

STATE OF NEW YORK
COMMUNITY DEVELOPMENT BLOCK GRANT
DISASTER RECOVERY (CDBG-DR) PROGRAM
SUBSTANTIAL AMENDMENT NO. 35

Approved by HUD August 1st, 2024

Additions to: New York State Action Plan Incorporating Amendments 8-33

In sections: Updated Impact and Unmet Needs Assessment, NY Rising Housing Recovery Programs, NY Rising Infrastructure Program

Summary:

Action Plan Amendment 35 (APA 35) will address the following items:

- A. *NY Rising Buyouts and Acquisitions*: Updates to the NY Rising Buyout and Acquisition Program to reflect final program design for closeout.
- B. *Suffolk County Coastal Resiliency and Water Quality Improvement Initiative Covered Project*: Updates to reflect updated total project cost, construction implementation approach, including projects advancing to construction and use of CDBG-DR funds for construction; and clarification of eligible activities.

Changes are indicated in **red** text.

A. NY Rising Buyout and Acquisition Program

Description of Changes: Updates to the NY Rising Buyout and Acquisition Program to reflect final program design for closeout.

From Page 16 of the New York State Action Plan:

How New York State Has Addressed Unmet Needs to Date

The State's efforts to assist storm-affected homeowners have focused on operating a Housing Recovery Program to facilitate home repairs, rehabilitation, mitigation, and elevation for the owners of single-family homes. Additional programs are available for the owners of multi-family rental properties, and for individual owners of co-ops and condos, as well as owners' associations. The NY Rising Buyout and Acquisition Program was also established for homeowners whose homes were substantially damaged or destroyed during Hurricane Irene, Tropical Storm Lee, and/or Superstorm Sandy. All programs are operated by GOSR.

From Page 18 of the New York State Action Plan:

The NY Rising Acquisition Program purchases storm ~~substantially~~-damaged homes within the 100- and 500- year floodplains from interested homeowners. Aiming to spur ~~new construction~~ redevelopment in a more ~~robust-resilient~~ and energy-efficient manner, these parcels are then auctioned, or otherwise dispositioned for more resilient redevelopment.

From Page 65 of the New York State Action Plan:

NY Rising Buyout and Acquisition Program

Activity Type: Voluntary Buyout or Acquisition of One- and Two- unit homes

National Objective: Low- and Moderate- Income, Slum and Blight or Urgent Need

Eligible Activity: Sec. 105 (a) (1) (2) (4) (7) (11) (24), 42 U.S.C. 5305(a) (1) (2) (4) (7) (11) (24) FR-5696-N-01 (VI) (B) (31)

Eligible Applicants: Eligible applicants to the Buyout component are owners of one-family or two- family homes and/or vacant land located in an Enhanced Buyout Area and Floodways who owned the property at the time of Hurricane Irene, Tropical Storm Lee, and/or Superstorm Sandy (the "Storms"). Applicants for the Buyout component may also be homeowners in the floodway with or without substantial damage. Applicants who purchase the storm damaged property after the time of Hurricane Irene, Tropical Storm Lee, and/or Superstorm Sandy are eligible for the Buyout awards without any added incentives; or the price at which the applicant purchased the property, whichever is less. Eligible applicants to the Acquisition component are owners of substantially damaged one-family or two-family homes that were damaged by the Storms, and/or vacant land that is contiguous to an eligible property with a structure and under the same owner as that property located within the 500-year floodplain in a disaster-declared county who owned the property at the time of one of the above storms. The tie-back requirement is documented for Acquisition applicants through documentation of damages from one of the above storms.

Program Description: The NY Rising Buyout and Acquisition Program includes State purchase of storm-damaged properties in the Enhanced Buyout Areas and floodways (the “Buyout Component”) and the acquisition of substantially-storm-damaged properties within the 500-year floodplain but which are outside of an Enhanced Buyout Area or floodway (the “Acquisition Component”).

The Buyout Component includes the purchase of eligible storm-damaged properties in Enhanced Buyout Areas or in the floodway. Enhanced Buyout Areas are certain high risk areas in the floodplain determined to be among the most susceptible to future disasters. Floodways are the portions of the floodplain where flood hazard is generally the greatest. Damaged properties in the floodway are not suitable for rehabilitation because these properties have no other recovery options other than buyout since federal regulations prohibit funding any rehabilitation or reconstruction of a home in a floodway. As of APA10, all properties in the floodway will be purchased through the Buyout Component since they are not suitable for rehabilitation and floodways are at the greatest risk of flood hazard. Properties purchased through the Buyout Component will be restricted in perpetuity for uses compatible with open space, recreation, or wetlands management practices. Additionally, storm-damaged properties in the floodway may participate in the Buyout component and not be in an enhanced buyout area and not be required to be substantially damaged.

The Acquisition Component includes the purchase of substantially-storm-damaged homes within the 500-year floodplain, but which are outside of an Enhanced Buyout Area or floodway, from willing sellers. Properties purchased through the Acquisition Component are eligible for redevelopment in the future in a resilient manner to protect future occupants of this property.

From Page 67 of the New York State Action Plan:

Acquisition Component

The Acquisition Component includes the purchase of substantially-storm-damaged homes within the 500-year floodplain, but which are outside of an Enhanced Buyout Area or floodway, from willing sellers. The State purchases properties from owners who, due to their own personal circumstances, are either unwilling or unable to withstand prolonged reconstruction and stringent elevation requirements, and thus desire to sell their properties to the State. The State ensures that all storm-damaged properties purchased through Acquisition are redeveloped in a code-compliant, resilient manner. The tie-back requirement is documented for Acquisition applicants through documentation of damages from Hurricane Irene, Tropical Storm Lee, and/or Superstorm Sandy.

B. Suffolk County Coastal Resiliency and Water Quality Improvement Initiative Covered Project

Description of Changes: Updates to reflect the current implementation approach, estimated total project cost, projects advancing to construction and projects receiving CDBG-DR funds for construction implementation under the Suffolk County Coastal Resiliency and Water Quality Improvement Initiative covered project; and clarification of the eligible activities under this covered project.

The State is removing the Connetquot River Watershed project from the covered project, as this project was rejected by voters in a public referendum and will consequently not proceed to construction implementation. The State is adding the Oakdale Watershed project to the covered project. This project will address the overall objectives of the covered project of improving public health and water quality issues exacerbated by the impact of Superstorm Sandy by extending sewers along a key watershed along the Great South Bay in Suffolk County. CDBG-DR funds were used to complete the required Environmental Review for this project, and construction will proceed with non-CDBG-DR funds.

This APA reflects the current construction implementation approach developed in coordination with the Suffolk County Coastal Resiliency and Water Quality Improvement Initiative stakeholders and funders as the various projects under this Initiative advance through planning and design to implementation. CDBG-DR funds provided by GOSR will fund construction implementation of the Forge River and Carlls River watershed projects, while non-CDBG-DR funds will be used for construction implementation of the Patchogue and Oakdale watershed projects.

Eligible planning costs, including environmental reviews, data gathering, and preliminary strategy discussions were previously authorized as part of the Suffolk County Coastal Resiliency and Water Quality Improvement Initiative covered project. Given the evolution of the construction implementation approach, the State is clarifying that the eligible activities under the covered project include Planning-only activities in support of the watershed projects which are not moving forward or will be constructed with non-CDBG-DR funds.

In addition, GOSR has confirmed CDBG-DR funds will be utilized as non-federal share match for the FEMA HMGP funds utilized for the Suffolk County Coastal Resiliency and Water Quality Improvement Initiative and is therefore adding non-federal share match as an eligible activity for this covered project.

From Page 47 of the New York State Action Plan:

Wastewater Systems In Suffolk County, over 70% of the wastewater is managed through on-site disposal systems. Many homes in the County have on-site systems which are located only a short depth to groundwater, and are compromised during flood events. This allows effluent to enter groundwater and surface waters. Even under normal conditions, on-site septic systems do not treat nitrogen effectively, leading large quantities of nitrogen-enriched effluent to flow into the County's groundwater, which then travels to surface waters or infiltrates drinking water aquifers. In January 2014, Suffolk County released an executive summary of its Comprehensive Water Resources Management Plan Report. The State has identified an estimated project cost of \$~~74.808.9~~ million for the Suffolk County Coastal Resiliency and Water Quality Improvement Initiative which proposes to extend sewers in Suffolk County in four areas, advanced by the County. The State initially identified up to \$300 million in CDBG-DR funding and \$83 million to be financed through low-interest loans from the Clean Water State Revolving Fund administered by the New York State Environmental Facilities Corporation (EFC) and the New York State Department of Environmental Conservation (NYSDEC). Subsequently, the amount of CDBG-DR funding for the Initiative changed to account for new sources including using FEMA Hazard Mitigation Grant Program (HMGP), New York State Empire State Development (ESD), the American Rescue Plan Act (ARPA), the Water Infrastructure Improvement Act (WIIA), New York State Environmental Protection Fund (EPF), Suffolk County funds, and New York State Environmental Facilities Corporation (EFC) Clean Water State Revolving Funds. With these additional resources identified, the total amount of CDBG-DR funds associated with the Initiative is now \$66,449,628 and it remains a covered project.

From Page 87 of the New York State Action Plan:

Covered Infrastructure Project

Activity Name: Suffolk County Coastal Resiliency and Water Quality Improvement Initiative

Eligible Activity Type: Planning, Essential public services, acquisition, construction/reconstruction of water/sewer lines or systems, rehabilitation/reconstruction of residential structures, and construction/rehabilitation/reconstruction of a public improvement, and Non-federal share

National Objective: Low- and Moderate- Income or Urgent Need

Eligible Activity: 105(a)(1)(2)(4)(8) (9)(12) (17); 42 U.S.C. 5305(a)(1)(2)(4)(8) (9)(12) (17)

Eligible Applicants: Both low- and moderate-income households and households in the project area

Program Description: The Suffolk County Coastal Resiliency and Water Quality Improvement Initiative is a resiliency project that aims to address public health and water quality while benefiting the communities. Suffolk County has a federally-designated sole source aquifer; it derives its drinking water from the ground. The severe flooding in this region during Superstorm Sandy raised the groundwater elevation above the top of the septic systems and cesspools, resulting in the mix of sanitary wastewater and groundwater, causing public health and water quality hazards. The impacts of Superstorm Sandy exacerbated the already rising nitrogen pollution from failing septic and cesspools along river corridors and into the Great South Bay. Nitrogen pollution has caused a water quality crisis, and the erosion of coastal wetlands, which have been scientifically proven to reduce vulnerability from storm surge.

GOSR, in coordination with DHSES, NYSDEC and the County, proposes to extend sewers to communities along four priority watersheds along the Great South Bay. The project combines \$66,449,628 in CDBG-DR funding with funding from other sources including FEMA HMGP, ESD, the ARPA, WIIA, EPF, Suffolk County funds and the EFC Clean Water State Revolving Fund and has a total project cost of ~~\$408,868,488~~ \$474,778,488. The initiative will help Suffolk County recover from Superstorm Sandy by installing sewer and wastewater infrastructure in areas where septic systems were compromised during Superstorm Sandy. These interventions will prevent future septic system flooding, sewage backups and groundwater pollution, and will reduce nitrogen pollution that adversely affects natural coastal protection systems.

In Suffolk County, over 70% of the wastewater is managed through on-site disposal systems such as the cesspools and septic tanks, for wastewater treatment. Many of these on-site systems are located only a short depth to groundwater, and are compromised during flood events. This allows effluent to enter groundwater and surface waters. Additionally, even under normal conditions, on-site septic systems do not treat nitrogen effectively, leading large quantities of nitrogen-enriched effluent to flow into the County's groundwater, which then travels to surface waters or infiltrates drinking water aquifers.^{xix}

The extension of the sewer system is a crucial factor in rebuilding and recovery for these communities. Properties along all four watersheds experienced flooding during Sandy, and project boundaries have been determined based on area characteristics including inundation history, depth to groundwater, and travel time to surface waters. The design phase of the Initiative will further refine parcel locations based on geography and other factors. As sewer extensions are created, homes will be connected to the new sewer main by means of a sewer lateral.

For many homeowners, paying for the sewer lateral is not financially feasible in light of the financial strain of rebuilding their homes. Providing assistance with installations of sewer laterals aids both individual household and broader community recovery. While funds will be used to assist both low- and moderate-income households and non-low- and moderate- income households, no CDBG-DR funds will be used for this portion of the project. Once the sewer lateral is installed, the homeowner will be responsible for maintaining and repairing it.

This work will be performed on private property; the activity will be carried out as a housing rehabilitation activity¹. The program will determine the location for the laterals at each residence based on engineering design requirements and cost considerations.

Geographic Eligibility: The Great South Bay sits between Fire Island (a barrier island) and the mainland of Long Island. These areas were selected because of the combination of substandard septic systems, dense

populations, a short depth to groundwater, and short travel times for nitrogen-enriched groundwater to enter surface waters.

The project area includes four watersheds:

1. *Forge River Watershed centered on Mastic*: This project will address impacts from Superstorm Sandy and reduce extensive nitrogen pollution to the Forge River and Great South Bay. The proposed project will connect parcels in the area to a new sewer collection system that will flow to a new wastewater treatment plant (that would include advanced nitrogen treatment) located on municipal property. Additionally, groundwater levels of nitrogen in this area are already at the maximum contaminant level for drinking water, and nitrogen levels are projected to continue to increase without an upgrade to the wastewater infrastructure. The community would be left vulnerable and at risk of contaminated drinking water.

2. *Carlls River Watershed centered on North Babylon and West Babylon*: This project will address storm impacts and reduce nitrogen and pathogen pollution in the Carlls River and Great South Bay. Currently over 60% of the nitrogen load from the Carlls River is from septic systems. The proposed project will connect parcels within the current Sewer District No. 3—Southwest Sewer District, and expand the sewer district to include a number of parcels in the North Babylon and West Babylon areas.

~~3. *Connetquot River Watershed centered on Great River*: After Superstorm Sandy, wastewater flooding caused surface water impairments, resulting in 15 days of emergency closures of shellfish beds by NYSDEC. Actual water quality impacts persisted much longer. This project will address nitrogen pollution and pathogens in Connetquot River, Nicoll Bay, and Great South Bay. The proposed project will connect parcels in the Great River area to the Sewer District No. 3—Southwest Sewer District. The Connetquot River contributes 15% of the total nitrogen in the Great South Bay; it is the single largest source of nitrogen. 63% of the nitrogen load from the Connetquot River is from septic systems.~~

~~3. *Patchogue River Watershed centered on Patchogue*: As a result of significant flooding from Sandy, the onsite sanitary disposal systems in the watershed contributed to poor water quality and elevated nitrogen levels that exceed limitations set by the Suffolk County Department of Health Services. This project will address storm impacts and nitrogen and pathogen pollution in Patchogue River and Great South Bay. The proposed project will connect parcels to the Patchogue sewer system.~~

~~4. *The Oakdale Watershed*: The Oakdale Watershed borders the east side of the Great River: After Superstorm Sandy, wastewater flooding caused surface water impairments, resulting in 15 days of emergency closures of shellfish beds by NYSDEC. Actual water quality impacts persisted much longer. This project will address nitrogen pollution and pathogens in Connetquot River, Nicoll Bay, and Great South Bay. The proposed project will connect parcels in the Oakdale area to the Sewer District No. 3—Southwest Sewer District. The Connetquot River contributes 15% of the total nitrogen in the Great South Bay; it is the single largest source of nitrogen. 63% of the nitrogen load from the Connetquot River is from septic systems.~~

GOSR funds will fund the construction implementation of the Forge River and Carlls River watershed projects, with each meeting an eligible activity and National Objective independently. The Oakdale and Patchogue watershed projects will proceed to construction implementation with non-CDBG-DR funds.

As discussed below, GOSR funds also supported eligible planning costs for the Covered Project, including environmental reviews, data gathering, and preliminary strategy discussions.

From Page 91 of the New York State Action Plan:

As outlined in the State's Infrastructure Program policy and procedure manual, this project will be subject to all the monitoring and compliance requirements that GOSR currently has in place. GOSR staff and

consultants work directly with Suffolk County to ensure that the project remains compliant throughout the life of the project, from concept stage to planning, construction, and closeout. The project follows the process that GOSR has developed for all infrastructure projects, whereby each project is developed and vetted to ensure that it meets all CDBG-DR requirements. The County prepared an application for planning work under the Infrastructure program where it determined that data gathering, identification of existing relevant reports and studies, preliminary strategy discussions, and communication among the involved entities was necessary to further develop a project description and implementation strategy. After this initial application was accepted, the planning work was completed. The County, proceeded to work with the State and its CDBG-DR grant consultants to develop further applications for construction scope for review and approval by GOSR. These applications also encompassed a planning component whereby environmental reviews were completed for each watershed considered for construction implementation. The watersheds for which GOSR is applying CDBG-DR funds to advance construction are Forge River and Carlls River.

In addition to moving through the application approval process, GOSR requires that the County take part in Technical Assistance sessions that address financial record keeping, labor and other cross cutting practices (Section 3, Minority and Women-owned Business Enterprise (MWBE)). GOSR reviews bid documents and takes part in pre-bid and bid-conference meetings. Throughout the project, the monitoring process will continue with items including but not limited to filing of monthly and quarterly reports, wage reports for Davis Bacon compliance and on site job interviews will take place. Both GOSR Infrastructure staff as well as the GOSR Monitoring and Compliance staff will then continue to work with Suffolk County to ensure that the project complies with CDBG-DR requirements, including those related to monitoring the long term efficacy and sustainability of the project.

Public Comments

The Office of Resilient Homes and Communities (RHC) posted Action Plan Amendment 35 (APA35) for public comment on June 5, 2024. At that time, RHC began accepting comments via webform, email and mail. The comment period officially ended at 5 p.m. July 4, 2024.

The public comment period for APA 35 and instructions for submitting public comments were announced via a notice posted prominently on RHC's main webpage at <https://hcr.ny.gov/resilient-homes-and-communities>. This webpage includes a translation function in over a dozen languages to support meaningful access by Limited English Proficiency (LEP) persons in their preferred language. The RHC website is also subject to accessibility standards to support web content that is more accessible to people with disabilities.

Translations of APA 35 were available in Simplified Chinese, Russian, and Spanish, the three most used languages in the PL 113-2 storms affected areas of New York State based on an analysis of Census data for households with members five years or older with limited English proficiency.

RHC received 8 public comments in total from 5 commenters via webform submissions. Commenters may have submitted more than one comment as part of their submission. Comments are summarized and organized by topic, and RHC's responses are set out below.

Comment: 5 commenters stated that the State's recovery programs and individual cases should be reopened, citing ongoing recovery needs, lack of awards for people with recovery needs, and cases where applicants initially received an award letter but ultimately did not receive program funds. 3 commenters referenced the challenges faced by applicants with medical needs, including stating that some of these applicants were locked out of funding due to changing rules, or lack of appropriate handling or due process. One commenter stated the NY Rising Program has caused financial damage to applicants, and one commenter stated these issues led to negative health results. One commenter stated these cases should be

reexamined by different people than those who decided cases originally. One commenter stated the purpose of the State's programs was to distribute FEMA funds and that some of these funds are unused.

Response: Following the end of the application window for the NY Rising Housing program in April 2014, the Program continued working with applicants throughout their recovery process to ensure awards were sufficient to address applicant needs, applicant issues were resolved and eligibility of costs and awards were appropriately documented. In that time period, the Program provided recovery assistance to over 12,000 New Yorkers. Following the application period, the Program continued working with applicants to clarify eligibility and award determinations, consider applicant appeals of these determinations, and waive program requirements when applicants demonstrated hardship. The State also created the NY Rising Construction Program to assist applicants who were unable to complete their recovery on their own. Information and policies for these options were available to the public on the State's website. The final deadline for applicants to submit new appeals or hardship requests was September 30, 2023, almost a decade after the end of the application period.

There are multiple reasons why an applicant's award, including amounts included in award letters, can be adjusted over time. These adjustments can result in cases where an initial award is determined to be ineligible and is therefore not paid out to the applicant, or where funds paid to applicants are determined to be ineligible and must be repaid by the applicant. The reasons relate to CDBG-DR rules and requirements and/or Program policies, including cases where the Program determines its awards duplicate funds provided for the same purpose by other sources (known as a duplication of benefits), and cases where applicants fail to complete projects and/or provide documentation required for closeout (i.e. evidence of flood insurance, certificates of occupancy, evidence of compliance with applicable building codes and permits, etc.) within the program's deadlines. In such cases, applicants were provided with explanations regarding award adjustments, and as discussed above, had the opportunity to request clarification of program determinations, appeal the determinations and submit requests for exemptions from program requirements due to hardship.

Finally, the State is clarifying that its recovery programs and applicant awards are not funded through FEMA, but rather, by an allocation of Community Development Block Grant- Disaster Recovery (CDBG-DR) funds from the US Department of Housing and Urban Development (HUD), from funds appropriated for the CDBG-DR program by Congress in the wake of Hurricane Sandy. While FEMA and CDBG-DR funding are both focused on disaster recovery, they have separate appropriations, different rules and requirements, and different roles in the federal disaster recovery framework; with FEMA funds generally funding needs in the immediate aftermath of a disaster and CDBG-DR addressing longer term recovery needs and remaining needs not met through other disaster recovery programs, with a focus on low and moderate income individuals and communities.

Comment: One commenter submitted 2 comments stating that they had not received an award that was promised by a grant award letter and that they had not received a response to their appeal, and inquired about the reasons for this.

Response: As discussed above, applicants were provided with opportunities to clarify program eligibility and award determinations, as well as to appeal these determinations or request hardship exceptions. Although the deadline for new applicant appeals has passed, the Program continues to respond to applicant inquiries and provide explanations for Program determinations.

As discussed above, there are multiple reasons, based on federal and program requirements, why an applicant's award, including amounts included in award letters, can later be determined to be ineligible and therefore not paid out to the applicant.

Comment: One commenter submitted two comments regarding the public comment process. The commenter inquired about where they could view all public comments, and why they are not sent to directly to all homeowners who applied to the State's programs. The commenter stated these applicants should be allowed to explain how the program did not work or provide awards after issuing award letters.

Response: The State's policies and procedures for substantial Action Plan Amendment public comment periods are based on HUD requirements established by the March 5th, 2013 Federal Register Notice (FRN) and subsequent FRNs. HUD requires grantees to establish criteria regarding which changes to a grantee's Action Plan are considered substantial, and to provide the public with a reasonable opportunity and timeframe to examine any proposed substantial amendments and submit comments. In alignment with HUD requirements, the State summarizes the comments received and provides responses when submitting the Action Plan Amendment (APA) to HUD following the required public comment period. Individual comments received are not posted publicly, nor are they provided to all program applicants. The State posts the version of the substantial APA submitted to HUD for approval on its website at <https://hcr.ny.gov/resilient-homes-communities-action-plans-amendments>, and replaces it with the HUD approved version of the APA once approval is received. Interested parties can review the State's summary of comments received, as well as the State's responses to these comments, at the bottom of relevant APAs posted to the webpage linked above.

In alignment with HUD requirements, the State provides reasonable notice to the public regarding proposed substantial APAs via an announcement on the main RHC webpage at <https://hcr.ny.gov/resilient-homes-and-communities>, as well as multiple methods and a 30 day timeframe to submit comments. The purpose of this public comment period is to afford the public an opportunity to express their views on the proposed changes to the State's Action Plan, not to solicit general feedback on program performance or field inquiries into specific applicants' awards. Applicant enquiries about specific program areas should be sent to GOSR-HousingCaseManagement@hcr.ny.gov.