations.

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 Business Owner. The notice will outline the violation and provide the Business Owner with an opportunity to challenge the determination.

If, after review, it is determined that the ineligible Award resulted from an action on the part of the Business Owner, the funds may 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.

The State reserves the right to recapture both grant and/or loan funds, in the event that the State determines the Business Owner to have:

- An ineligible project (e.g. failure to meet a National Objective or failure to meet other eligibility requirements of the Program);
- Used funds for an ineligible activity (e.g. used money for an unauthorized purpose);
- Failed to comply with the rules and regulations of the CDBG-DR Program or the NY Rising Small Business Recovery Program Guidelines (e.g. maintaining flood insurance);
- Failed to submit required documentation (e.g. required job creation or retention reporting or required urgent need reporting, etc.);
- Received benefits that are duplicative to Program funds; or
- Knowingly misrepresented information on the application.

4.7 Conflicts of Interest and Confidentiality

Conflicts of interest between Business Owners, sub-recipients, contractors, Program staff and other parties are strictly prohibited by federal law. Generally, no person who is a covered person, and who exercises or has exercised any functions or responsibilities with respect to CDBG-DR activities and who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

A “covered person” is an employee, agent, consultant, officer, or elected official or appointed

official of the state, or of a unit of general local government, or any designated public agencies, or subrecipients which are receiving CDBG funds.

The conflict of interest regulations contained in the contract between the sub-recipient and the GOSR prohibit local elected officials, GOSR staff, sub-recipient employees, and consultants who exercise functions with respect to CDBG-DR 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.

4.7.1 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 Business Owner or contractor.

For purposes of this regulation, "family" is defined to include 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-recipients, 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 Business Owner or contractor. For example, a Business Advisor may not perform work on the application of a family member.

The GOSR may consider granting an exception to the conflict of interest provisions per 24 CFR 570.489(h) (4) if GOSR has determined that the 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).

4.7.2 Confidentiality/Privacy

The 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 Business Owners for the 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. The 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. Business Owner personal information may be disclosed to those with official Power of Attorney for the Business Owner or for whom the Business Owner has provided written consent to do so.

Organizations assisting the State in executing the 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.

4.8 Policy Exception Process

The Policy Exception Process allows the State to make an exception to a specific policy when it is determined to be necessary and in the best interest of the program. Exceptions to Program policy must be processed through a formal exception process.

1. Policy Exception Protocol

   - Policy exceptions can be initiated by any member of Program staff.
   - Policy exceptions must be submitted on the Policy Exception Request Form.
   - An analysis of the cost and potential impact(s) of the change must be performed and entered on the Policy Exception Request Form.
   - The Policy Exception Board (PEB) will review the exception, and approve or deny the proposed changes as they believe appropriate. The PEB will evaluate cost and potential impact prior to making any policy changes. The PEB may be represented by Anti-Fraud Waste and Abuse, Quality Assurance, Federal Compliance, Program Directors and Senior Program Staff.

4.9 Policy Change Control Process

The Policy Change Control Process allows the State to change a specific policy when it becomes necessary and in the best interest of the program. Changes to Program policy must be processed through a formal change control process.

2. Changes Subject to the Policy Change Control Process

   - All policy changes affecting the eligibility of Business 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.

3. Policy Change Control Protocol

- Policy changes can be initiated by any member of Program staff.
- Policy changes must be submitted on the Policy Change Request Form.
- An analysis of the cost of the change must be performed and entered on the Policy Change Request Form.
- The 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 may be represented by Public Relations, Office of Internal Audit and Oversight or authorized representative that has authority to audit, Training, Information Technology, Anti-Fraud Waste and Abuse, QA, Contracting and Procurement, Federal Compliance and Program Directors.
- Policy changes will be integrated into the Policy and Procedures Manual promptly after the PCB's decision.

4.10 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.

4.10.1 Audit Trail

The State's management information system provides immediate tracking and imaging of all Program documentation including, but not limited to, Business 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 Business 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. 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 Definitions

5.1 Acronyms

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

UGLG	Units of General Local Government
VOB	Verification of Benefits

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 Building Codes may require that the lowest floor be built above the ABFE. The ABFEs are based on FEMA coastal studies that were completed before Hurricane Sandy. The studies include data that has been collected and analyzed over a number of years. Though advisory now, eventually information used to develop the ABFEs will be incorporated into official FIRMs.

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

Award: Determination of Program funding available to a Business Owner

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

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

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

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

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

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.

Davis Bacon Wage Requirements: The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of $2,000 to pay their laborers and mechanics

not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts.

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

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

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

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

Likelihood of employment loss is reviewed by:

- Comparing the NYS-45 employment report from comparable quarters of consecutive years (e.g. Q1 2013 and Q1 2012),
- Self-reported work reductions within the next six month period as indicated in the application,
- Any public or correspondence to employees regarding impending employment reductions, and
- Current financial condition of the business.

Significant employment loss is defined as:

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

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

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

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

Governor's Office of Storm Recovery (GOSR): A department of New York State Homes and Community Renewal that oversees the New York Action Plan for disaster recovery programs.

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

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

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

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

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

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

Low-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.

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

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

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

Owner expenses: Costs above the program's spending caps and/or costs associated with providing ineligible items.

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

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

a. Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

b. In the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this definition, the term blindness means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.

(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

a. Is expected to be of long-continued and indefinite duration,

b. Substantially impedes his or her ability to live independently, and

c. Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(iii) Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8))

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.

Preliminary Award Initiative: Opportunity for Business Owners to apply for a preliminary Award payment of $10,000 to assist with immediate business needs while a full Program application is submitted. Business Owners have 60 days from receipt of a preliminary Award to complete a full Program application.

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

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

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

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

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

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

Recapture Period: Period of time that a Business Owner must maintain Program compliance and fulfill their Program obligations in order to avoid potential recapture of an Award by the Program. Grants have a 3 year recapture period and loans have a 7 year recapture period.

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.

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

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

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

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

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

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

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

State: As referenced in this Policy Manual, means "New York State".

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

Subrogation: The process by which duplicative assistance paid to a Business Owner after receiving an Award is 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)

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

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

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

Total Program Maximum Benefit: Total Maximum Program Award (grants and loans) is

capped at $1,250,000 ($1,000,000 as a loan and $250,000 as grants). In order to receive the Total Program Grant Maximum Benefit, a business would have to show sufficient documented, eligible, unmet need, demonstrate an ability to repay the loan and meet all conditions required for each type of grant assistance: small business, seasonal or coastal fishing business, demonstration of economic hardship and mitigation

Underwriting Agent: Organization contracted by New York State to assist in underwriting grants and loans to determine Awards.

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

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

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

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

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

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

EXHIBIT 1 - Citizen Participation Plan

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

I. Public Notices and Comment Period

The State Citizen Participation Plan will ensure there is reasonable and timely access for public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG-DR grant funds. In following HUD's guidance in the November 2013 Federal Register, substantial Action Plan Amendments will now include a thirty-day (30) public comment process with at least one (1) public hearing. The Action Plan and any Substantial Amendments will be posted prominently on the Governor's Office of Storm Recovery (GOSR) official website. The State also has and will continue to coordinate outreach meetings with state entities, local governments, non-profits, private sector and involved associations. The State will use means such as press releases, posting notices on the New York State Governor's website and/or GOSR's website to maximize access of program information to the impacted citizens and businesses.

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 or category described in the approved application
- Exclusion of a previously defined geographical area
- 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 copy of the proposed Substantial Amendment will be posted on the GOSR official website. Citizens will be provided with no less than thirty (30) days to review, comment and attend at least one public hearing on the proposed amendment. Written comments may be submitted to

Governor's Office of Storm Recovery
P.O. Box ###,
New York, NY 10004

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.

EXHIBIT 2 – Historical Record of NY Rising Small Business Recovery Program Policy Memorandums

Please note: This table provides a historical record of issued policy memorandums as of the date of this draft. The information listed below should not be relied upon for policy guidance or implementation. All relevant information contained in the memorandums below have been incorporated into this version of the policy manual. Please refer to the policy manual for the most up-to-date policy guidelines.

Historical Policy Memorandums Record	
Date	Summary
2/5/14	Version 1.4 of the Policy Manual distributed to Program Partners
11/1/13	Outlined valuation methodology for losses of agriculture/aquaculture inventories; provided additional acceptable proof of payment documentation examples for reimbursements
10/28/13	Classification of exempt vs. non-exempt activities; items included/excluded in initial damage inspection; clarification of initial damage inspection policy surrounding leasehold and home based businesses
10/8/13	Allowed businesses to receive multiple disbursements of Award funds
10/1/13	Further modification of definition of Viability; clarification of working capital grant and loan documentation requirements; clarification of documentation for verification of loss
9/3/13	Modification of Seasonal Business definition
8/20/13	Modification of definition of Viability; requirements to provide and/or maintain flood insurance; basis of determining working capital needs