

# STATE OF NEW YORK ACTION PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM DISASTER RECOVERY

*Utilizing Supplemental CDBG Disaster Recovery Funding from the Allocation, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees Under the Department of Housing and Urban Development Appropriations Act, 2012 (Public Law 112-55)*

Through the US Department of Housing and Urban Development  
Office of the Assistant Secretary for Community Planning and Development

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Andrew M. Cuomo, Governor, NYS  
Darryl C. Towns, Commissioner/CEO, NYSHCR

Prepared by  
New York State Homes and Community Renewal  
Office of Community Renewal  
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**New York State Office of Community Renewal  
CDBG-DR Action Plan  
Disaster Impacts and Needs Assessments**

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## **Introduction:**

In the wake of Hurricane Irene and Tropical Storm Lee, along with other disasters that occurred nationwide in 2011, Congress appropriated funding in the Federal Fiscal Year 2011-2012 (FY 11-12) Budget for the CDBG Disaster Relief (CDBG-DR) program. Section 239 of Public Law 112-55 enacted on November 18, 2011, and appropriated \$400 million through the Community Development Block Grant (CDBG) program for:

...necessary expenses for activities authorized under Title I of the Housing and Community Development Act of 1974 (Public Law 93-383) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in 2011: Provided, that funds shall be awarded directly to the State or unit of general local government at the discretion of the Secretary: ...

The U.S. Department of Housing and Urban Development (HUD) allocated these funds based on its estimate of the total unmet needs for infrastructure and the unmet needs for severe damage to businesses, infrastructure and housing that remain to be addressed in the most impacted Counties after taking into account data on insurance, Federal Emergency Management Agency (FEMA) assistance, and Small Business Assistance (SBA) disaster loans. Per this evaluation, New York State will receive \$93,213,963 to assist communities with flood recovery. New York State Homes and Community Renewal (NYS HCR), through its Office of Community Renewal (OCR), will oversee \$71,654,116 with a minimum of 80 percent of these funds committed to Broome (except for Town of Union), Greene, Schoharie, and Tioga Counties, and may include areas in Orange County outside of areas already receiving direct disaster assistance. Orange County, with the exception of the Cities of Newburgh, Middletown and Port Jervis and the Villages of Kiryas Joel and Highland Falls and Town of Union in Broome County will receive the remaining \$21,559,847 of the \$93,213,963. Community Development Block Grant Disaster Recovery (CDBG-DR) funds can be used for disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in Counties that received a Presidential Disaster Declaration in 2011 due to the impact of Hurricane Irene and/or Tropical Storm Lee.

The State of New York is required to publish an Action Plan for Disaster Recovery that describes the proposed use of HUD CDBG-DR funding as provided under the *Allocation, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees Under the Department of Housing and Urban Development Appropriations Act, 2012*.

The Action Plan will describe:

- How the proposed use of CDBG-DR funds will address long-term recovery needs;
- Eligible affected areas and the distribution of CDBG-DR funds to those areas;
- Activities for which CDBG-DR funds may be used;
- The Citizen Participation process used to develop the Action Plan; and
- Grant administration standards.

The Action Plan will be used as a guide by the State and the OCR for the distribution of \$71,654,116 of CDBG-DR funding towards meeting the unmet housing, infrastructure and economic development needs. As outlined in the legislation, a minimum of \$53,011,323 of the State's allocation must be expended in the most impacted Counties identified as Broome, Greene, Schoharie, Tioga and/or Orange Counties. The use of these funds, as outlined in the Federal Register Notice FR-5628-N-01, is restricted to the recovery efforts from Hurricane Irene, FEMA Disaster No. 4020 and Tropical Storm Lee, FEMA Disaster No. 4031.

Hurricane Irene and Tropical Storm Lee caused major flooding and storm damage primarily in the eastern 38 Counties in New York State between August 29, 2011 and September 8, 2011. According to data provided by FEMA, as of April 9, 2012, it is estimated that total damage statewide is in excess of \$823 million.

**Eligible & Ineligible Criteria:**

CDBG-DR funds must be used toward short and long-term recovery activities directly related to the storm damage from Hurricane Irene and Tropical Storm Lee.

**Eligible:**

CDBG-DR funds from the HUD disaster appropriation may be used for eligible CDBG activities that meets the State CDBG program regulations as found at 24CFR570.482 or any activity for which HUD has issued a waiver. The assistance may be provided for eligible projects that FEMA has provided assistance to, or that other sources; including FEMA, cannot fund or cannot fund in full, but which are nevertheless critical to recovery, or for activities where the costs significantly exceed the amount of assistance that FEMA or other sources can fund. However, any appropriation covered by this Plan (Public Law 112-55) shall be reviewed for compliance with duplication of benefits guidelines at 42 U.S.C. 5155, which specifically prohibits the use of funds for activities reimbursable by, or for which funds have been made available by FEMA, the Small Business Administration (SBA), or other Federal or State sources. Funds may be used as a matching requirement, share, or contribution for any other Federal program, provided all activities are in compliance with duplication of benefit guidelines.

➤ Pre-Agreement Costs:

The provisions of 24CFR 570.489(b) permit a State to reimburse itself for otherwise allowable costs incurred by itself or its sub grantees on or after the incident date of the covered disaster. Any unit of general local government receiving a direct allocation under this Notice is subject to the provisions of 24CFR570.200(h) but may reimburse itself or its sub-grantee for otherwise allowable costs incurred on or after the incident date of the covered disaster. This may include pre-agreement costs for Hurricane Irene, FEMA 4020 back to August 31, 2011 and Tropical Storm Lee, FEMA 4031, back to September 13, 2011.

**Ineligible:**

- List of ineligible activities
- General government expense
  - Political activities
  - Operations and maintenance
  - Income payments
  - Purchase of equipment (with several exceptions; i.e., as part of an eligible economic development activity, a public service activity, a solid waste disposal facility or an integral part of a public facility project.)
    - Purchase of any equipment will require a one-on-one consultation with OCR to determine eligibility.
  - Any assistance to a business or property owner who received FEMA assistance in the past and where required flood insurance has not been maintained.
  - Preparedness activities for future disasters, except in cases where a facility was severely damaged and reconstruction includes mitigation efforts.

**Proposed Use of Funds:**

A. Public Infrastructure

Infrastructure – Match for FEMA Projects

- CDBG-DR funds from the HUD disaster appropriation may be used for up to the 25 percent required local match for infrastructure projects funded under FEMA.
- Any appropriation covered by this Plan (Public Law 112-55) shall be reviewed for compliance with the Federal Duplication of Benefits guidelines at 42 U.S.C. 5155, which specifically prohibits the use of funds for activities reimbursable by, or for which funds have been made available by FEMA, the Army Corps of Engineers (ACE), or other Federal or State sources, or private sources, including, but not limited to insurance payments.
- Eligible Infrastructure Activities may include:

- Water/sewer treatment facilities and including storm sewer
  - Flood control mitigation projects
  - Streets and sidewalks
  - Other public infrastructure as needs are identified
1. Allocation for Activity
    - a. NYS anticipates allocating approximately \$68,071,411 to this category of funding. However, the exact allocation will be dependent upon the total number of eligible activities and the total amount of funding approved for those eligible activities.
  2. Eligible Recipients
    - a. County, City, Town, or Village Governments that have been determined to be eligible for FEMA assistance
  3. Threshold Criteria
    - a. Receipt of an award commitment from FEMA for CDBG-eligible infrastructure projects.
    - b. Project will address severe unmet infrastructure need arising from the 2011 disaster declaration 4020 and/or 4031.
  4. Selection Criterion
    - a. Projects that have been determined to be eligible CDBG-DR activities may be funded in order of priority as determined by New York State Homeland Security State Emergency Management Office in consultation with OCR.
  5. Priority Selection:
    - a. Activities located within five priority Counties. The State has determined that the most effective use of the CDBG-DR funds will be to allocate CDBG-DR funds within the hardest hit Counties of Broome, Delaware, Greene, Schoharie and Tioga.
    - b. Activities that meet a low- and moderate-income benefit National Objective.
    - c. Activities in highly impacted areas that are the most severely distressed.
    - d. Activities that have a large impact area, but do not necessarily meet the low- and moderate-income benefit.

Public Infrastructure – Non-FEMA

- Assistance may be provided for projects that FEMA or other sources cannot fund, but which are nevertheless critical to recovery.
- Assistance may also be provided to activities where the costs significantly exceed the amount of assistance that FEMA or other sources can fund.
- Any appropriation covered by this Plan (Public Law 112-55) shall be reviewed for compliance with Duplication of Benefits guidelines at 42 U.S.C. 5155, which specifically prohibits the use of funds for activities reimbursable by, or for which funds have been made available by FEMA

or other Federal or State sources, or private sources, including, but not limited to insurance payments.

- Funds may be used as a matching requirement, share, or contribution for any other Federal program, provided all activities are in compliance with duplication of benefit guidelines.
  
- Eligible Infrastructure Activities may include:
  - Water/sewer treatment facilities and including storm sewer
  - Flood control mitigation projects
  - Streets and sidewalks
  - Other public infrastructure as needs are identified

2. Allocation for Activity

- a. At this time NYS does not anticipate allocating CDBG-DR funds to this category. However, depending on the eligible activities identified and the total costs committed to projects under the FEMA match, funds may be provided to projects under this category. The exact allocation will be dependent upon the total number of eligible activities identified and the total amount of funding approved for those eligible activities.

3. Eligible Applicants

- a. County, City, Town, or Village Governments that have been determined to be eligible for FEMA assistance

4. Threshold Criteria

- a. Eligible projects will address severe unmet infrastructure need arising from the 2011 disaster declarations 4020 and/or 4031.
- b. The proposed project must be the best alternative to resolve the need.

5. Selection Criteria

- a. The degree of urgency for need for the facility, threat to health, safety or welfare.
- b. Insufficient local, State, or Federal funds available or cannot be obtained in the timeframe required.
- c. Use of additional local taxes or user fees in place of the requested assistance would place an undue burden on residents, particularly low- and moderate-income households.
- d. Likelihood that the project can be completed in a timely manner.

6. Selection Priority:

- a. Activities located within five priority Counties. The State has determined that the most effective use of the CDBG-DR funds will be to allocate CDBG-DR funds within the hardest hit Counties of Broome, Delaware, Greene, Schoharie, and Tioga.
- b. Activities that meet a low- and moderate-income benefit National Objective.

- c. Activities in highly impacted areas that are the most severely distressed.
- d. Activities that have a large impact area, but do not necessarily meet the low- and moderate-income benefit.

## B. Housing

### Funds Provided for Housing Related Activities

- CDBG-DR funds from the HUD disaster appropriation may be used as the required match for housing projects funded under FEMA or any other State or Federal sources.
- Assistance may also be provided for eligible projects that FEMA or other sources cannot fund, but which are nevertheless critical to recovery or for activities where the costs significantly exceed the amount of assistance that FEMA or other sources can fund.
- Funds may be used as a matching requirement, share, or contribution for any other Federal program, provided all activities are in compliance with Federal Duplication of Benefit.
- Any appropriation covered by this Plan (Public Law 112-55) shall be reviewed for compliance with Duplication of Benefits guidelines at 42 U.S.C. 5155, which specifically prohibits the use of funds for activities reimbursable by, or for which funds have been made available by FEMA, the Small Business Administration (SBA), or other Federal or State sources, or private sources, including, but not limited to insurance payments. Eligible housing activities may include:
  - Single-family housing, owner-occupied and rental housing including
    - Housing-rehabilitation assistance to assist in the repair of damage caused by the storms
    - new housing construction to assist in the replacement of destroyed housing or housing that needs to be destroyed due to the severity of damage as a result of the storms
    - down-payment assistance for homebuyers to purchase replacement housing lost in the storm; replacement of private on-site water well and septic systems damaged or destroyed during the storms
      - Assistance is limited to households with incomes up to 120 percent of median-household income.
  - Multi-family housing, owner-occupied and rental housing including
    - housing rehabilitation assistance to assist in the repair of damage caused by the storms
    - new housing construction to assist in the replacement of destroyed housing or housing that needs to be destroyed due to the severity of damage as a result of the storm

- replacement of private on-site water well and septic systems damaged or destroyed during the storms
1. Allocation for Activity
    - a. At this time NYS does not anticipate allocating CDBG-DR funds to this category. However, depending on the eligible activities identified and the total costs committed to projects under the two infrastructure categories, funds may be provided to housing projects. The exact allocation will be dependent upon the total number of eligible activities identified and the total amount of funding approved for all other eligible activities.
  2. Eligible Recipients
    - a. County, City, Town, or Village Governments that have been determined to be eligible for FEMA Individual Assistance and that may provide direct assistance to eligible homeowners.
  3. Threshold Criteria
    - a. Project will address severe unmet housing need arising from the 2011 disaster declaration 4020 and/or 4031.
    - b. Project is the best alternative to resolve the need.
    - c. Property owner has requested FEMA assistance and documentation from FEMA of the status of funds.
  4. Selection Criteria
    - a. Urgency for severe unmet housing need and the threat to health, safety, or welfare.
    - b. Sufficient other local, State or Federal resources are not available or cannot be obtained in the timeframe required.
    - c. Use of personal funds (cash/savings) in place of the requested assistance would place an undue burden on low- and moderate-income households.
    - d. Likelihood that the project can be completed in a timely manner.
  7. Priority Selection:
    - a. Activities located within five priority Counties. The State has determined that the most effective use of the CDBG-DR funds will be to allocate CDBG-DR funds within the hardest hit Counties of Broome, Delaware, Greene, Schoharie, and Tioga.
    - b. Activity must meet the National Objective of benefitting a low- and moderate-income household.
    - c. Activities in highly impacted areas that are the most severely distressed.
    - d. Activities that have a large impact area, but do not necessarily meet the low- and moderate-income benefit.

## C. Economic Development

### Funds Provided for Economic Development Related Activities

- CDBG-DR funds from the HUD disaster appropriation may be used as the required match for economic development projects funded under FEMA or any other State or Federal sources.
- Assistance may also be provided for eligible projects that FEMA or other sources cannot fund, but which are nevertheless critical to recovery or for activities where the costs significantly exceed the amount of assistance that FEMA or other sources can fund.
- Funds may be used as a matching requirement, share, or contribution for any other Federal program, provided all activities are in compliance with Federal duplication of benefit.
- Any appropriation covered by this Plan (Public Law 112-55) shall be reviewed for compliance with Duplication of Benefits guidelines at 42 U.S.C. 5155, which specifically prohibits the use of funds for activities reimbursable by, or for which funds have been made available by FEMA, the Small Business Administration (SBA), or other Federal or State sources, or private sources, including, but not limited to insurance payments.
- Eligible economic development activities may include:
  - Small business assistance
    - 25 or fewer employees at the time of the event
  - Large-scale economic development projects

#### 1. Allocation for Activity

- a. At this time NYS does not anticipate allocating CDBG-DR funds to this category. However, depending on the eligible activities identified and the total costs committed to projects under the two infrastructure categories, funds may be provided to economic development projects. The exact allocation will be dependent upon the total number of eligible activities identified and the total amount of funding approved for all other eligible activities.

#### 2. Eligible Recipients

- a. County, City, Town, or Village Governments that have been determined to be eligible for FEMA Individual Assistance and that may provide direct assistance to eligible businesses.

#### 3. Threshold Criteria

- a. Eligible projects will address severe unmet economic development need arising from the 2011 disaster declaration 4020 and/or 4031.
- b. Project is the best alternative to resolve the need.

#### 4. Selection Criteria

- a. Urgency of need identified.

- b. Sufficient other local, State or Federal funds are not available or cannot be obtained in the timeframe required.
  - c. The business may need to relocate or shutdown if funds are not available.
  - d. For businesses that were forced to close as result of 2011 disaster declaration 4020 and/or 4031, the business will not be able to reopen without assistance.
  - e. Likelihood that the project can be completed in a timely manner.
5. Selection Priorities:
- a. Activities located within the five priority Counties.
  - b. Activities that meet a low- and moderate-income benefit National Objective.
  - c. Activities in highly impacted areas that are the most severely distressed.
  - d. Activities that have a large impact area, but do not necessarily meet the low- and moderate-income benefit.

**State and Local General Administration:**

State and local general administration will typically include staff, equipment, consultant, and other operating costs involved in selection, funding, assisting, and monitoring local projects, detailed quarterly reporting to HUD, documentation of adherence to all laws, and other expenses.

1. Allocation for Activity:
- a. At this time NYS does not anticipate allocating CDBG-DR funds to this category. However, the exact allocation will be dependent upon the total number of eligible activities identified and the total amount of funding approved for all other eligible activities.
  - b. Actual expenses up to 5 percent of all CDBG-DR disaster funds received by the State may be allocated to this activity. Recipients will be strongly encouraged to minimize their administrative costs so that the amount available for program activities will be maximized. To promote this goal, the amount of allowable Recipient administrative costs will be capped at a reasonable amount for each of the various activity categories (i.e. housing repair, public facilities, business assistance), but will not exceed 5 percent for any of the categories.
    - i. This may include efforts to provide technical assistance, working within existing administrative infrastructure, and expanding on already existing programs to create the greatest efficiency for minimizing administrative costs.
  - c. Recipients will be required to demonstrate compliance with CDBG-DR Administrative requirements regardless of the source of funds. If administrative costs are ultimately reimbursed, actual costs must be accurately tracked and well documented at the local level.

2. Eligible Recipients
  - a. State, County, City, Town, or Village Governments that have participated in or received funds through CDBG-DR.
3. Threshold Criteria
  - a. Administrative costs directly related to the CDBG-DR projects funded as a result of the 2011 disaster declaration 4020 and/or 4031.
4. Selection Criteria
  - a. Sufficient other local, State or Federal funds are not available and all public infrastructure, housing and economic development needs have been fully addressed to the extent possible through CDBG-DR and funds remain available.
  - b. Funds may be made available on a pro-rated basis of the total amount of CDBG-DR funds actually received.

**Needs Assessment and Rationale for Prioritization of CDBG-DR funds:**

The OCR conducted an initial needs assessment in late March, 2012 in all declared 38 Counties. In addition to this, outreach efforts and needs assessments were coordinated with other State and Federal agencies, including, but not limited to FEMA, New York State Office of Emergency Management (OEM), New York State Department of Environmental Conservation (NYS DEC), New York State Environmental Facilities Corporation (EFC), and SBA. As a result of this assessment, OCR has determined that the greatest benefit for CDBG-DR funds will be in the long-term recovery efforts of public infrastructure.

OCR maintains that while it is critical to address the severe unmet housing needs and business needs as result of the events, it is critical to the long-term recovery of the State to first address the severe unmet infrastructure needs. The public infrastructure must be restored first in order to support residential and business rehabilitation so that the residents and businesses are not burdened with the added expense of infrastructure repair while also undertaking the repair and restoration of their impacted properties.

OCR maintains that it is better suited to provide long-term housing assistance through one of the regular housing programs administered by HCR including those administered through the OCR. On May 16, 2012, the OCR issued a Notice of Funding Availability for all of its housing programs including both Federal and State funds. These funds include the Federal CDBG and HOME programs and the State NYS Access to Home Program, NYS RESTORE Program, and the NYS Affordable Housing Corporation's Affordable Home Ownership Development Program. Each of these programs has indicated that their funding priority for 2012 will include areas that suffered the greatest impacts from Hurricane Irene and Tropical Storm Lee and with the most severe unmet housing needs. This will allow those areas impacted to address all needs of a house and not just the damage caused by the storms.

### **OCR Storm Activities Responses to Date:**

On September 16, 2011, OCR contacted all Recipients with active CDBG programs who had expended 75 percent or less of individual grant awards to provide the opportunity to reprogram or redirect available CDBG funds to address an urgent need or imminent threat caused by the storms.

OCR has committed \$7,605,182 in CDBG Imminent Threat Funds for recovery efforts. This includes \$1,303,487 for economic development activities that will assist Main Street businesses that suffered economic losses and damage as a direct result of the storms. OCR has also made available \$2,037,501 in New York Main Street funds that will assist 321 storm impacted businesses with bricks and mortar recovery efforts.

In November, 2011, in coordination with the Governor's Office and NYS Department of Agriculture and Markets (Ag & Markets), the Agricultural and Community Recovery Fund (ACRF) was announced. To date, this has provided \$1,959,738 in NYS CDBG Imminent Threat funds to assist 158 storm-impacted farms in 20 different Counties. Assistance included replacement costs for feed, seed, and produce loss as a result of the initial impact, and for feed costs for the winter months.

OCR has provided \$4 million in assistance for the Capital on Farm Program, which in conjunction with Ag & Markets to assist eligible farmers with replacement costs for items such as:

- Bulk tanks and storage bins
- Hoop houses, high tunnels
- Equipment and fixtures
- Structural supports for orchards and vineyards
- Root stock for orchards and vineyards
- Certain farm product inventory including but not limited to lost or destroyed seed, fertilizer, pesticides, etc.

Applications were due in April, 2012 and it is anticipated that funds may be made available in June, 2012.

The Weatherization Assistance Program (WAP) will make up to \$4.6 million in Home Energy Assistance Program (HEAP) funds, which will be targeted to eligible households in need of housing assistance in the 38 impacted Counties.

In order to ensure that the most severe unmet financial needs are addressed with CDBG-DR funds, OCR has been coordinating its long-term recovery efforts with other State and Federal Agencies including, but not limited to, FEMA, OEM, DEC, EFC, NRCS, and US Department of Agriculture (USDA), and SBA.

Examples of these coordination efforts include the Hurricane Emergency Loan Program (HELP) through EFC, which is providing short-term loans of up to \$1 million to EFC

eligible projects. Total estimated need is \$45,493,070, with the anticipated unmet need of \$26,431,280.

**Promoting high quality durable, energy efficient and mold resistant construction methods**

All newly constructed multi-family and single-family housing must meet all locally adopted and enforced building codes, standards and ordinances. In the absence of locally adopted and enforced building codes, standards and ordinances, the requirements of the State Building Code apply. All newly constructed housing must also meet the requirements of the 2006 International Energy Efficiency Code.

All single- and multi-family housing activities involving rehabilitation must meet all locally adopted and enforced building or housing codes, standards or ordinances. In the absence of locally adopted and enforced building or housing codes, standards or ordinances, the requirements of the State Building code apply. The State Building Code under the direction of the NYS Department of State has adopted the International Building Code and related publications.

**Provision of adequate, flood resistant housing for all income groups that lived in the disaster impacted areas**

At this time NYS does not anticipate allocating CDBG-DR funds to housing. Any allocation will be dependent upon the total number of eligible activities identified and the total amount of funding approved for all other eligible activities. The State of New York may provide a portion of its CDBG-DR supplemental appropriation, for affordable single-family and multi-family housing activities, including rehabilitation, homebuyer assistance and interim mortgage assistance in the impacted areas.

New York has a broad array of programs and initiatives to serve individuals with special needs, including the elderly and frail elderly, persons with disabilities, those who are chronically homeless, in danger of becoming homeless, or are making the transition to permanent housing and independent living. Homeless shelters and transitional housing units impacted by the flood will be eligible for assistance through the housing assistance component of this plan, if these facilities were located outside the 100-year-flood plain. If they were within the 100-year-flood plain the facilities will be eligible for assistance to rebuild outside the flood plain.

The State of New York's 2011-2015 Consolidated Plan, approved by HUD in December, 2010 identifies specific strategies and actions that the State takes to address a variety of housing needs for low- and moderate income-persons, the at risk population group, as well as those with special needs (i.e., elderly, frail elderly, persons with disabilities, persons with alcohol or other drug addictions and person diagnosed with HIV/AIDS). There is a need for a wide variety of housing options ranging from independent living to supported independent living to group settings to specialized care. Beyond the bricks and mortar is the need to blend required support services with the appropriate affordable

housing options. All of these issues will need to be considered as we rebuild our communities following our recent storm damage.

All new construction and rehabilitation must keep in mind the needs of the potential occupants of the units, particularly the needs of those with special needs. Lead Centers of Government (COG) and entitlement cities may be required to work with nonprofit agencies as well as persons providing housing to special needs individuals and groups to ensure that their housing is replaced or rehabilitated in a manner appropriate to their needs.

### **Method of Allocation:**

Through coordinated outreach efforts with OCR, FEMA, and OEM, a list of 16,000 potential activities is being developed and the State intends to utilize the following methodology for State distribution to allocate dollars to within the individual Counties.

The State will operate a grants management protocol in order to deliver CDBG-DR resources and funds within the eligible Counties. The process for the State to provide funds within the Counties will be as follows:

1. The State will develop program criteria, basic guidelines and CDBG requirements for a slate of different programs including housing, infrastructure, economic recovery, and mitigation measures.
2. Counties and Units of General Local Government (UGLG) must follow a citizen participation plan as required by the OCR.
3. Counties and UGLG's may receive CDBG-DR assistance on a non-competitive entitlement basis.
4. The State will fund projects as applications are approved.
5. Unused funds in the program will be re-allocated based on demand from the Counties
6. The goal is to provide the greatest possible autonomy and flexibility to Counties and UGLG's.

### **Criteria for Eligibility:**

1. All proposed activities must address severe unmet needs resulting from the Presidentially-declared disaster areas for Hurricane Irene, No. 4020 and Tropical Storm Lee, No. 4031.
2. Eligible recipients are eligible units of local government as defined in the notice.
3. The applicant has demonstrated the capacity to undertake the activities
4. The service area of the selected activity does not overlap area(s) of other selected applicants.
5. To be considered for funding, the activity must meet identified threshold criteria.

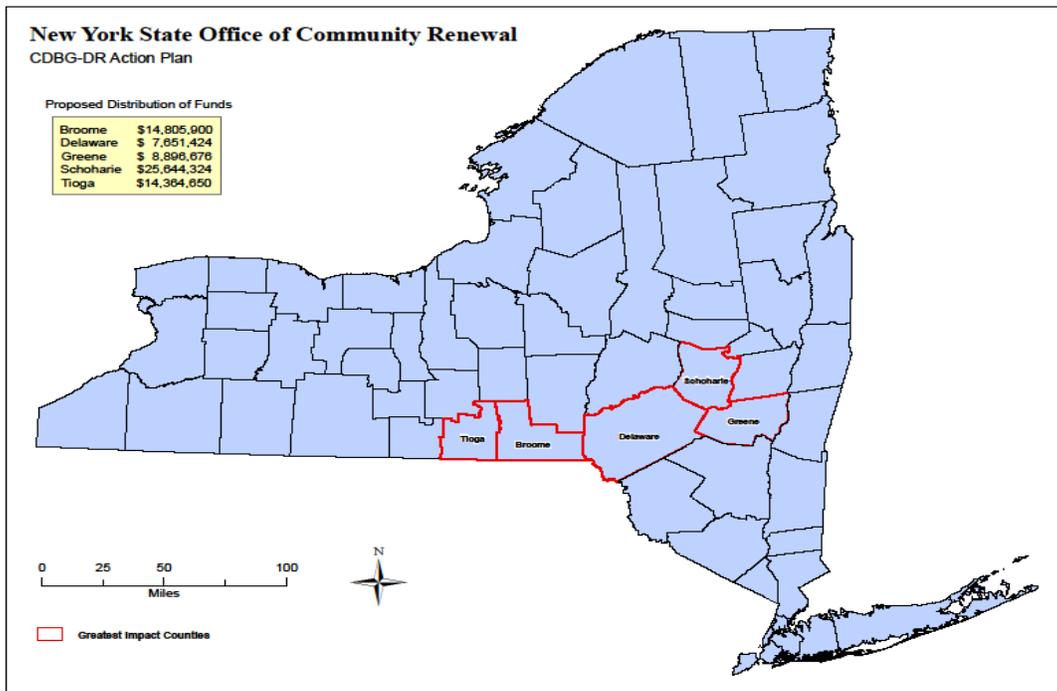
**Proposed Distribution of Funds:**

On April 18, 2012, New York announced that the State will fully cover the non-federal share of disaster response and recovery costs resulting from Hurricane Irene and Tropical Storm Lee. The State has determined that the most effective use of the CDBG-DR funds will be to allocate up to the entire CDBG-DR allocation of \$71,654,116, within the hardest hit Counties of Broome, Delaware, Greene, Schoharie, and Tioga. The basis for this determination is consistent with the Notice which requires the State to expend the funds in areas of greatest impact and severest needs.

Broome	\$14,805,900	(Excluding Town of Union)
Delaware	\$ 7,651,424	
Greene	\$ 8,896,676	
Schoharie	\$25,644,324	
Tioga	\$14,364,650	

The proposed distribution is based in part on FEMA estimates as of April 9, 2012, with total projected costs for the identified Counties of \$302,551,886 with total estimated non-federal match requirement of \$75,637,972. The exact allocation within each County will be dependent upon the total number of eligible activities identified within each County and the total amount of funding approved for those eligible activities.

The State may provide up to the 25 percent required non-federal match for FEMA available to the Counties that do not receive CDBG-DR funds.



### **Further Criteria for Eligibility:**

As outlined below, a total of thirty-eight (38) Counties in New York State received Federal Disaster Declarations as a result of Hurricane Irene, FEMA Declaration 4020 and/or Tropical Storm Lee, FEMA Declaration 4031. An eligible Recipient of CDBG-DR funds is any one of the 38 Counties or a Unit of General Local Government (UGLG), such as a City, Town or Village contained within one of the 38 Counties identified below and that received a disaster declaration. Only costs associated with a disaster declaration in a particular County may be eligible. In order to be eligible for both, a County must have received both designations.

Only those Counties designated as eligible for, Individual Assistance (IAP), can receive CDBG-DR funds for those activities. Individual assistance is money or direct assistance to individuals, families, and businesses in an area whose property has been damaged or destroyed and whose losses may not covered by Federal or state assistance, insurance or other private sources. It is meant to help with critical expenses that cannot be covered in other ways.

Only those Counties designated as eligible for Public Assistance can receive CDBG-DR funds for those activities. The Public Assistance Program (PAP) provides federal disaster grant assistance for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged property. The Public Assistance Program is meant to supplement any Federal disaster grant assistance that a municipality has or may receive. The Public Assistance, or PA Program, is based on a partnership between FEMA, State, and local officials. The Federal share of assistance should be less than 75 percent of the eligible cost of emergency efforts and restoration. The remaining funds are generally allocated by the state and are distributed amongst eligible applicants.

**Federally Designated Areas Eligible for Assistance**

	<u>County</u>	<u>IAP</u>	<u>PAP</u>	<u>IAP</u>	<u>PAP</u>
		4020 Hurricane Irene		4031 Tropical Storm Lee	
1.	Broome			X	X
2.	Greene	X	X		
3.	Schoharie	X	X	X	X
4.	Tioga			X	X
5.	Orange	X	X	X	X
6.	Albany	X	X		
7.	Bronx	X	X		
8.	Chemung			X	X
9.	Chenango			X	X
10.	Clinton	X	X		
11.	Columbia	X	X		
12.	Delaware	X	X	X	X
13.	Dutchess	X	X		
14.	Essex	X	X		
15.	Franklin		X		
16.	Fulton			X	
17.	Hamilton		X		
18.	Herkimer	X	X	X	X
19.	Kings	X	X		
20.	Montgomery	X	X		X
21.	Nassau	X	X		
22.	New York		X		
23.	Oneida			X	X
24.	Otsego	X	X	X	X
25.	Putnam	X	X		
26.	Queens	X	X		
27.	Rensselaer	X	X		
28.	Richmond	X	X		
29.	Rockland	X	X		
30.	Saratoga	X	X		
31.	Schenectady	X	X	X	X
32.	Suffolk	X	X		
33.	Sullivan	X	X		
34.	Tompkins				X
35.	Ulster	X	X	X	X
36.	Warren	X	X		
37.	Washington	X	X		
38.	Westchester	X	X		

### **Public Infrastructure Impact:**

Damage to public infrastructure includes, but is not limited to, damage to wastewater treatment facilities and collection systems, drinking water treatment plants and distribution systems, water storage tanks, storm water collection systems and bridges, roads, and other transportation networks that have been severely compromised or destroyed.

The Office of Community Renewal, in conjunction with local municipalities through the respective County governments, identified existing infrastructure needs through a needs-assessment survey, as the repair or replacement of any of the following, only if directly damaged by the storms:

1. Water/Sewer treatment facilities and other water/sewer infrastructure including storm sewer
2. Flood Control Mitigation projects (Non-state owned facility)
3. Streets/Sidewalks (Non NYS DOT, US or Federal roadways)
4. Other public infrastructure as needs identified (Non-State or Federally owned facility excluding parks)
5. Initial storm cleanup/debris removal
  - The estimated total impact on all identified public infrastructure and facilities is estimated in excess of \$487,000,000.
  - The estimated unmet need for all identified public infrastructure and facilities is estimated in excess of \$121,836,795.

### **Housing Impact:**

The impact to housing in the affected areas includes single and multi-family, and both owner occupied and rental units. Within the 38 Counties impacted by Hurricane Irene and Tropical Storm Lee, the FEMA has received 31,445 applications for housing assistance as of April 30, 2012.

The Office of Community Renewal, in conjunction with local municipalities through the respective County governments, identified existing housing needs through a needs assessment survey, as the repair or replacement of any of the following, only if directly damaged by the storms:

1. Single-family housing, owner-occupied and rental housing including
  - a. housing rehabilitation assistance
  - b. new housing construction to assist in the replacement of destroyed housing
  - c. down payment assistance for homebuyers to purchase replacement housing lost in the storm
  - d. replacement of private on-site water well and septic systems damaged or destroyed during the storms

2. Multi-family housing including:
  - a. housing rehabilitation assistance
  - b. new housing construction to assist in the replacement of destroyed housing
  - c. replacement of private on-site water well and septic systems damaged or destroyed during the storms

In determining the impact on housing, the following definitions were followed:

***Destroyed** means the unit is no longer standing or is proposed to be demolished.*

***Severely damaged** means that the unit is standing, but is currently not habitable and that the Certificate of Occupancy has been suspended, but that the unit can be made suitable for residential occupancy.*

***Moderately damaged** means that the unit is standing and is currently habitable, but still requires some type of structural repair.*

- The estimated total impact on housing, including all single-unit and multi-unit housing is \$155,935,084.
- The estimated unmet need for single unit and multi-unit housing is \$13,051,751
  - The estimated unmet housing needs presumes that insurance and other State and Federal assistance has been taken into consideration.

### **Economic Impact:**

Economic impact damage includes, but is not limited to, structural damage to businesses, loss of inventory, general loss of business due to lack of infrastructure, and in some instances, costs related to temporary relocation, where the business has made a commitment to return to the original facility.

The Office of Community Renewal, in conjunction with local municipalities through the respective County governments, identified existing economic needs through a needs-assessment survey, as the repair or replacement of any of the following, only if directly damaged by the storms:

1. Interior/exterior structural damage to businesses,
2. Damage to privately-owned infrastructure that directly affects business operations,
3. Damage to property of the business, including machinery and equipment, furniture and fixtures and inventory,

In determining the economic impact on businesses, the following definitions were followed:

*Destroyed* means the unit is no longer standing or is proposed to be demolished.

*Severely damaged* means that the unit is standing, but is currently not open for business and that the Certificate of Occupancy has been suspended, but that the structure can be made suitable for the resumption of economic activities.

*Moderately damaged* means that the unit is standing and is currently open for business, but still requires some type of structural repair, or the owner(s) are still replacing inventory and equipment.

### **Development of the Proposed Disaster Recovery Plan:**

Prior to the submittal of the initial Disaster Recovery Action Plan to the United States Department of Housing and Urban Development (HUD), public notices including a summary of the proposed plan will be made available for public review through statewide distribution providing an opportunity for citizens to comment. The proposed Action plan will be available through the Homes and Community Renewal (HCR) website at <http://www.nyshcr.org/AboutUs/Offices/CommunityRenewal/>. The State will identify a deadline for the submittal of written comments of at least seven (7) days on the proposed plan as published on the website.

### **Amendments to the Disaster Recovery Plan:**

A substantial amendment to the Action Plan may be defined as:

- Addition or deletion of any allowable activity (e.g. Housing Assistance, Business Assistance, Public Facilities/Infrastructure) described in the Plan;
- Significant change in the planned beneficiaries;
  - A change of more than 10 percent in the original proposed funding allocation between the various activity categories of housing, economic development/business assistance, and public facilities and services (unless sufficient applications are not received to meet the targeted percentages for each activity.)

Substantial amendments to the State of New York Action Plan for Disaster Recovery, if any, will be published on the OCR's website, e-mailed to affected units of general local government and will provide for a public comment period. All comments will be considered.

Localities will be allowed to amend projects through a "minor amendment" process if the proposed changes are minor and do not materially change the project (generally defined as 10 percent budget line-item change, or 10 percent change in beneficiaries). This provision should not be construed as allowing the general administrative budget to exceed the allowable limit.

Only those amendments which meet the definition of a substantial amendment are subject to the citizen participation process previously identified herein. Substantial amendments

are defined as those which eliminate or add a program category or activity, exclude a previously defined geographical area, or involve a change of more than ten (10) percent of the allocation of funds in any one program category or activity.

A summary of the proposed substantial amendment will be published on the HCR website. Copies of the proposed substantial amendment will be distributed via the website and, citizens will be informed for how copies of the proposed substantial amendment can be obtained. A copy of the proposed substantial amendment may also be reviewed in the Office of Community Renewal. The State will identify a deadline for the submittal of written comments on the proposed substantial amendment; that timeframe will allow no less than seven (7) calendar days and a maximum of 30 calendar days depending on the urgency of the substantial amendment proposed. Written comments may be submitted to the Office of Community Renewal, Hampton Plaza, 38-40 State Street, 9<sup>th</sup> Floor, Albany, NY 12207-2804. A summary of all comments received and the State's response to the comments will be attached to the substantial amendment to the Disaster Recovery Plan and submitted to HUD.

### **New York State Citizen Participation:**

The State of New York developed a specific citizen participation plan for disaster recovery. The plan includes citizen participation requirements both for the State as well as for the Counties and other entities implementing activities under this grant. The State will employ innovative methods to communicate with our citizens and to solicit their views on the proposed uses of disaster-recovery funds. These comments and the State's response to the comments will be made a part of the Action Plan and Amendments to the plan. A summary of the Disaster Recovery Action Plan and Amendments will be published on the Office of Community Renewal's website, <http://www.nyshcr.org/AboutUs/Offices/CommunityRenewal/> for review and comments.

The State will consider any comments or views received in writing on the original Citizen Participation Plan or amended Citizen Participation Plan. Comments may be submitted to the address shown below.

The Citizen Participation Plan will be made accessible to persons with disabilities upon request by telephone or written request to the:

Office of Community Renewal  
Hampton Plaza  
38-40 State Street  
Albany, New York 12207-2804  
Telephone (voice) – (518) 474-2057

In order to facilitate citizen participation requirements and to maximize citizen interaction, the State will take whatever actions are necessary to encourage participation by all citizens, especially those of low-and moderate-income, those living in slum and

blighted areas and in areas where CDBG funds are proposed to be used, non-English speaking persons, minorities, and those with disabilities.

**Citizen Participation Requirements for Local Governments Participating In the CDBG-DR Program:**

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:

1. 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;
2. 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;
3. 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;
4. provide for the review of proposed activities and program performance by potential or actual beneficiaries, and with accommodations for the disabled;
5. provides for a timely written answer to written complaints and grievances, within 15 working days where practicable;
6. 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;
7. Establishes procedures and policies to ensure non-discrimination, based on disabilities, in programs, and activities receiving Federal financial assistance as required by Section 504 of the Rehabilitation Act of 1973, as amended.

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

### **Performance Hearings:**

Prior to close out of the disaster recovery program, the Recipient may be required to hold a public hearing to obtain citizen views and to respond to questions relative to the Recipient's performance. 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.

### **Complaint Procedures:**

Each applicant/recipient 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 applicant/recipient's community development program will merit careful and prompt consideration by the applicant/recipient. 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 who will investigate and review the complaint. A written response from the Chief Elected Official 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, 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.

### **Overview of Allocations and Program Delivery:**

These funds will be used for eligible disaster related activities supporting housing rehabilitation, rebuilding, mitigation, economic revitalization, and infrastructure repair and improvements relating to the disasters of 2011. Following the direction of Public Law 112-55 and HUD, a minimum of 80 percent of the State's total allocation, (\$53,011,323), must be used to address the needs in five Counties: Broome, Greene, Schoharie, Tioga, and Orange. Remaining funds may be made available to all 38 eligible Counties and the communities within those Counties.

### **Project Area:**

The project area includes those 38 Counties, previously identified, in New York State that received Federal Disaster Declarations as a result of Hurricane Irene, FEMA Declaration 4020 and Tropical Storm Lee, FEMA Declaration 4031 as determined by HUD damage estimates based on FEMA and SBA inspection data and further refined by NYS data. Areas eligible for assistance include non-entitlement communities within those Counties and entitlement areas not already receiving direct assistance under this program.

### **Avoidance and Mitigation of Occurrences of Fraud, Abuse and Mismanagement:**

#### **1. Staffing:**

Current CDBG programs are directly managed by eight project staffers with ancillary support staff. The responsibilities of the CDBG-DR program will be absorbed into the workload of current staff and OCR does not anticipate adding additional staffing for this program.

#### **2. Timeliness:**

CDBG-DR funds do not have a statutorily defined expenditure deadline; however, NYS will require grantees to expend funds and complete projects within 24 months of the award for eligible activities to a municipality and will demonstrate progress towards the deadline in its reporting. It is anticipated the NYS will fully obligate and distribute funds within 7 years of award by HUD.

#### **3. Program Income:**

At this time, the State does not anticipate that any activity that is funded with CDBG-DR funds will result in program income. If any program income is generated, the State will follow the program income guidance provided in the regulations at 24CFR570.489(e) and 24CFR85.25. During the term of the contracts, the recipients are allowed to retain amounts up to \$25,000, as it is not considered program income. After exceeding \$25,000, any program income that may be received is deducted from funds being requested. In this way, the funds are used to increase the amount of funds available for disaster recovery activities.

Following grant closeout, Recipients will not be allowed to retain program income generated as a result of any CDBG-DR funded activity; these funds will be required to be returned to the State. Program income received subsequent to grant closeout by all other entities will be submitted to the State for reallocation to other disaster recovery activities. At the time the grant program is closed out by the State, all subsequent program income will be submitted to the State and will become program income to the State's regular CDBG program.

**4. Procurement:**

All Recipients of NYS CDBG-DR assistance must demonstrate compliance with Federal Procurement guidelines as found at 24CFR85.36.

**5. Anti-Displacement and Relocation:**

All Recipients of NYS CDBG-DR funds will be expected to minimize displacement of persons or entities and assist displaced as a result of the disasters. Efforts to conduct buyouts for destroyed and extensively damaged buildings in a flood plain may be excluded.

**6. Prevention of Duplication of Benefits:**

For all public infrastructures, housing, and economic development activities, funded in whole or part with NYS CDBG-DR Funds, OCR will work directly with the Recipient and FEMA and other applicable Federal and State agencies that may provide recovery funds to the project in order to avoid duplication of benefits.

**7. National Objective:**

All activities must meet one of the three National Objectives; address urgent need, primarily benefit LMI persons or slum and blight, as identified in the Housing and Community Development Act of 1974. At least 50 percent of the CDBG-DR funds will be used for activities that meet the National Objective of primarily benefiting LMI persons.

**8. Access to Records:**

The State will provide citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the State's CDBG-DR Action Plan and the State's use of assistance under the programs covered by the Action Plan during implementation. All requests for such information should be directed to the appropriate agency administering each program.

**9. Independent Internal Audit and Investigations:**

The State assures compliance with the requirements of A-122 and A-133 through independent internal audit and will provide results of all audits to the Federal Clearinghouse, HUD, the State and the Governor's Office.

## **10. Citizen Complaints:**

The State shall respond to complaints from citizens related to the Disaster Recovery Plan or amendments, and quarterly reports. Written complaints must be directed to the Office of Community Renewal who will further direct the complaint to the appropriate agency as necessary. The State will provide a timely, substantive written response to the complainant within 15 working days, where practicable. All Recipients of funds from NYS will be required to establish procedures for responding to citizens' complaints regarding activities carried out by the Recipient.

## **11. Regulatory Requirements:**

Recipients must comply with fair housing, nondiscrimination, labor standards, and environmental requirements applicable to the CDBG Program, as follows:

- Fair Housing: Recipients will be required to take steps to affirmatively further fair housing; and when gathering public input, planning, and implementing housing related activities, will include participation by neighborhood organizations, community development organizations, social service organizations, community housing development organizations, and members of each distinct affected community or neighborhood which might fall into the assistance category of low- and moderate income communities.
- Nondiscrimination: Each Recipient will be required to adhere to the established Federal policies which ensure that no person be excluded, denied benefits or subjected to discrimination on the basis race, color, national origin, religion, sex, familial status, and/or physical and mental handicap under any program funded in whole or in part by Federal CDBG-DR funds. Recipients will be required to document compliance with all nondiscrimination laws, executive orders, and regulations.
- Labor Standards: Each Recipient will be required to oversee compliance with Davis-Bacon Labor Standards and related laws and regulations as provided at 40 U.S.C. 276a-a7 and 29CFR Part 5. Regulations require all laborers and mechanics employed by contractors or subcontractors on CDBG funded or CDBG assisted public works construction contracts in excess of \$2,000, or residential construction or rehabilitation projects involving eight or more units are paid wages no less than those prescribed by the Department of Labor and in accordance with Davis Bacon Related Acts.
- Minority and Women's Business Enterprises (M/WBE) Recipients are required to take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Recipients shall take all of the following steps to further this goal:
  - Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
  - Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and

facilitate participation by small businesses, minority-owned firms, and women's business enterprises. Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises. Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

- Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.
  - Recipients should obtain a list of Minority and Women-owned Business Enterprises (MBE/WBE) certified firms by contacting the Empire State Development Corporation, Division of Minority and Women's Business Development, 30 South Pearl Street, Albany, NY 12245, (518) 292-5250 or utilize the website-based retrieval process at [www.nylovesmwbe.ny.gov](http://www.nylovesmwbe.ny.gov).
- Section 3: In accordance with the requirements under Section 3 of the Housing and Urban Development Act of 1968, as amended, Recipients shall ensure that employment and other economic opportunities generated by the use of NYS CDBG funds shall, to the greatest extent feasible, be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons. Assistance covered by Section 3 includes the expenditure of NYS CDBG funds for work arising in connection with housing rehabilitation, housing construction, or other public construction projects. Section 3 requirements are applicable to all procurement actions in excess of the small purchase threshold established at 24 CFR 85.36(d)(1), regardless of whether the procurement is governed by 24 CFR 85.36. Section 3 applies to the entire project or activity funded with assistance that triggers Section 3 requirements. Recipients of NYS CDBG grants that exceed \$200,000 must include a Section 3 clause in all construction contracts for \$100,000 or more.
- Environmental: Specific instructions concerning environmental requirements at 24 CFR Part 58 will be made available to all Recipients. Some projects will be exempt from the environmental assessment process, but all Recipients will be required to submit a Request for Release of Funds, and Certification. Funds will not be released for expenditure until the Departments are satisfied that the appropriate environmental review has been conducted. Recipients will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps unless it also ensures that

the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR Part 55.

- Lead Based Paint: All NYS CDBG-DR-funded housing rehabilitation and home-ownership projects must adhere to the EPA regulations at 40CFR Part 745 and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (24 CFR Part 35). These regulations must be carefully followed to ensure that exposure to lead hazards is reduced in any residential property to be rehabilitated or purchased. The regulations can be found at <http://www.hud.gov/offices/lead/enforcement/lshr.cfm>.

HUD has created an Interpretive Guidance that can be used to address many of the questions that have arisen as a result of the implementation of these new regulations. The Interpretive Guidance can be found at:

<http://www.hud.gov/utilities/intercept.cfm?/offices/lead/library/enforcement/LSHRGuidance21June04.pdf>

For questions that cannot be answered through the regulations or Interpretive Guidance, Recipients should submit their questions in writing to OCR. OCR will respond in writing.

## **12. Technical Assistance & Capacity Building:**

The State understands that many communities have limited capacity as they continue to recover from these storms. The State will provide Technical Assistance to communities as well as resources for communities to build their capacity to administer their disaster recovery CDBG portfolio. Recipients of CDBG-DR funding will be provided assistance on regulatory compliance throughout the grant process. The goal is to provide the greatest possible autonomy to Counties while ensuring compliance with CDBG regulations.

## **13. Monitoring:**

The State has a monitoring plan for the regular CDBG program and has developed monitoring plans for the oversight of the current disaster recovery funds. These plans will be revised as necessary under this new appropriation and to accommodate any waivers given to the State and other provisions cited in the legislation. Particular attention will be paid to duplication of other benefits. The State will ensure through its application process, monitoring of recipients, and oversight by the OCR, that recipients are not receiving duplication of benefits and that funds are not used for projects or activities that are reimbursable by or for which funds have been made available by FEMA, SBA, other State supported grants, etc.

To ensure that each Recipient of NYS CDBG-DR funds operates in compliance with all applicable Federal statutes and regulations and according to all deadlines and requirements, a monitoring strategy is in place that will closely review and monitor the project implementation of Recipients and provides extensive technical assistance for the prevention of non-compliance issues.

Records are maintained for the oversight and monitoring of each Recipient while also requiring each Recipient to maintain its own records to facilitate the monitoring process and for public access.

Monitoring each Recipient requires both on-site and off-site monitoring to track the progress of the projects and compliance with all program requirements. Additionally, a technical assistance visit may be required as a result of a field visit or the identification of potential non-compliance issues.

The objectives of monitoring and reporting are to determine if Recipients:

- Are carrying out their NYS CDBG-DR projects as described in their grant agreement with the NYS Housing Trust Fund Corporation (HTFC) and have obtained and organized documentation to support all actions and national objective compliance;
- Are carrying out the project in a timely manner in accordance with the time frames required by the grant agreement;
- Are charging costs to the program or project that are eligible under applicable regulations in compliance with A-122 and/or A-133;
- Are complying with all applicable procedures, policies, laws, regulations and terms of the grant agreement;
- Are conducting the program in a manner which minimizes the opportunity for fraud, waste and mismanagement; and
- Have a continuing capacity to carry out the approved program or project.

In carrying out these objectives, the local program will be reviewed by assessing the administration of the program and compliance with program and regulatory requirements.

Monitoring activities may also include, but are not limited to the following:

- Compliance with Federal Register Notice FR-5628-N-01
- An initial assessment of the capacity and needs of each Recipient or a pre-funding site visit for potential Recipients to check that conditions are as described in the funding application
- Periodic meetings or conference calls to review all contract conditions, requirements, and procedures for requesting payments
- Detailed explanation of ways to improve grant administration procedures should a grantee be experiencing difficulty

HTFC must further be satisfied with compliance in the following areas:

- Program Administration
- Environmental Compliance
- Civil Rights Compliance
- Citizen Participation
- Conflict of Interest

- Financial Management
- Procurement
- Bonding Requirements and Contract Provisions
- Davis-Bacon Labor Standards Compliance
- Minority and Women's Business Enterprise (M/WBE) Compliance
- Property Acquisition and Management
- Displacement, Relocation, and Replacement
- Policies and Procedures
- Benefit Standard

The identification of compliance problems will result in notification to the grant Recipient and the setting of a deadline for response and compliance. Status shall be further monitored to insure resolution in a timely manner and continued compliance. Where warranted, suspension of CDBG-DR grant funds may occur.

### **Technical Assistance**

The applicant must provide technical assistance to facilitate citizen participation where requested, particularly to groups representative of persons of low- to 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.

### **Comments Received:**

**Comment:** Several commenters indicated that they would like to see New York State allocate a small percentage of the overall allocation to local administration.

**Response:** NYS recognizes that under the State administered CDBG program, there is an allowance for program administration and delivery costs, and that this allowance would be beneficial given the scope of assistance being provided under the CDBG-DR allocation. However, based on the needs assessments received from impacted communities as well as an estimate of the Federal Emergency Management Agency (FEMA) projects that have been submitted for reimbursement in the affected counties, New York State determined that the State's allocation would be best utilized by providing direct project cost assistance up to the full allocation amount provided to the State. In addition, it should be noted that the State will not be reserving any administrative funds for its own administrative needs, which is an allowance under the CDBG-DR allocation, and will re-direct these funds to direct project cost assistance as well. Together, these measures will ensure that the greatest amount of funds will be provided to the maximum number of projects in the Counties most in need of assistance.

**Comment:** Two commenters indicated that they wished to extend the public comment period for an additional 7 day period.

**Response:** Although the 7-day comment period allowed for the CDBG-DR Action Plan was shorter than normally allowed under the standard CDBG regulations, HUD issued a waiver for the CDBG DR funds to allow for this shorter comment period in order to

expedite the distribution of funds. In a two-step process, New York State Homes and Community Renewal first publically announced the forthcoming availability of the Action Plan, via a Public Comment Notice and then posted the Draft Action Plan for public comment via its website, [www.nyshcr.org](http://www.nyshcr.org), for the full 7-day period from June 20-26. For both steps in the process HCR broadly distributed notice via email to interested parties in accordance with the notification processes and procedures used for NY State's Consolidated Plan and Annual Action plans for CDBG funding. At this time, New York State will continue to entertain comments on its Action Plan, but since the official comment period has ended, New York will submit its Action Plan to HUD as planned in order to ensure a prompt review and approval of the plan. The Office of Community Renewal (OCR) will respond directly to any entities submitting comments after the comment period and will determine if the comments should result in a substantial change to the CDBG-DR Action Plan. Per the HUD guidelines, the CDBG-DR Action Plan is a document that could be changed as the recovery efforts move forward and additional needs are uncovered or as the unmet needs identified in the Action Plan are met by other resources.

**Comment:** Commenters indicated that the State's plan is too limited in scope. Specifically, they felt that the full allocation should not be provided to address infrastructure and facility needs.

**Response:** New York State, through a review of needs assessments submitted by Counties in the affected areas and an analysis of the FEMA estimates of projects seeking reimbursement, determined that the best use of the CDBG-DR funds was to provide assistance in the form of the twenty-five percent (25%) non-federal match required for all FEMA-approved projects. The majority of these projects are FEMA Public Assistance (PA) projects, or infrastructure projects. The combined total of FEMA estimates for these projects among the hardest hit counties of Broome, Delaware, Greene, Schoharie and Tioga exceeded the CDBG-DR allocation to NYS, further reinforcing the decision to use these funds in this way. The determination to use the funds in this way was made in part by the fact that the cost of the non-federal match for FEMA projects would have placed an undue hardship on cash-strapped municipalities in the hardest hit areas, who in turn would pass these costs on to their residents, who themselves are continuing to recovery and rebuild from the storms. The State has not overlooked need beyond infrastructure and since the storms; NYS has made millions of dollars available to farmers, business owners, municipalities and others to assist in their recovery and rebuilding efforts through programs that are still awarding funds across the State. In addition, for its upcoming 2012 application round for CDBG, HOME, RESTORE, AHC AHODP and Access to Home, where more than \$40 million is being made available, HCR's Office of Community Renewal (OCR) will be giving preference to applications for housing assistance in those areas impacted by the storms. This will be yet another form of assistance helping to address the unmet housing needs in the affected counties.

**OCR Contact Information**  
[DisasterRecovery@nyshcr.org](mailto:DisasterRecovery@nyshcr.org)