



# New York City Build It Back Single-Family Policy Manual

Version 2.1

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# 1 Overview

The New York City Build It Back Policy Manual for 1-4 Unit Properties (“Manual”) establishes policies for New York City’s “Build It Back” Community Development Block Grant (“CDBG”) funded disaster recovery (“DR”) program (known collectively as the “Program”) which provides Hurricane Sandy recovery assistance to the owners of one to four-unit residential properties impacted by Hurricane Sandy. The Program provides several types of assistance, including Repair, Reconstruction, Reimbursement, Relocation, Buyout and Acquisition assistance. The Program is designed to assist both owner-occupied and tenant-occupied properties within New York City.

## 1.1 Scope

This Manual constitutes the primary governance for the implementation of the one to four-unit Repair, Reconstruction & Reimbursement Program options. New York City maintains separate policy manuals governing New York City’s Acquisition, Relocation, Buyout and Resettlement Program; its Multi-Family Construction Program and the Uniform Relocation Act. New York State maintains separate policy manuals for the New York State Acquisition for Redevelopment and New York State Buyout programs.

The purpose of this Manual is to provide information regarding the implementation of the Build it Back Program to all employees, consultants and contractors working on the Program. The agencies and personnel that are responsible for implementing the procedures announced in this manual must maintain Standard Operating Procedures (SOPs) that provide detailed information on how to do so.

The contents of this Manual reflect the Program’s procedures at the time of its issuance and may not reflect the procedures or guidance in place at the time that decisions were made regarding the processing of individual applications. Accordingly, the policies contained within this Manual may be supplemented or modified to address changes to rules, regulations or the changing unmet recovery needs of the applicant population. From time to time, the Program will issue policy revisions, bulletins, memoranda, design guidance or other written instructions which may modify the contents of this Manual. In the event of a conflict with this Manual, such guidance may serve to revise or modify the contents of this Manual.

The purpose of the use of mandatory language in this Manual and other such guidance is to establish baseline protocols for implementing the requirements of the laws that govern the Program. Notwithstanding such language, the Program’s Director and/or the Director’s designees retain final discretion to issue case-specific determinations regarding whether and how the policies in this Manual and elsewhere should be implemented in order to further the mandates of New York City’s CDBG-DR Action Plan (“Action Plan”) and all other applicable laws. Any such determinations deviating from the procedures established in this Manual or in other guidance must be made in writing and preserved in the Program’s content management system (“CMS”) of record.

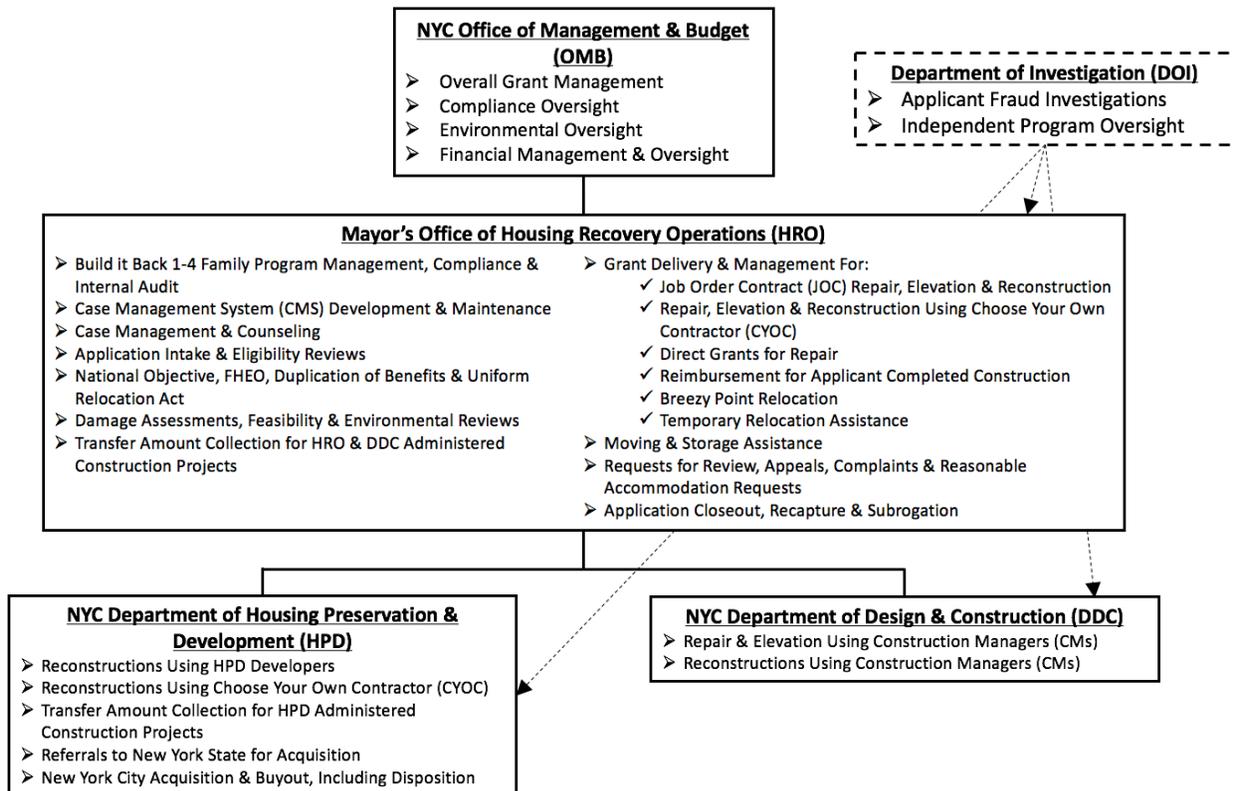
## 1.2 The Build it Back Implementation Team

In order to deliver the Build it Back Program, New York City (“NYC” or “the City”) has leveraged the City’s existing capabilities through partnerships with various City agencies. The NYC Office

of Management and Budget (“OMB”) is the grantee that is ultimately responsible for all Sandy CDBG Disaster Recovery (“CDBG-DR”) grant funds received from the Department of Housing and Urban Development (“HUD”). The NYC Mayor’s Office of Housing Recovery Operations (“HRO”), which is a Mayoral office, is responsible for overall implementation of the 1-4 Unit Build it Back Program and delivery of some of the benefits provided to eligible applicants. The NYC Department of Housing Preservation of Development (“HPD”) and the NYC Department of Design and Construction (“DDC”) is responsible for delivering other types of benefits to eligible applicants. HRO also works with partner agencies and entities to procure various services and goods that are necessary to implement the Program.

The following diagram provides an overview of the structure of the Program’s implementation team and the relative areas of responsibility of each agency that is primarily responsible for implementing the Build it Back Program.

**Table 1 – Single Family Program Areas of Responsibility**



## **2 Outreach and Registration**

### **2.1 Affirmatively Furthering Fair Housing**

No racial or ethnic group comprises more than half the total population of NYC. The Program affirmatively furthers fair housing through outreach that facilitates fair housing choice by all applicants. Multilingual outreach materials and interpreters are available to all New Yorkers, including those who have limited English proficiency to facilitate meaningful access to housing information and services. Support is also provided for those with special needs (e.g., hearing or mobility impaired). Program outreach includes channels that allow homeowners currently residing outside of NYC access to information about the assistance being offered, eligibility requirements and how to apply.

### **2.2 General Outreach**

The Program conducts general outreach to obtain as many applications as possible with the goal of capturing the vast majority of applicants who still have unmet housing needs brought about by Hurricane Sandy. General outreach is performed via public meetings, media and other avenues in multiple languages and formats.

### **2.3 Targeted Outreach**

The Program conducts targeted outreach to reach populations and communities that are likely to be underserved. The goal of targeted outreach is to reach applicants who have challenges which may prevent them from being aware of or applying for the Program. Targeted outreach focuses upon minority communities, communities with concentrated low to moderate-income populations and areas which were most impacted by the storm. The Program also attempts to locate homeowners who were displaced by the storm due to the destruction of their homes.

### **2.4 Demographic Data**

The Program will make reasonable efforts to collect relevant demographic data for HUD reporting throughout the application process via electronic means, mailings and/or at in-person meetings. The Program may collect data via income reporting forms, pre-grant agreement data collection forms or post-assistance data collection forms. Applicants will be provided the option to decline to answer requests for demographic information.

### **2.5 Registration**

To be considered for assistance under the Program, NYC property owners, tenant-occupants and co-op/condo board representatives must first register their Hurricane Sandy-damaged home. NYC residents may register for the Program through the City's 311 system either online or by calling 311. 311 is a service that is available to the public and serves to disseminate government information and non-emergency services.

The 311 system provides information online in over 50 languages and over 170 languages through its telephone services. For applicants calling 311 to register, the 311 call center representatives are available to provide basic information about Program eligibility requirements and assist callers in completing their registration forms. Registration closed on October 31, 2013. The Program may also register applications outside of the 311 system if such registrations are

required in order to serve other eligible Program applicants. Such registrations may occur at any time during the life of the Program.

## **2.6 Application Registration**

For each application, the Program must identify the proper applicant(s) and it must determine the total number of residential units that are eligible to be included on the application.

### **2.6.1 Determining the Proper Applicant(s)**

An “owner” may be a person, multiple persons or an entity such as a trust, Limited Liability Company (LLC), corporation or other legal entity. The owner(s) must be listed as the applicant(s) in the application.

### **2.6.2 Application Procedures**

Generally, each “property” must have its own application and each residential unit that is located on the property must be included on the application. New York City has a wide variety of different property ownership structures. Accordingly, “property” as used in this Policy Manual may be a single residential unit and the land upon which that unit is located, it may be multiple residential units and the land upon which those units are located or it may be an individual residential unit that does not include the land where the unit is located. The following examples may be used to determine what must be included on an application for assistance and what defines a “property” for processing and reporting purposes:

#### *2.6.2.1 Standard Ownership*

In a “standard” ownership structure, the applicant owns both the land and the residential unit(s) located upon that land. The “land” is defined as a parcel of land that has a unique Tax Parcel Identification Number (“TPID”) or Borough, Block and Lot Number (“BBL”). Land may also be defined by a deed if the TPID or BBL number is incorrect. In a standard ownership structure, the property includes the land and each residential structure located on the land as defined above. Accordingly, each property must have its own application and each residential unit that is located on the property must be listed on the application.

#### *2.6.2.2 Stand-Alone Cooperative Unit Ownership*

In a “stand-alone cooperative unit” ownership structure, the applicant owns a residential unit that is located upon land owned by a cooperative, but the applicant has certain non-ownership rights to use the land upon which their unit is located. Applicants that own stand-alone cooperative units may purchase flood insurance coverage and are eligible to receive benefits from FEMA and the Small Business Administration and are otherwise indistinguishable from properties owned under a standard ownership structure. Residential units located on land owned by the Breezy Point Cooperative, Inc., the Edgewater Park Owners Cooperative and similar cooperatives are stand-alone cooperative units. In a stand-alone cooperative unit ownership structure, the property includes only the residential unit. Accordingly, each property must have its own application that includes only the unit applying for assistance. Typically, such properties include only a single unit. However, if the structure contains more one unit, each unit must be listed separately on the application.

### 2.6.2.3 *Cooperative or Condominium Unit Ownership*

In a “cooperative or condominium unit” ownership structure, the applicant owns one residential unit that is located upon land owned by a cooperative or condominium association. Such a unit may be attached to another unit, it may be located in a building owned by a cooperative or condominium association or it may be a fully detached unit. In a cooperative or condominium unit ownership structure, the property includes only the residential unit. Accordingly, each property must have its own application that includes only the unit applying for assistance.

## 2.6.3 **Units**

### 2.6.3.1 *Unit Eligibility*

The Program defines a “residential unit” as one or more rooms that contain lawful cooking and sanitary facilities, inhabited by one or more persons living together and maintaining a common household, in a residential building or residential portion of a building. This definition may not apply in all cases. Accordingly, the Program relies upon its assessors, designers, architects and engineers to utilize their professional judgment in determining the total number of units located on a property that are eligible to be repaired or reconstructed using this definition as a guide.

### 2.6.3.2 *Preliminary Unit Count*

The Program receives data regarding the number of units on a property from a variety of sources, including applicants, City records and the Program’s damage assessment. Based upon this data, the Program makes a case-by-case determination of the number of units on a property. The preliminary number of units that are located on a property is based upon the number of units observed during the Program’s damage assessment.

### 2.6.3.3 *Final Unit Count*

In some cases, the Program may be unable to repair or reconstruct all of the units that are located on a property. Accordingly, the number of units may change after construction. For repair and repair and elevation projects, the final unit count is the number of units that are returned to service as listed on the most recent Certificate of Occupancy or on a permit issued by the New York City Department of Buildings. For reconstruction projects, the final unit count is the number of units listed on the new Certificate of Occupancy. The final unit count must be between one and four units.

## 2.6.4 **Determining Proper Program Assignment**

### 2.6.4.1 *Single Family Program*

The Single-Family Program may process all applications for assistance where a property will contain one to four residential units at the completion of construction. This may include, but is not limited to, ownership structures where:

- The applicant owns land that contains one to four residential units that are also owned by the applicant; or
- The applicant owns one to four residential units that are located on land or in a building owned by a third party.

The Single-Family Program may also process applications where the Program initially determines that the property contains five or more units and the property does not have a Certificate of Occupancy allowing for five or more units. In such cases, the Program may only return one to

four units to service after the completion of construction, reimbursement or disposition of an acquired property.

**2.6.4.2 Multi-Family Program**

The Multi-Family Program may process all applications for assistance where a property contains five or more residential units and the property has a Certificate of Occupancy allowing for five or more residential units. This may include, but is not limited to, ownership structures where:

- The applicant owns land that contains five or more residential units that are also owned by the applicant; or
- The applicant is a cooperative or condominium association that is applying for assistance to repair common areas of the structure or land owned by the cooperative or condominium association.

**2.7 Priority Determination (Section No Longer Applicable)**

The Program’s prioritization policy was created when it was unclear whether Build It Back would receive sufficient funding from HUD to serve all impacted homeowners. The City of New York was successful in securing additional funding from HUD and it is likely that the Program will have sufficient funding to serve all eligible applicants. The Program has now determined that all applications will be processed regardless of priority. The Program will continue to utilize the prioritization methodology outlined below for internal reporting and tracking purposes only.

**2.7.1 Prioritization Schedule (Section No Longer Applicable)**

Priority will be assigned at the application level. Prioritization of an application is based upon a combination of the income of the household based upon the 2013 Area Median Income (“AMI”) levels established by HUD for the City and the structure’s unrepaired damage.

**Table 2 – Case Prioritization\***

Property Income	Level of Property Damage	Potential Program Benefit
<b>Priority 1</b>		
All Income Levels	Destroyed or Infeasible to Repair	Rebuild
All Income Levels	Repairs Completed	Reimbursement
0-80% AMI	Repair of Damage is Feasible	Repair/Repair and Elevate
<b>Priority 2</b>		
80-165% AMI	Repair of Damage is Feasible	Repair/Repair and Elevate
<b>Priority 3</b>		
165% AMI and above	Repair of Damage is Feasible	Repair/Repair and Elevate

\*Note: A limited number of applicants who are not eligible for New York State Acquisition for Redevelopment or Buyout such as residents of Breezy Point may be eligible for a Relocation Incentive option. The State of New York will establish the priorities for State Acquisition for Redevelopment and Buyout, if any.

**2.7.2 Priority Determination (Section No Longer Applicable)**

Case prioritization occurs in three stages:

1. *Provisional Priority Determination after Registration:* The Program uses self-reported income and damage data gathered during registration to assign applications to a provisional priority group and subgroup. The Program makes every attempt to schedule initial appointments by the highest priority subgroup, but may schedule lesser priority applications based on resource availability.
2. *Revised Provisional Priority Determination:* Once the household's income and household size is verified, the Program updates the case priority designation consistent with the Case Prioritization Schedule. The Program continues to process the case in accordance with the updated priority subgroup designation.
3. *Final Priority Determination:* After the level of damage is confirmed through an initial inspection, the Program determines the case's final priority designation. The Program continues to process the case in accordance with the final priority subgroup designation.

### **2.7.3 Income Priority of Rental Units (Section No Longer Applicable)**

For properties containing rental units, the Program makes a final priority determination based upon the number of units located on the property and the landlord reported income of the tenant household residing in each unit prior to the receipt of assistance. If a unit is unoccupied, the Program classifies the unit as greater than 165% of the Area Median Income (AMI). If an owner is unable to provide an income certification form for a tenant-occupied unit because the tenant household will not provide the required information or because the unit is vacant, the owner may indicate that the certification was refused or that the unit is vacant (by writing "REFUSED", "VACANT" or any known variants of these words on the certification form) and processing may continue. Such a unit is assumed to be occupied by a household that has an income of greater than 165% of the AMI for priority purposes.

### **2.7.4 Income Priority of 2-4 Unit Properties (Section No Longer Applicable)**

Provisional and final income priority for applications containing two to four (2-4) units is based upon the number of LMI units on the property and it is calculated using the same method which is used to classify the application as LMI or urgent need for national objective purposes, unless the unit which is the subject of the single application is part of a condominium or cooperatively owned building.

### **2.7.5 Damage Priority Determination (Section No Longer Applicable)**

The Program establishes the final priority of an application based upon the level of unrepaired damage present in the structure at assessment and damage priority is established at the feasibility determination stage. Damage priority shall not change if the Program determines that an alternative construction method is available to serve the applicant's unmet housing need. Each Program damage assessment states whether the structure is destroyed (no longer standing), has severe damage (not practical to repair and/or greater than 80% of the cost to reconstruct based upon the repair feasibility determination), major damage (greater than 50% damage based on fair market value or appraised value), moderate damage or no unrepaired damage.

### **2.7.6 Priority Exceptions (Section No Longer Applicable)**

At its discretion, the City may assign an alternate prioritization for special circumstances, which may include special needs, the applicant's living situation or site conditions that require specific repairs in order to complete the project. In general, the Program processes all high priority cases

("Priority 1" cases) to completion before processing lower priority cases, but in certain circumstances, applications that are unable to progress may be placed on hold while lower priority cases continue through processing.

Additionally, in the cases of attached and adjacent structures that share critical mechanical and structural components, the Program will be required to perform work and expend CDBG-DR funds on structures and in areas which are of lower priority or which have not applied for assistance in order to provide assistance to eligible beneficiaries. In such cases, the Program will determine the best available and most responsible engineering solution to provide a housing solution to an eligible applicant. If required, lower priority applicants may receive assistance in order to provide assistance to higher priority applicants and the Program may conduct outreach to encourage nonregistered homeowners to apply for the Program. Registration exceptions may be made on a case-by-case basis to allow an otherwise eligible applicant to apply after the close of registration.

## **3 Program Eligibility**

Eligibility for assistance is dependent upon the type of benefit that is being provided to an applicant.

### **3.1 Applicant Identity**

The Program must verify the identity of the applicant(s) listed on the application. The Program must confirm that the individual executing documents has authority to provide information, allow access and otherwise execute legally binding contracts and documents related to the property.

#### **3.1.1 Verification Method**

A valid government issued photo identification is required. The Program must inspect the identification and verify that the person applying for the Program is the person pictured on the identification card. The Program may accept expired identification documents to confirm identity.

#### **3.1.2 Acceptable Applicant Documentation**

One of the following types of government issued photo identification is required:

- Driver's License;
- State or City Issued Identification Card;
- Passport;
- Passport Card;
- Permanent Resident Card;
- Military ID; or
- Other Official state or federal Photo, ID

### **3.2 Ownership**

The Program must determine:

- That the applicant owned the property or had an ownership interest in the property at the time of the storm, October 29, 2012;
- That the applicant currently owns the property or has an ownership interest in the property to verify that the applicant can properly execute documents encumbering the property and contractual documents; and
- That all owners of the property are applying for Program benefits.

#### **3.2.1 Verification Method**

The Program determines whether an applicant meets the ownership or ownership interest requirement by viewing the online records of ownership maintained by the Office of the City Register's Automated City Register Information System ("ACRIS") or through the Richmond County Clerk's Office. A search of these databases together with a screenshot of the database information showing that the applicant is an owner is sufficient to meet the ownership requirement.

If ownership cannot be verified through an online review, the applicant must submit documentation such as a deed, shareholder document or other legal document evidencing ownership. Documentation that has not been recorded is sufficient to meet the ownership requirement pursuant to New York State laws.

In certain cases, a title search may be required to verify ownership. These cases include, but may not be limited to:

- Cases where the property is to be acquired for redevelopment;
- Cases where the home is to be reconstructed; or
- Unusual ownership structures.

### **3.2.2 Acceptable Applicant Documentation**

The Program must verify ownership independently through a review. The following forms of documentation are acceptable to satisfy the ownership documentation requirement:

- The Program may perform an online review, and a screenshot of the database showing that the applicant is the current owner of the property is sufficient documentation of ownership; or
- The Program may accept documentation associated with ownership such as deeds, certificates of ownership of cooperative shares, proprietary leases, death certificates, wills, corporate ownership documentation or other ancillary documentation. Documentation that is not recorded is sufficient to meet the documentation requirements.

### **3.3 Citizenship or Qualified Immigrant Status**

Only citizens and qualified aliens (e.g. legal permanent residents, refugees) are eligible to receive assistance under the Program. An alien who is not a "qualified alien" as defined by the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") of 1996 is not eligible for any "federal public benefit."

For the purpose of confirming Citizenship or Qualified Immigrant status, the Program first determines if the applicant received Sandy FEMA Individual Housing assistance (temporary housing, repair, replacement or permanent housing construction assistance) and the receipt of such assistance may be considered to be evidence of citizenship or qualified immigrant status.

In the absence of evidence that the applicant received FEMA Individual Housing assistance, the Program independently determines eligibility under the PRWORA. Verification for co-applicants will not be required. In cases where properties or units are owned by multiple natural persons, as long as the primary applicant satisfies the Citizenship or Qualified Immigrant status, the application may be determined eligible.

#### **3.3.1 Verification Method**

If the Program is unable to confirm that the applicant received FEMA Individual Housing Assistance, the Program relies on documentation provided by the applicant. To prove qualified alien status, the Program relies on the Systematic Alien Verification for Entitlements ("SAVE") database administered by the US Citizenship and Immigration Services.

#### **3.3.2 Acceptable Applicant Documentation**

If the applicant is a citizen, one of the following documents is required to prove citizenship:

- Current or expired US Passport or US Passport Card matching name on application;
- Current or expired New York State Enhanced Driver's License ("EDL") or Enhanced Non-Driver Photo ID Card ("ENDID");
- Valid US Birth Certificate;

- Certificate of Naturalization;
- Certificate of Citizenship; or
- If the applicant is qualified alien, the applicant must provide an Alien Number, or an I-94 Admission Number, to facilitate a SAVE screening.

### **3.3.3 Special Considerations**

The following special considerations shall apply:

- Applicants who provide birth certificates from United States Territories (Guam, Puerto Rico, the Northern Mariana Islands and the US Virgin Islands) or who would otherwise be considered United States citizens pursuant to federal law (such as being born in the Former Panama Canal Zone or outside of the United States with at least one parent who was a US citizen) shall be considered a US citizen.
- In those cases where the property owner is not a natural person (such as an LLC or an LLP), no citizenship/qualified alien status documentation is required.

### **3.4 Primary Residency**

All owner-occupied and year-round renter-occupied residential properties that served as a primary residence at the time of the storm may be eligible for assistance. For one-unit residential properties, the residential unit located on the property must meet the primary residency requirement.

For two to four (2-4) unit properties, at least one residential unit located on the property must meet the primary residency requirement. If one residential unit meets the Program's primary residency requirement, all residential units on the property that require assistance are eligible to receive assistance. The Program does this so that it can verify that the property is decent, safe and sanitary upon project completion.

A primary residence is one that meets the definition of a "main home" in IRS Publication 936 (for Mortgage interest deductions): "You can have only one main home at any one time. This is the home where you ordinarily live most of the time." Second homes, vacation homes and seasonal rental properties are not primary residences.

#### **3.4.1 Method of Verification for Owner Occupied Units**

The Program relies upon a variety of documentation and data sources to verify primary residency. The Program primarily relies upon documentation provided by applicants. The applicant must provide documentation sufficient to show that at least one unit on the property was a primary residence at the time of the storm. The methods of documentation are listed below. The Program may also determine if the applicant received Sandy FEMA Individual Housing assistance relative to the address listed on the application (including temporary housing, repair, replacement or permanent housing construction assistance) and the receipt of such assistance relative to the address listed on the application may be considered to be evidence of primary residency at that address.

#### **3.4.2 Acceptable Applicant Documentation for Owner Occupied Units**

The following documentation requirements apply to individually owned homes, and Co-Op and Condo units. All documentation is subject to review and approval by the Program.

For documentation to be considered valid, it must meet all of the following criteria:

- The applicant's name(s) must appear on the documentation; and
- The documentation must be clearly dated within the date range provided below; and
- The address of the property listed on the application as being the damaged property address must appear on the documentation.

The following types of documentation will be accepted if they contain the required information listed above:

1. Proof of 2012 School Tax Relief (STAR) / 2012 Homestead Exemption;
2. Government issued identification issued before October 29, 2012, and expiring on or after October 29, 2012;
3. 2012 Federal Tax Return;
4. 2012 Tax Return Transcript;
5. Vehicle Registration or Renewal for 2012;
6. Certificate of Title for Vehicle Issued in 2012;
7. Receipt of any of the following government benefits received for at least one (1) month during the six (6) months prior to or after October 29, 2012:
  - Social Security (All types including, but not limited to, Retirement, SSDI, SSI and Survivors)
  - Temporary Assistance for Needy Families (TANF)
  - Medicare
  - New York Child Health Plus (CHIP)
  - New York Head Start
  - New York Low Income Home Energy Assistance Program (LIHEAP)
  - New York Medicaid
  - New York Special Supplemental Nutrition Program or Women, Infants and Children (WIC)
  - New York State Supplemental Nutrition Assistance Program (SNAP)
  - New York Temporary Assistance (TA)
  - New York Unemployment Insurance;
8. Copy of water, electric or gas bill(s) showing service for the six (6) months prior to October 29, 2012, showing usage consistent with primary residency as judged by the Program's eligibility review team;
9. Letter from a water, electric or gas service provider stating that service was provided in the name of the applicants(s) for the six (6) months prior to October 29, 2012, and that the level of service was consistent with a primary residence; or
10. Other documentation from a government or commercial source which would tend to evidence that the applicant resided at the address listed on the application on October 29, 2012, as their primary residence.

### **3.4.3 Method of Verification for Tenant Occupied Units**

Primary residency for properties containing rental units will be verified by the applicant providing proof of primary residency for the tenants in at least one of the units through one of the methods listed below.

### 3.4.4 Acceptable Applicant Documentation for Tenant Occupied Units

There are no primary residence requirements for landlords who do not live in the property on the application. However, the applicant must establish that at least one tenant was a year-round renter. The following documentation may be used to establish such residency:

- Rent Roll reflecting the rent charged/received for each rental unit in the building for the 12-month period up to November 2012;
- Signed 12-month lease for period encompassing Sandy (October 29, 2012);
- Proof of payment of a rent for the 12 months prior to November 2012; or
- Schedule E (Form 1040) showing that the Rental Unit was used for approximately 300 Fair Rental Days during the 2011-2012 filing period.

### 3.4.5 Special Considerations

The following special considerations shall apply:

- In cases where a home is not owner-occupied, but is occupied by an individual(s) **who does not pay rent to the owner** (generally, a friend or family of the owner), an individual(s) living in the home must provide the same primary residency documentation as is required for owner-occupants.
- In cases where the property has two or more owners and the primary applicant is deceased prior to grant agreement, the co-applicant must provide the same primary residency documentation as was required for the primary applicant.
- If an applicant's primary residency is verified through the receipt of FEMA Individual Housing assistance and the applicant provides documentation that may indicate that the home which is the subject of the application is not the applicant's primary residence, the Program will perform additional due diligence to verify that the subject home is not an ineligible second home.
- Owners may change the use of their property from an owner-occupied primary residence to a tenant-occupied primary residence or from a tenant-occupied primary residence to an owner-occupied primary residence after assistance is provided by the Program. The end use of the property after assistance is provided will dictate which provisions of the Program's grant agreement will apply to that property.
- Exceptions: The Program may issue individual interpretations of this requirement based upon a fact-specific examination of circumstances, such as when an applicant inherited a property after the storm from a family member or when the participation of an applicant is required in order to meet another Program goal. Refer to the "Other Eligibility Policy Considerations" and "Applications Accepted After October 1, 2015" sections of this manual for further information.

### 3.5 National Flood Insurance Program ("NFIP") Coverage (If Required)

As a condition of Program eligibility for Repair or Reconstruction, properties which received certain kinds of federal flood disaster assistance in the past are required to carry flood insurance through the National Flood Insurance Program ("NFIP") or through a privately issued policy of flood insurance that meets federally defined standards. If this requirement applies to the property that is listed on the application and the property owner subsequently failed to maintain flood

insurance as required under applicable federal law, then the property listed on the application is not eligible for Reconstruction, Repair or Reimbursement.

### **3.5.1 Verification Method**

The Program utilizes a data sharing agreement with FEMA to determine properties that are required to carry flood insurance. In the event that this data is unavailable, a property's eligibility or ineligibility for Sandy FEMA structural benefits as determined by FEMA will serve as evidence of compliance or noncompliance for those properties which were the subject of a Sandy FEMA application.

For properties which were not the subject of a FEMA application, the Program may verify compliance with this requirement if it verifies that the property was covered by a policy of flood insurance at the time of Hurricane Sandy. Eligibility may also be verified if an applicant certifies that the property which is the subject of the application was not subject to this requirement.

### **3.5.2 Acceptable Applicant Documentation**

Applicants may submit proof that they carried a policy of flood insurance on their property on October 29, 2012.

### **3.5.3 Special Considerations**

Applicants that did not maintain required NFIP coverage will only be eligible for non-construction program options.

## **3.6 Location Determination for Eligible Borough**

Properties impacted by Hurricane Sandy must be located within one of the five boroughs of NYC (Queens, Kings, Richmond, New York, and The Bronx).

### **3.6.1 Verification Method**

The location of the property listed on the application is verified via 311, based on the NYC Department of City Planning's GeoSupport system.

### **3.6.2 Acceptable Applicant Documentation**

No documentation is required unless location cannot be verified via 311, in which case the property location is verified via the deed.

## **3.7 Hurricane Sandy Damage**

The residential unit must have sustained physical damage by Hurricane Sandy. Damage is defined as rain, wind and/or flood damage received as a direct result of the storm, which occurred on October 29, 2012 plus any subsequent damage related to the original storm damage.

### **3.7.1 Verification Method**

Damage may be verified in one of three ways:

1. Verification of damage by DoB placard. The applicant's structure was "tagged" following the storm as having suffered storm damage. DoB placard status is provided to the Program via a data feed.
2. Verification by the Program that the applicant received assistance in the form of a payment for structural loss from FEMA, NFIP or Private Insurance.

3. Each Program damage assessment states whether the Damage Assessor (“DA”) can confirm the structure was damaged by the storm based upon visual observation. Evidence of completed repairs that are likely to have resulted from storm damage is sufficient to meet this requirement.

### **3.8 Unrepaired Hurricane Sandy Damage**

In order to be eligible for construction assistance, the Program must observe the presence of unrepaired storm damage. The Program verifies the presence of unrepaired storm damage during the damage assessment and during scope development.

If the Program cannot verify the presence of unrepaired storm damage, but the Program has verified that the structure suffered Hurricane Sandy damage, the applicant may be evaluated for the reimbursement only option or for a mitigation only construction benefit such as the elevation of a substantially damaged home, optional/discretionary elevation of a non-substantially damaged home or other eligible mitigation activities such as the elevation of utilities or filling below-grade space.

#### **3.8.1 Verification Method**

The presence of unrepaired Hurricane Sandy Damage is confirmed during the Program’s damage assessment and it is reconfirmed during the Program’s design consultation when a scope of work is prepared for construction.

#### **3.8.2 Special Considerations**

In cases where it is unclear whether the unrepaired damage to the structure was caused by Hurricane Sandy, the Program reviews the case to determine whether it is more likely than not that some of the unrepaired damage to the structure was caused by Hurricane Sandy or that Hurricane Sandy was the proximate cause of any unrepaired damage.

### **3.9 Eligible Structure Type**

The program is designed to meet the diverse housing needs of New Yorkers affected by Hurricane Sandy. As such, determining whether or not the structure is eligible depends on a combination of factors including owner-occupancy status and the number of attached units. The Program does not repair or replace:

- Commercial buildings, in which there are no residential units or
- Mobile structures such as recreational vehicles or other types of vehicles.

#### **3.9.1 Verification Method**

Structure type is verified using existing NYC databases, as well as an onsite inspection. Each Program damage assessment contains information regarding:

- The number of units in the structure and whether the structure has greater than four units contained within the structure;
- The presence of non-residential units in the structure;
- Whether the structure is commercial with no residential units; or
- Whether the structure is a mobile structure used for recreation such as a recreational vehicle or is a panel truck, utility trailer, semi-trailer or other type of vehicle.

### **3.9.2 Special Considerations**

In mixed-use buildings, assistance is given only to repair or rebuild the residential portions of a structure. Commercial portions of the structure are not assisted, except to the extent that commercial and residential portions of a building cannot be separated, for instance in the case of common mechanical systems.

### **3.10 Property Insurability**

All properties that receive assistance from the Program which are in a Special Flood Hazard Area must obtain and maintain flood insurance in an amount at least equal to the Program's grant amount(s) or to the maximum limit of coverage made available.

#### **3.10.1 Verification Method**

The Program determines whether the applicant's structure was built over a waterway and may therefore be uninsurable. Applicants with uninsurable residential property may be eligible for Acquisition or Buyout.

#### **3.10.2 Acceptable Applicant Documentation**

Applicants with potentially uninsurable properties must provide proof of current flood insurance coverage to prove that property is insurable.

#### **3.10.3 Special Considerations**

In cases where a property is not eligible for NFIP coverage (for example, because it is built entirely over open water), the property is not eligible for construction or construction reimbursement assistance. Such properties may, however, be eligible for Program options such as Acquisition or Buyout.

### **3.11 Other Eligibility Policy Considerations**

#### **3.11.1 Required Agreements**

The Program also requires that applicants execute certain notices and agreements in order to be considered for or provided Program benefits. These documents include, at a minimum:

- *Notice and Acknowledgement of Limited Availability of Funding:* Each applicant must sign a notice acknowledging that Program benefits are contingent upon the availability of CDBG-DR funding, and that benefits are not guaranteed.
- *Conflict of Interest Disclosure:* Each applicant must complete this form and disclose any potential conflicts of interest, as defined in the form. In the event that an applicant has a potential conflict of interest, the Program must determine whether such a conflict exists, and, if so, the Program, at its discretion, may request a waiver of the conflict on behalf of the applicant.
- *Right of Entry Permit:* Each applicant must execute a Right of Entry permit so that the Program can conduct the necessary inspections of the property, and, as applicable, provide the applicant with benefits under the Program.
- *Agreement to Maintain Tenant Contact Information:* Applicants who have units that are currently occupied by tenants (or that were occupied by tenants but are vacant due to the storm) must certify the total number of rental units at the property, the number of rental units that are currently occupied, tenant contact information, and monthly rent amounts.

Such applicants must also agree to maintain forwarding addresses for any tenants that vacate the property during the pendency of the applicant.

### **3.11.2 FEMA Recapture and Eligibility Determinations**

Build It Back may, at its discretion, rely upon eligibility determinations made by FEMA to determine if an applicant is eligible for CDBG-DR assistance relative to the following eligibility criteria as stated in the sections above:

- Citizenship or Qualified Immigrant Status;
- Primary Residency;
- National Flood Insurance Program (“NFIP”) Coverage (If Required); and/or
- Hurricane Sandy Damage

If FEMA reverses an eligibility determination and finds that an applicant did not meet the eligibility criteria to receive FEMA Individual Assistance, Build It Back will perform additional due diligence to determine if the applicant meets the eligibility criteria to receive CDBG-DR assistance. The FEMA determination shall not be dispositive and binding upon the applicant for the purposes of the Program.

The Program will continue to count FEMA funds that are subject to recapture as duplicative unless an applicant can provide proof that the FEMA funds in question were repaid. If an applicant provides acceptable proof that FEMA funds were repaid, such repayment may be taken into consideration when calculating the applicant’s unmet need.

### **3.11.3 Reasonable Accommodation**

The Program must provide reasonable accommodation to applicants with disabilities and make reasonable modifications to its policies, practices or procedures when necessary to avoid discrimination on the basis of disability and to ensure meaningful access to programs, benefits and facilities, except where the provision of an accommodation/modification would fundamentally alter the nature of a Program service, program or activity. It is the Program’s policy to use construction standards for accessibility for the mobility impaired, within the scope of the Program’s construction activity on each project, where the need for such accessibility by a household living in the structure is documented. Applicants who assert that they have a disability may request a reasonable accommodation/modification by following the process that is communicated in the Program’s Reasonable Accommodation/Modification Policy Bulletin.

### **3.11.4 Power of Attorney**

Applicants may authorize others through a legally executed “Power of Attorney” document to submit and/or execute Program application and eligibility documents, to amend such documents and to make decisions related to their participation and benefits to be received in the Program, including withdrawing the application. Applicants may revoke the Power of Attorney at any time in writing.

### **3.11.5 Communication Designee**

Applicants may authorize others as a “Communication Designee” to discuss Program requirements and their application status without requiring their presence. A Communication Designee may not alter or execute documents or make decisions for the applicant. Applicants may revoke the rights of a Communication Designee at any time in writing.

### **3.11.6 Referral to Program Counseling**

The Program will refer certain applicants for Housing Financial Counseling and Legal Counseling as appropriate. Applicants may receive referrals for multiple counseling topics at different times during case development.

### **3.11.7 Referrals to Other Resources**

The Program may provide the applicant with a list of references for external resources. Such resources may include, but are not limited to, counseling services and additional resources run by HUD-approved housing counseling organizations, nonprofit organizations and City agencies.

### **3.11.8 Voluntary Withdrawal and Ineligibility**

The Program may accept the voluntary withdrawal of any application at any time as evidenced by a document signed by one or more applicants. This may be through a standard Program form or through a letter provided by the applicant. The Program may also accept the partial withdrawal of an application if an applicant does not wish to receive one type of benefit for which they are eligible, but the applicant wishes to preserve the ability to receive another type of benefit. The Program may make an application ineligible if the applicant fails to participate in the Program or if an applicant fails to respond to a request for information or documentation if the applicant is provided written notice of the failure to participate or respond, and the applicant fails to cure the defect within the time period that is contained in the written notice provided by the Program.

### **3.11.9 Fraud**

An applicant's failure to disclose accurate and complete information may delay the application process and could constitute fraud. Potential fraud cases are examined by the Program on a case-by-case basis. Suspected cases of fraud are referred to the NYC Department of Investigation. If restitution is required, further assistance is denied unless restitution is made in full.

### **3.11.10 Processing Exceptions Due to Construction Issues**

In cases such as attached and adjacent structures that share critical mechanical and structural components, the Program will be required to perform work and expend funds on structures and in areas which may not have applied for assistance or which may be at different stages in the Program's review processes. In such cases, the Program will determine the best available and most responsible engineering solution to provide a housing solution to an eligible applicant. If required, the Program may conduct outreach to encourage nonregistered homeowners to apply for the Program or it may accelerate the processing of an application. Registration exceptions may be made on a case-by-case basis to allow an otherwise eligible applicant to apply after the close of registration.

### **3.11.11 Deceased Applicants**

If an applicant dies after the start of construction and there is no co-owner who executed the grant agreement, the Program will complete its commitment to the repair or rebuild project by completing construction, if the new owner agrees in writing to continue the project. The new owner of the property will not be bound by the terms of the grant agreement, and the Program will consider the original owner to have been the beneficiary of the Program's funds for national objective purposes. This policy does not apply to Acquisition for Redevelopment.

### **3.11.12 Program Completion and Operational Flexibility**

The Program may adopt operational procedures regarding deadlines, pathways, construction options and other policies in order to complete construction in a timely manner. Such operational procedures may include, but are not limited to:

- programmatic-level deadlines that restrict pathway choice,
- pathway selection deadlines,
- transfer amount satisfaction deadlines,
- grant execution deadlines,
- requiring applicants with low-value scopes of work to participate in the Program's direct grant option,
- limiting design choices such as discretionary elevation or reconstruction choice,
- assigning applicants to a construction pathway (i.e. a DDC Construction Manager over JOC or HPD Rebuild) based upon capacity and capability and
- restricting design options.

Programmatic limitations that are established in order to facilitate Program completion may be changed or modified based upon a decision by the Program's Director. Decisions to set or extend deadlines shall be made on a case-by-case basis by the Program Director or by the Director's designees.

## **4 New Intake Applications**

New York City's housing density poses certain challenges such as the elevation or reconstruction of homes that are physically attached to other homes or the repair and replacement of privately owned sewer and water lines in courts or other non-traditional neighborhood types. The Program has determined that the success of certain individual construction projects and strategic neighborhood projects is dependent upon the participation of persons who did not submit applications during the Program's 2013 open-application period. Accordingly, the Program may perform targeted outreach and application intake directed towards property owners whose participation is required in order to accomplish other Program goals. These applications, which were accepted after October 1, 2015, are known as "new intake" applications.

### **4.1 Application Acceptance Criteria**

The Program's decision to accept a new application must be documented in writing and approved by the Program's Director or legal department. The documentation must provide a justification as to why the new application was accepted.

### **4.2 Eligibility Criteria**

New intake applications must meet all of the eligibility criteria that apply to previously accepted applications, subject to certain alternative ownership and primary residency eligibility criteria as defined below. These alternative eligibility criteria do not replace existing eligibility criteria. Instead, they supplement the Program's existing eligibility criteria for ownership at the time of Hurricane Sandy and primary residency for applications accepted after this date.

### **4.3 Waiver of the Ownership at the Time of Sandy Requirement for New Intake Applications**

The requirement that an applicant must have owned the property at the time of the storm, October 29, 2012, is waived for all new intake applications if the Program made a determination that the participation of the new applicant was required in order to accomplish a compelling Program goal such as the elevation or reconstruction of an attached home or the installation of private infrastructure in a strategic neighborhood. Documented Program approval of new intake for a specific purpose such as the elevation of an attached home or participation in a strategic neighborhood project shall serve as justification for the waiver's applicability.

### **4.4 Alternative Primary Residency Requirement for New Intake Applications**

New intake applications may demonstrate compliance with the Program's primary residency requirement by demonstrating that their property was used as a primary residence at the time of Hurricane Sandy or by demonstrating that their property is currently used as a primary residence. This alternative requirement shall not apply to applications that were accepted prior to October 1, 2015, unless the Program determines that the application of this alternative requirement is required in order to accomplish a compelling Program goal such as the elevation or reconstruction of an attached home or work within a strategic neighborhood. A decision to apply this waiver to new intake applications must be documented in writing and approved by the Program's Director or legal department. In no case will the Program provide construction assistance for a home that is intended to be used as a second home.

#### **4.5 Acceptable Documentation of Current Primary Residency for Owner Occupied Units**

The following documentation requirements apply to individually-owned homes, and Co-Op and Condo units. All documentation is subject to review and approval by the Program.

For documentation to be considered valid, it must meet all of the following criteria:

- The applicant's name(s) must appear on the documentation; and
- The documentation must be clearly dated within the date range provided below; and
- The address of the property listed on the application as being the damaged property address must appear on the documentation.

The following types of documentation will be accepted if they contain the required information listed above:

1. Proof of School Tax Relief (STAR) / Homestead Exemption granted within the year prior to the date of application;
2. Government issued identification issued within the year prior to the date of application;
3. Federal Tax Return filed within the year prior to the date of application;
4. Tax Return Transcript issued within the year prior to the date of application;
5. Vehicle Registration or Renewal issued within the year prior to the date of application;
6. Certificate of Title for Vehicle issued within the year prior to the date of application;
7. Receipt of any of the following government benefits received for at least one (1) month during the six (6) months prior to the date of application:
  - Social Security (All types including, but not limited to, Retirement, SSDI, SSI and Survivors)
  - Temporary Assistance for Needy Families (TANF)
  - Medicare
  - New York Child Health Plus (CHIP)
  - New York Head Start
  - New York Low Income Home Energy Assistance Program (LIHEAP)
  - New York Medicaid
  - New York Special Supplemental Nutrition Program or Women, Infants and Children (WIC)
  - New York State Supplemental Nutrition Assistance Program (SNAP)
  - New York Temporary Assistance (TA)
  - New York Unemployment Insurance;
8. Copy of water, electric or gas bill(s) showing service for the six (6) months prior to the date of application showing usage consistent with primary residency as judged by the Program's eligibility review team;
9. Letter from a water, electric or gas service provider stating that service was provided in the name of the applicants(s) for the six (6) months prior to the date of application, and that the level of service was consistent with a primary residence; or
10. Other documentation from a government or commercial source which would tend to evidence that the applicant resided at the application address on the date of application, as their primary residence.

#### **4.6 Documentation of Primary Residency for Tenant Occupied Units**

There are no primary residence requirements for landlords who do not live in the property on the application. However, the applicant must establish that at least one tenant was a year-round renter. The following documentation may be used to establish such residency:

- Rent Roll reflecting the rent charged/received for each rental unit in the building for the 12-month period prior to the date of application;
- Signed 12-month lease for period encompassing the date of application;
- Proof of payment of a rent for the 12 months prior to the date of application; or
- Schedule E (Form 1040) showing that the Rental Unit was used for approximately 300 Fair Rental Days during the tax filing period immediately preceding application.

#### **4.7 Limited Waiver of Primary Residency in Special Cases**

In limited cases, the Program may waive the Program's current or past primary residency requirements. In order to obtain a waiver, an applicant must submit a written request to Build it Back that provides evidence of intent to utilize the property as a primary residence. Upon submission of such a written request, the Program's legal department will review the request. If the legal department finds that the request is sufficient, the legal department will provide the applicant with an affidavit that requires the applicant to certify that they will utilize the property as a primary residence after project completion. If the applicant chooses to execute the affidavit, the Program may issue a waiver of the primary residency based upon the applicant's commitment to utilize the property as a primary residence after project completion. This waiver shall only be granted in extraordinary circumstances. In no case will the Program provide construction assistance for a home that is intended to be used as a second home.

#### **4.8 Coordination of Benefits for Post-Storm Owners**

The Program will not perform a duplication of benefits review in cases where an applicant purchased a property after Hurricane Sandy in an arms-length transaction and the applicant was granted a waiver of the ownership at the time of the storm eligibility requirement. The duplication of benefits review is not required because the post-storm owner could not have previously received any benefits from any source that would duplicate Program assistance.

This policy does not apply when there is not an arms-length transfer of ownership, such as when an applicant becomes an owner due to inheritance, gift or purchase from a family member as defined in the Program's policies on Transfer of Property Ownership Post-Storm Due to Death and Transfer of Property Ownership Post-Storm as a Result of Purchase from a Family Member or Gift.

#### **4.9 Benefit Limitations**

New intake applications are not eligible for the Program's Reimbursement or Cooperative Relocation benefit types.

## **5 National Objective**

The Program must classify all applications as meeting an eligible National Objective as defined by HUD. The Program primarily relies upon the income of the household(s) receiving assistance when classifying a project's National Objective. No applicant will be deemed ineligible to receive assistance due to their household income and the Program does not provide different assistance to households with different income categorizations.

### **5.1 National Objective Types**

Each activity funded by the Program, with the exception of administration and planning activities, must meet one of the following national objectives:

- Benefit low- and moderate-income ("LMI") households;
- Meet an urgent need related to recovery from Hurricane Sandy; or
- Prevention or elimination of slums or blight.

### **5.2 Low to Moderate Income and Urgent Need National Objectives**

The Program reviews the income of each household receiving assistance and then classifies the property's National Objective according to the aggregate income of the household(s) that occupy the property. Storm damaged properties receiving assistance containing a sufficient number of LMI households are classified as meeting the LMI National Objective. Storm damaged properties receiving assistance that contain an insufficient number of LMI households are classified as meeting the Urgent Need National Objective.

#### **5.2.1 Method of Income Verification**

The Program follows a modified 1040 method, based upon the income as it was (or would have been, if there is no 1040 form) reported on the applicant's most recent IRS 1040 form, which takes gross income and incorporates deductions to reach Adjusted Gross Income. For owner occupied properties, households submitting income certifications are required to either submit supporting documentation of household income or an IRS Form 4506T-EZ. For tenant occupied properties, the Program does not require additional supporting documentation.

#### **5.2.2 National Objective in 2-4 Unit Properties**

For properties containing between two and four units, household income must be verified for a sufficient number of units to determine the national objective status of the property as a whole. To satisfy the LMI objective for a one-unit property, an LMI household must occupy the unit. Two-unit properties must have at least one unit occupied by a LMI household. If the property contains three or more units, at least 51 percent of the units must be occupied by LMI households. The LMI national objective is measured as follows:

- *One unit:* The household occupying the unit must be at or below 80% of the Area Median Income.
- *Two units:* At least one household occupying one unit must be at or below 80% of the Area Median Income.
- *Three units:* Two units must have households at or below 80% of the Area Median Income.
- *Four units:* Three units must have households at or below 80% of the Area Median Income.

### **5.2.3 Unoccupied Units**

For properties containing severely damaged, destroyed or otherwise unoccupied units, the Program will determine whether the unit meets the LMI national objective based upon the household that will be occupying the unit after the completion of construction.

- For units which will be owner occupied after the Program provides assistance, the Program will presume that the owner will occupy the unit upon completion and will utilize the income of the owner's household to determine whether the unit meets the LMI national objective.
- For units which will be tenant occupied after the Program provides assistance, the Program will consider the unit to be non-LMI.

### **5.2.4 Refusal**

Households who are unwilling or unable to provide sufficient information to verify income are deemed to have incomes above 80% of AMI. If a household is unwilling to provide an income certification, the household or the unit owner may indicate that the certification was refused or that the unit is vacant (by writing "REFUSED", "VACANT" or any known variants of these words) on the certification form and the unit will be presumed to contain a non-LMI household.

### **5.3 Fair Housing and Equal Opportunity Data Collection**

In addition to National Objective, the Program must also attempt to collect demographic data relating to the household(s) receiving assistance. The Program collects this data on its income certification forms. If the household is unwilling to provide the requested demographic data, the household may refuse to provide this data by indicating that they declined to answer or by leaving the answers blank. Blank answers will be considered to be an indication that the head of household declined to answer the question asked.

## **6 Coordination of Benefits**

Federal law prohibits any applicant from receiving federal funds for any part of a disaster-related loss as to which he or she has already received financial assistance under any other program, from insurance or any other source. This is referred to as a “Duplication of Benefits” (“DoB”) in the Stafford Act. To avoid confusion with the NYC Department of Buildings (“DOB”), this Program will refer to “Duplication of Benefits” as “Coordination of Benefits” (“COB”).

Funds received by the applicant from other sources for the same property and same purpose are considered duplicative benefits. If an applicant receives Program assistance in the form of repair or reconstruction, all assistance previously received by the applicant for repair or reconstruction must be considered when calculating the applicant’s grant award. If an applicant receives Program assistance in the form of Acquisition or Buyout, the award may include housing relocation cost and additional cost assistance. In such cases, the Program must consider all benefits which were received by the applicant for each of those purposes when calculating the applicant’s grant award.

If the applicant received potentially duplicative assistance, the Program must determine if such assistance was spent on allowable activities. Allowable activities are expenditures on items and services made by the applicant for the purpose which was intended when the applicant received assistance. If the Program determines that the applicant has an unmet need and the applicant is unable to show that the potentially duplicative assistance received has not been spent on allowable activities, the Program must collect funds from the applicant before providing Program assistance. These funds are referred to as the “Transfer Amount”. The Transfer Amount is the amount of previously received benefits, which the applicant cannot prove were spent on allowable activities.

If the Program determines that the applicant has already received assistance from other sources which is sufficient to meet or exceed the applicant’s disaster recovery needs, the applicant is not eligible to receive Program assistance unless the applicant agrees to pay their entire transfer amount to the Program. If an applicant whose transfer amount exceeds their disaster recovery need opts to pay their entire transfer amount to the Program, such an applicant will not be eligible to have any part of their transfer amount refunded to them if their project cost is less than the transfer amount that was paid to the Program.

Applicants are given the option of funding the Transfer Amount with unspent disaster related financial assistance or personal funds. Only funds that originate with an applicant may be used for this purpose. If the applicant cannot fully fund the required Transfer Amount in part or in whole, the Program may, in some cases, reduce the benefit received by the applicant from the Program in an amount which is equal to or greater than the unpaid transfer amount. Specifically, repair or reconstruction applicants may receive a reduction in the scope of work or a reduced construction benefit, if it is feasible to reduce the benefit while still completing the construction project. Acquisition and Buyout applicants must receive a reduced payment.

The Program uses multiple sources to verify duplication of benefits, including verification with third parties and applicant declaration (where no other source of information is readily available).

The following table indicates which benefits and allowable activities are considered when calculating an applicant's unmet disaster need.

**Table 3 – Coordination of Benefits and Allowable Activities**

	Homeownership Repair and Rebuilding Fund (HRRF)	Build it Back Reimbursement	FEMA Individual Assistance	Private Insurance or Construction Assistance	Temporary Repairs & Post-Storm Recovery Expenses	Preconstruction or Interim Housing Expenses	Forced Mortgage Payoff	Contractor Fraud
Reimbursement for Completed Repairs	✓	✓	✓	✓	✓	✓	✓	✓
Construction Assistance - Repair	✓	✓	✓	✓	✓	✓	✓	✓
Construction Assistance - Repair & Elevation	✓	✓	✓	✓	✓	✓	✓	✓
Construction Assistance - Reconstruction	✓	✓	✓	✓	✓	✓	✓	✓
Acquisition Without Relocation	✓	✓	✓	✓	✓	✓	✓	✓
Acquisition With Relocation	✓	✓	✓	✓	✓	✓	✓	✓
Buyout	✓	✓	✓	✓	✓	✓	✓	✓
Breezy Point/Edgewater Park Relocation	✓	✓	✓	✓	✓	✓	✓	✓
Temporary Relocation Assistance						✓	✓	

**Key**

✓ - Cash benefit counted if received or allowable activity credit if claimed & supported.

⊙ - Construction benefit that reduces unmet construction need and/or reduces allowable activity credit.

\* - Cash benefit that is only counted if a temporary housing allowable activity is claimed.

## 6.1 FEMA Individual Assistance (IA) Benefits

### 6.1.1 Verification Method

The Program must verify FEMA IA payments using data provided by FEMA. There are two instances in which the Program uses other documentation for FEMA IA payments received:

1. If the Program is unable to verify the FEMA IA amount through the FEMA data, the Program uses the payment amount provided by the applicant on the application; or
2. When the FEMA data conflicts with other FEMA documentation provided by the applicant, the Program must confirm with FEMA that documents received are valid. If an applicant is able to provide valid documentation demonstrating that the FEMA IA amount provided by the FEMA data is incorrect and the Program verifies such information, the Program must adjust the payout amount consistent with the applicant's documentation for Repair or Rebuild applicants.

### 6.1.2 Calculation Method

FEMA IA repair and replacement payments for structural loss to the property are considered potentially duplicative benefits. Payments for other losses or expenses are not considered duplicative.

### 6.1.3 Special Considerations

The following special considerations shall apply:

- When an applicant is claiming an allowable activity offset for temporary housing expenses, the amount received from FEMA IA for temporary housing is deducted from the applicant's verified claim prior to calculating the offset.
- In cases where FEMA determines that an applicant was ineligible to receive FEMA IA assistance or determines that a duplication of benefits occurred after a FEMA IA payment has been made to an applicant, FEMA may attempt to recapture funds from the applicant. If FEMA has determined that a recapture is required, Build It Back will continue to count any FEMA IA benefits received by the applicant as duplicative. However, if an applicant can provide sufficient proof in the form of a letter from FEMA or other documentation (including a cancelled check showing a repayment to FEMA) that funds were repaid to FEMA, the Program may adjust the applicant's benefit determination to exclude the amount repaid to FEMA from the benefit calculation because the repaid amount is no longer duplicative.

## **6.2 FEMA National Flood Insurance Program Benefits**

### **6.2.1 Verification Method**

NFIP payments are verified by the Program using data provided by FEMA. If the Program is unable to verify the NFIP insurance proceeds through the database, the Program uses the payment amount provided by the applicant on the application.

If an applicant is able to provide documentation demonstrating that the insurance proceeds amount includes items not paid to cover structural loss, the Program uses the documentation provided by the applicant to adjust the FEMA NFIP insurance payout. All documentation provided by the applicant must be from the insurance company that issued the payments.

### **6.2.2 Calculation Method**

NFIP payments for structural loss (building coverage) to the property listed on the application are considered potentially duplicative benefits. Payments for other losses or expenses, including contents coverage, are not considered duplicative.

### **6.2.3 NFIP Litigation Settlements and Claims Review Payments**

Applicants that received additional NFIP structural loss payments due to the filing of a lawsuit against the NFIP or through the NFIP claims review process are examined pursuant to HUD's special rule governing such payments announced on September 16, 2015, in HUD Press Release Number 15-114. In accordance with HUD's guidance, additional flood insurance proceeds of up to \$20,000 will not be subject to a duplication of benefits review or collection.

## **6.3 FEMA Increased Cost of Compliance Benefits**

### **6.3.1 Verification Method**

Increased Cost of Compliance ("ICC") eligibility, award and payments are verified by the Program using data provided by FEMA. If the Program is able to determine how much the applicant received from NFIP ICC, then the Program uses that amount in calculating the Transfer Amount.

### **6.3.2 Calculation Method**

The following calculation method shall be used:

- ICC payments received for the property listed on the application are considered potentially duplicative benefits.

- If a property is destroyed or substantially damaged, the applicant may have received an award for certain construction activities such as elevation, demolition or flood-proofing. This award must be considered duplicative.
- ICC will only be considered a benefit received if the applicant applied for and received the benefit.

### **6.3.3 Special Considerations**

All applicants receiving elevation and reconstruction assistance that carried flood insurance at the time of Hurricane Sandy are potentially eligible to receive ICC funding. Potentially eligible applicants will be required to assign the right to receive the ICC payment to the City as part of the grant agreement. The Program will apply for ICC funding on behalf of all potentially eligible applicants and will use said funding to offset the cost of elevation or reconstruction.

## **6.4 Small Business Administration Loans**

### **6.4.1 Verification Method**

Small Business Administration (SBA) loan and assistance amounts are determined and verified by the Program through data provided by SBA.

### **6.4.2 Calculation Method**

The following calculation method shall be used:

- Awarded SBA real estate loans for the repair, replacement or mitigation of the property listed on the application are considered potentially duplicative. This includes loans for both owner-occupied and rental properties. The amount considered potentially duplicative is determined by the status of the loan. If the applicant drew all or part of the loan amount, the total amount of real estate funds awarded by SBA is counted as the benefit received regardless of whether the entire awarded amount has been drawn by the applicant.
- If the applicant cancelled an SBA loan, the Program may examine the circumstances under which the loan was cancelled to determine whether the cancelled loan amount should be considered potentially duplicative. The Program must consider loans cancelled at the request of the applicant as potentially duplicative unless the applicant can provide evidence that the loan amount should not be considered. Cancelled loans may be considered non-duplicative if:
  - The Program determines that the property owner's household income meets the low to moderate-income threshold established by the Program;
  - The property owner provides evidence that the repayment of the loan would have constituted a hardship; or
  - The property owner provides evidence of a change in circumstances that necessitated the cancellation of the loan.
- Loan amounts that were cancelled or revoked by SBA are not considered duplicative.

### **6.4.3 Small Business Administration RISE Loans**

The SBA was required by the Recovery Improvements for Small Entities (RISE) After Disaster Act of 2015 to reopen their disaster loan program to new Sandy disaster loan applications. Since applicants were given the ability to apply for these loans after the Build it Back Program began providing assistance, Build it Back is not obligated to consider such loans when calculating assistance. Build it Back provides SBA with a list of all applicants that have received or that are

likely to receive assistance. SBA then performs a duplication of benefits review which considers actual or potential Build it Back assistance when it calculates an applicant's eligibility for a RISE loan.

## **6.5 Empire State Fund and the Disaster Homeownership Repair and Rebuilding Fund Benefits**

### **6.5.1 Verification Method**

The payment to applicants by the Empire State Fund and the Disaster Homeownership Repair and Rebuilding Fund are determined and verified by the Program through data provided by the funds.

### **6.5.2 Calculation Method**

The following calculation method shall be used:

- Payments received from the Empire State Fund and the Disaster Homeownership Repair and Rebuilding Fund which were intended for Repair or Reconstruction are considered potentially duplicative.
- Payments for other losses or expenses are not considered when calculating the applicant's Transfer Amount.

## **6.6 State of New York Hurricane Sandy CDBG-DR Housing Program Benefits**

### **6.6.1 Verification Method**

The City works with the State of New York to transfer all applications submitted for structures located in NYC to the Program, including for the purposes of the COB calculation. Applications that qualify for the State's Acquisition or Buyout program are transferred from the Program to the State if the applicant elects to participate in Acquisition or Buyout. Applicants may only have one active application in either Program at one time.

## **6.7 Private Insurance Benefits**

### **6.7.1 Verification Method**

The Program must verify insurance proceeds paid for structural loss by contacting individual insurance companies. If the Program is unable to verify the private insurance proceeds paid for structural loss through the insurance company, the Program uses the payment amount provided by the applicant at the time of application, as demonstrated by documentation from insurance company. In the absence of the proper documentation, the applicant must self-certify the amount he/she received from the insurance company. If an applicant is able to provide documentation demonstrating that the insurance proceeds amount provided by the insurance company includes amounts not paid to cover structural loss, the Program will use the applicant's documentation to properly classify the private insurance payout. The documentation provided by the applicant must come from the insurance company that issued the payments.

### **6.7.2 Calculation Method**

Insurance payments or settlements for structural loss (building coverage) to the property listed on the application are considered potentially duplicative. Payments for other losses or expenses, including contents coverage, are not considered potentially duplicative.

### **6.7.3 Special Considerations**

When an applicant claims an allowable activity offset for temporary housing expenses, the amount received from private insurance for temporary housing or Additional Living Expenses (“ALE”) is deducted from the applicant’s verified claim prior to calculating the offset.

If an applicant obtained insurance proceeds through legal action, incurred legal fees are credited to the applicant and are not considered duplicative benefits. Amounts recovered for punitive damages, contents or other non-structural coverage are not considered duplicative benefits. The applicant’s attorney must provide a written statement showing these amounts in order for the Program to consider them non-duplicative.

## **6.8 Philanthropic Assistance**

### **6.8.1 Verification Method**

Funds received by the applicant from philanthropic organizations are based upon the payment amount provided by the applicant on the application.

### **6.8.2 Calculation Method**

Payments received from non-profits, religious institutions, charitable organizations or other philanthropic organizations that are specifically intended for Repair or Reconstruction are considered potentially duplicative. Payments for other losses or expenses are not considered when calculating the applicant’s Transfer Amount.

### **6.8.3 Special Considerations**

Repair assistance such as demolition work, repairs or other work performed on the structure by philanthropic organizations and the New York City Rapid Repairs Program must be disclosed by the applicant at the time of inspection. Applicants are not given credit for repair assistance from philanthropic organizations in the form of labor and materials for COB offset or reimbursement purposes.

## **6.9 Other Coordination of Benefits Policy Considerations**

### **6.9.1 Special Coordination of Benefits Procedures for Cooperative or Condominium Units**

If the property listed on the application is an individual residential unit located within a building or upon land owned by a cooperative or condominium association, the unit may have been provided coverage for losses through a policy of flood insurance or private insurance held by the cooperative or condominium association. For each individual unit located within a building or upon land owned by a cooperative or condominium association, the Program must verify whether the owner of the unit received insurance benefits from a policy held by a third party. Such benefits may have been provided in the form of a payment or in the form of repairs to the unit.

This policy shall not apply to units classified by the Program as stand-alone cooperative units (such as those units located in the Breezy Point Cooperative, Inc. and Edgewater Park Owners Cooperative) as the Program has determined that such cooperatives did not hold policies of private or flood insurance that provided coverage to individual homes.

### **6.9.2 Tax Benefits**

Tax filings related to losses to the home do not affect funding assistance awards and are not considered duplicative.

### **6.9.3 Allowable Activity Credits**

Applicants that used benefits received from insurance, SBA, FEMA or other sources to repair damage may receive a credit to offset their COB liability. In such instances, the Program is required to document eligible expenditures via receipts the Program determines to be valid or via physical inspection. The Program provides an estimated value for repairs which the applicant made to the structure. In cases where the applicant does not agree with the Program's valuation, the applicant may be afforded an opportunity to provide documentation to show actual expenditures. Applicants that used benefits for eligible disaster related expenses other than repairs may also receive a credit to offset their COB liability. The Program verifies non-repair expenditures through a review of documentation provided by the applicant.

### **6.9.4 Allowable Methods for Addressing the Transfer Amount**

An applicant is considered to have a Transfer Amount if the COB calculation shows that the applicant did not spend all potential duplicative benefits received on allowable activities. If the Program determines that an applicant has a Transfer Amount, the Program first seeks funds from the applicant to cover the Transfer Amount. If the applicant is unable to address the Transfer Amount in part or in whole, the Program may offer the option to decrease the cost of the project by reducing the scope of the repairs. The feasibility of the scope reduction is based upon the best judgment of the Program.

### **6.9.5 Allowable Activity Credits after Payment of Transfer Amounts**

The Program may allow applicants to provide documentation of temporary housing expenses incurred after payment of the transfer amount to the Program. Upon approval by the Program, the transfer amount may be decreased to reflect additional expenditures on allowable activities such as temporary housing costs. Funds deposited by the applicant may then be made available to the applicant to provide temporary housing support during lengthy construction projects. In no case may CDBG funds be made available to owner-occupants for this purpose without Program approval of the expenditure. This policy shall not apply to any applicant that is receiving Temporary Relocation Assistance from the Program and the Program will not allow applicants to utilize this policy after April 1, 2015.

### **6.9.6 Funds Received After Application**

Any additional funds that an applicant receives after the completion of the application must be reported to the Program. Applicants are also required to execute a Subrogation Agreement, obligating the applicant to notify the Program if benefits are received in the future and, if applicable, transfer such funds to the Program.

### **6.9.7 Transfer Amount Refunds**

The Program will refund a transfer amount that is paid to the City if an applicant withdraws from the Program prior to the initiation of construction.

### **6.9.8 De Minimis Calculation Errors and Underpayments**

The Program will not attempt to collect transfer amounts that are underpaid by an amount of ten dollars (\$10.00) or less as the cost of resolving the underpayment or calculation error exceeds the uncollected transfer amount.

## **7 Preconstruction**

Prior to delivering benefits to an applicant, the Program will perform a damage assessment on the property together with preparing a Tier 2 environmental assessment. The damage assessment will determine whether the property meets the Program's property eligibility requirements. The environmental review will determine whether there are any environmental compliance factors that must be addressed as a condition of providing benefits to an eligible applicant. The environmental review requirements are based upon the type of benefit that the Program expects to provide to the applicant.

### **7.1 Damage Assessment**

#### **7.1.1 Verify Sandy Damage**

The assessment must verify that there is evidence that the applicant's home was damaged by Hurricane Sandy. Evidence of completed repairs to damage that is likely to have been storm damage is sufficient to meet this requirement. The damage assessment report must also indicate whether there is any unrepaired storm damage.

#### **7.1.2 Eligible Structure Type**

The assessment must verify that the applicant's home is an eligible structure, must identify the number of residential units that are potentially eligible for assistance and must assign the application to the Single or Multi-Family Program using the procedures announced in this Policy Manual. The assessment must also identify outbuildings, storage buildings, swimming pools, detached residential units, commercial structures, detached garages and structures erected to contain boilers or other mechanical assemblies. The Program does not repair or reconstruct:

- Commercial buildings, in which there are no residential units;
- Mobile structures used for recreation such as recreational vehicles;
- Panel trucks, utility trailers, semi-trailers and other vehicles; or
- Structures in a floodplain that are not eligible for flood insurance.

#### **7.1.3 Multi-Unit Properties, Cooperatives and Condominiums**

The Program must perform a damage assessment on each residential unit located on the property listed on the application as defined herein. The Program will not assess units used for commercial purposes unless such an assessment is required to provide appropriate assistance to an attached residential unit. If the property listed on the application is a single residential unit located upon land or in a building owned by a cooperative or condominium association, the Program will only perform a damage assessment in the unit owned by the Program applicant. The Program will not assess common areas or other units located in the building or on the parcel of land owned by third parties. Applications for assistance to common areas shall be processed by the Multi-Family Program.

#### **7.1.4 Cost to Complete for Potential Repair Projects**

The assessment must provide an estimated cost to repair all unrepaired storm damage together with addressing life, health, safety and accessibility issues. If applicable, the estimated cost to complete may also include mitigation activities such as the elevation of certain critical utilities above the base flood elevation (BFE) or the elevation of the entire structure. The cost to complete is based upon a scope of work that is developed to repair the home to Program standards using

preliminary pricing benchmarks. The assessment must only account for damage and conditions that can be visually observed and the assessment may not use destructive testing methods. The estimated cost to complete from the damage assessment is not the cost to replace the exact items which were damaged and it may not be reflective of the final cost of the project. The primary purpose of the damage assessment's cost to complete is to provide data for the Program's preliminary feasibility analysis.

#### **7.1.5 Elements Excluded from the Cost to Complete**

The following items must be excluded from the cost to complete unless specifically approved by the Program:

- Repair or replacement of detached structures such as sheds and garages, swimming pools, decks and docks, or boat ramps;
- Replacement of special features, trims, and designer features that exceed basic livability requirements and features of standard grade homes such as solar panels, sky lights, wainscoting and wood paneling, hot tubs, copper gutters and non-standard roofs unless the damage to these items present a health or safety hazard (whereby they will be replaced with the Program standard quality of material) or are determined to be protected historic features;
- Repair or replacement of fencing or security systems; and
- Replacement of clothes washers and/or dryers.

#### **7.1.6 Repairs Less Than \$5,000 (Section No Longer Applicable)**

Removed.

#### **7.1.7 Value of Completed Repairs**

The assessment must provide an estimated value of all permanent repairs that were completed in all areas of the home including main living spaces, basements and cellars after Hurricane Sandy. For each repair, the assessment must state whether the repair was self-performed, performed by a contractor or other professional, by the NYC Rapid Repairs Program or by a charitable entity who was not paid by the applicant. During the assessment, the applicant must identify to the assessor what work was performed and who performed the work. The value assigned to these repairs must be based upon reasonable post-storm pricing for similar repairs using a standardized cost-estimating tool. Non-permanent repairs must be considered unrepaired storm damage and will not be included in the assessment as completed repairs for valuation purposes.

#### **7.1.8 Unsafe Dwellings**

An assessment must not be performed upon a home if it is unsafe to enter due to structural integrity, infestation or other safety or security reasons. If the structural integrity of the home is in question, the New York City Department of Buildings must inspect the structure. Based upon the findings of this inspection, the assessment should be either completed or an exterior only assessment must be completed.

#### **7.1.9 Vacant Lot Assessments**

Assessments for vacant lots where the home was demolished or destroyed must include an estimate of the home's square footage.

#### **7.1.10 Estimated Cost of Reconstruction**

Where the home located on the property is demolished, destroyed or it is evident that it cannot be repaired, the assessment will assign an estimated cost to reconstruct a new, elevated home based upon the pre-storm square footage and unit count of the property. If the Program is reducing the number of units on the property from five or more units to four or fewer units, the Program will attempt to replace the square footage of the units that will not be rebuilt. The cost to reconstruct is an approximation based upon the Program's initial new construction cost estimates and it includes an estimated cost for site preparation and demolition. The estimated cost of reconstruction is not the cost to replace the damaged home and it may not be reflective of the final cost of the project. The primary purpose of the damage assessment's estimated cost of reconstruction is to provide data for the Program's preliminary feasibility analysis.

#### **7.1.11 Repair, Reconstruction or Demolition Activities after Damage Assessment**

Pursuant to HUD requirements, applicants should cease all demolition, repair and reconstruction activities at the time the damage assessment is scheduled. Following the damage assessment, the applicant should not resume construction activities because construction activities may alter the condition of the property, invalidate the assessment, and may be considered evidence of fraud, waste, and abuse of Program funds. Any applicant who performs permanent home repairs after the damage assessment may be determined ineligible for assistance. Any applicant who demolishes their home after the damage assessment may be determined ineligible for assistance unless:

- The City of New York ordered the demolition;
- The applicant provides proof that the demolition was required to protect public health and safety as demonstrated by documentation such as a letter from an engineer;
- The applicant provides proof that the demolition and reconstruction of the home was the only available construction alternative;
- The applicant entered into a contract to design a reconstructed home on or before the date that the applicant executed the Program's F1 Form or October 29, 2013, whichever is earlier;
- The applicant submitted reconstruction plans to the NYC Department of Buildings on or before the date that the applicant executed the Program's F1 Form or October 29, 2013, whichever is earlier; or
- The applicant entered into a contract with a construction contractor or modular home seller to reconstruct their home on or before the date that the applicant executed the Program's F1 Form or October 29, 2013, whichever is earlier.

The Program reviews applicant eligibility in cases where repair or reconstruction activities were performed after the damage assessment, and may consider the relevant exigent circumstances for the action if verifiable and warranted.

#### **7.1.12 Program Adjustment Factors**

The NYC Build It Back Program performs damage assessments for applicants who apply to the Program for assistance. The contractor performing these damage assessments utilizes a cost-estimating tool called Xactimate to complete the damage assessments. When assessing a home, the damage assessor returns both an estimated cost to complete repairs to the home and a

valuation of repairs which have been made to the home, both of which are calculated within Xactimate.

The version of Xactimate utilized by the Build It Back assessors provides a base value for both the needed and completed work which includes only material and labor costs. This value does not accurately reflect the actual cost for the Program to complete work or the cost that an applicant would have paid to have work completed on the open market.

### **7.1.13 Adjustment Factors Used for Construction Determinations**

#### *7.1.13.1 Cost to Complete*

The Program utilizes an adjustment factor equal to the Program's repair program multiplier as contained in the Job Order Contract (JOC) of the region where the home is located to estimate the cost to repair storm damage and to address other life, safety, health and environmental compliance issues found in the applicant's home. This adjustment factor is not revised if the JOC multiplier changes due to annual increases or other factors (known as the "non-adjusted JOC multiplier") because the damage assessment's cost to complete is only a projection of the cost of repairs that is used to determine the applicant's pathway (repair, repair and elevate or reconstruct). This number is not used as the basis of any construction contract. The final construction contract scope and cost are determined later in the process when the final scope or cost of repair or reconstruction is determined.

#### *7.1.13.2 Substantial Damage Determination*

The Program utilizes a 1.49 adjustment factor for repairs made to the home (regardless of the party that performed the repairs) and the cost to repair storm damage. The use of a consistent factor applied to all completed and incomplete repairs is necessary to approximate a post-storm substantial damage determination as standard Residential Substantial Damage Estimates (RSDEs) were not prepared for use by the City floodplain manager after Sandy. Additionally, the actual cost of the repairs is irrelevant to whether the home was substantially damaged as this is an "insurance type" determination which should not vary based upon the source of the funding used.

#### *7.1.13.3 Substantial Improvement Estimate*

The Program utilizes a 1.49 adjustment factor for repairs made to the home (regardless of the party that performed the repairs) and an adjustment factor equal to the non-adjusted JOC multiplier of the region where the home is located to determine the cost to complete which is used to perform a preliminary Substantial Improvement calculation. This is similar to Substantial Damage with the addition of applicable life, safety, health and environmental compliance scope items which must be included in the calculation. The final Substantial Improvement calculation is performed by the contractor who prepares the final scope of work and it utilizes actual cost of repairs to be completed by the Program and the Program's estimated cost of repairs already completed by the owner.

### **7.1.14 Adjustment Factors Used for Coordination of Benefits Determinations**

#### *7.1.14.1 Completed Contractor Repairs*

The Program utilizes a 1.7 adjustment factor to estimate the cost that an applicant would have incurred if they utilized a contractor to complete repairs. This factor includes contractor's general conditions, supervision, insurance, overhead, profit, and an average mark-up on building

materials due to increased post-storm demand. This represents a leveled cost based upon the grade assigned to the repair by the Program's damage assessor. The Program has determined that this cost represents an average, reasonable cost for the completed repair and it eliminates the necessity of reviewing documentation and comparing that documentation to a cost index to determine if the cost is reasonable. Additionally, because completed repairs are assessed in the field, the damage assessor is also able to determine if the cost was necessary so that expenditures on luxury items or non-eligible items such as ancillary structures, swimming pools, etc. are excluded from subsequent calculations related to duplication of benefits and reimbursement. It is important to note that this methodology is ONLY used for repairs. A different methodology is used to value reconstruction for both duplication of benefits and reimbursement purposes. It is important to note that a different factor, 1.49, is applied to these repairs for substantial damage and substantial improvement calculations purposes for the reasons stated above.

#### *7.1.14.2 Completed Self-Performed Repairs*

The Program utilizes a 0.5 adjustment factor for repairs which were completed by the applicant rather than by a contractor. The Xactimate values range from 49% to 54% for the cost for materials and generally less than 1% for equipment depending upon the type of repair performed. Taking these factors into account, the Program determined that there is essentially a 50/50 average split between materials and labor. Since the base Xactimate cost includes both materials and labor, the Program removes the cost of labor by reducing the value by 50%. Accordingly, applicants are not given credit for "sweat equity" in their repair projects. The Program may use an alternative adjustment factor where self-performed repairs included elevation or reconstruction activities, given the complexity and increased material costs of such activities. It is important to note that a different factor, 1.49, is applied to these repairs for substantial damage and substantial improvement calculations purposes for the reasons stated above.

#### *7.1.14.3 Completed Rapid Repairs*

If an applicant received repair assistance through the Rapid Repairs post-storm recovery program, the applicant receives no credit for those repairs. The Program only values the repairs for the purposes of including them in the substantial damage and substantial improvement calculations by applying the standard 1.49 factor.

#### *7.1.14.4 Completed Volunteer Repairs*

If an applicant received repair assistance from a volunteer or philanthropic organization, the applicant receives no credit for those repairs. The Program only values the repairs for the purposes of including them in the substantial damage and substantial improvement calculations by applying the standard 1.49 factor.

## **7.2 Environmental Review**

Program activities funded by a federal agency must be environmentally cleared to proceed pursuant to the National Environmental Policy Act ("NEPA") and other federal, state and local environmental regulations which apply to the Program benefit(s) that an applicant will receive. As the Program is CDBG-DR funded, compliance with environmental laws and regulations must be documented in an Environmental Review Record ("ERR") before the Program can provide a reimbursement, construction, acquisition, buyout or relocation benefit to an applicant. The City's

Office of Management and Budget (OMB) is authorized by HUD to administer the CDBG-DR grant funds and it functions as the Lead Agency for environmental review purposes. The Program manages the ERR and OMB approves necessary environmental review documents prepared for the Program prior to funding a project.

NEPA established different levels of environmental review based upon the type of benefit provided. OMB advises the Program regarding the applicable level of environmental review that applies to the Program's activities. The Program's environmental reviews are primarily tiered consistent with 40 CFR 1508 and HUD's regulations as stated in 24 CFR Part 58. The tiered environmental review process has two stages. The Tier 1 (programmatic) level review prepared for the Program establishes the environmental rules for the Program. The Tier 2 level reviews for specific sites are based upon the rules announced in the Tier 1.

To the maximum extent possible, the Program will consider environmental reviews performed by other federal agencies relating to Hurricane Sandy housing repair and reconstruction prior to performing its own review.

### **7.3 The Tiered Environmental Review**

The two original Tier 1 Environmental Review documents prepared for the Program are standalone documents published in 2013 that describe and evaluate programmatic activities and include public notices as well as supporting materials as attachments. The Tier 1 Environmental Review applicable to Single Family Houses was subject to re-evaluations in 2014 and 2015 to incorporate an evaluation of additional activities approved by HUD. The Program prepared these Tier 1 documents to provide broad analysis of relevant, general environmental conditions for each Program area. Both documents plus any published revisions are maintained within the ERR.

Each Tier 1 also captured environmental compliance documentation for known Program area activities determined to be either Exempt from environmental review or Categorically Excluded per 24 CFR Part 58.

The Tier 1 includes applicable statutory and environmental assessment checklists in support of analyses and the published Findings of No Significant Impact. The Tier 1 also establishes the Tier 2 site-specific statutory and environmental assessment checklists to be used by the Program. This provides structure for the Tier 2 environmental review process and supports those procedures established for site-specific compliance with applicable environmental factors. Examples of environmental compliance factors include Historic Preservation, Floodplain Management, and Wetlands Protection. The Tier 2 environmental assessment identifies the environmental compliance factors that must be addressed during the project.

Tier 2 environmental assessment documents (inclusive of authorized revisions) produced by the Program to secure environmental clearance to proceed with each site-specific project must be approved by OMB prior to the initiation of any reimbursement, construction, acquisition, buyout or relocation activity and maintained within the ERR. Each Tier 2 environmental assessment prepared for the Program may be supplemented with materials developed to support analysis and decision-making. The Program's Standard Operating Procedures for Environmental Compliance provide step-by-step guidance on the tiered environmental review process, including the workflow for approval of documents and the environmental clearance of projects by OMB. It also contains

guidance for achieving compliance with environmental mitigation requirements that may be required for specific projects.

### **7.3.1 Application of the Appropriate Tier 1 Environmental Review**

The Program must perform environmental reviews on each property pursuant to either the Single-Family Tier 1 Environmental Review or the Multi-Family Tier 1 Environmental Review. The Program determines which Tier 1 will be used for a Tier 2 environmental assessment (site-specific environmental review). The decision is based upon the number of residential units that are located on the land where the unit(s) that may receive assistance are located. The Program will not consider certain types of unpermitted units, commercial units or other non-dwelling units when determining the total number of residential units located on the applicable parcel of land. The following procedures apply:

- If a parcel of land, as identified by a unique Tax Parcel Identification Number (“TPID”), Borough, Block and Lot Number (“BBL”) or deed, contains one to four residential dwelling units, the Program will utilize the Single-Family Tier 1 Environmental Review to execute the Tier II environmental assessment.
- If a parcel of land, as identified by a unique Tax Parcel Identification Number (“TPID”) or Borough, Block and Lot Number (“BBL”), contains five or more residential dwelling units, the Program will utilize the Multi-Family Tier 1 Environmental Review to execute the Tier II environmental assessment. This includes applications for individual cooperative or condominium units that are located on a parcel of land that is owned by a cooperative or condominium association where the parcel of land contains five or more residential dwelling units.
- If a parcel of land is owned by a cooperative and the unit or units are classified by the Program as stand-alone cooperative unit(s) as defined herein, the Program will utilize the Single-Family Tier 1 Environmental Review to execute the Tier II environmental assessment.

### **7.3.2 Environmental Data Collection**

To complete the Tier 2 environmental assessment the Contractor must collect the data required to develop a strategy for environmental factor compliance pursuant to applicable environmental regulations and Program requirements. The results of the Tier 2 environmental assessments will determine if additional activities must be undertaken by the Program during construction.

The need for further site-specific data collection may become apparent to the Program at different times before the Tier 2 can be completed for OMB approval. The applicable Tier 2 environmental assessment Checklist and the Program’s Standard Operating Procedures provide guidance for determining the point at which an environmental compliance factor is resolved. The most common environmental compliance factor requiring further data collection by the Program is Toxic Chemicals, Hazardous Materials, Contamination and Radioactive Substances (24 CFR Part 58) as summarized in the following sections.

### **7.3.3 Hazardous Materials**

The presence and location of hazardous materials on a property cannot usually be determined until a site inspection is performed. Where the age of the storm-damaged structure has been determined, decisions as to whether Lead-Based Paint or Asbestos testing will be required can

be made prior to the site inspection, and perhaps performed simultaneously. In other cases, onsite testing may need to be scheduled after the site inspection identifies the presence of a potentially hazardous substance.

#### *7.3.3.1 Lead-Based Paint*

The Program is required to determine whether a lead-based paint hazard is present in a house, dwelling unit, residential building, or housing development, including common areas and exterior surfaces, and if present, which building components contain lead-based paint pursuant to 40 CFR part 745 and Title X of the 1992 Housing and Community Development Act.

Lead-based paint testing for individual cooperative and condominium units that have applied for assistance will be limited to the unit that applied for assistance and no testing shall take place outside of the subject unit. Lead-based paint testing must be performed by a certified lead-based paint risk assessor in every eligible property built before 1978. If lead is detected or presumed to be present in the structure, an assessment report must be provided that indicates where lead-based paint is located in the unit or the building as it relates to the scope of work.

#### *7.3.3.2 Asbestos*

The Program is required to determine whether asbestos-containing building materials may be present in the areas of storm damaged homes where contractors could potentially be exposed to asbestos fibers during demolition or construction activities pursuant to 29 CFR Part 1926. The Program considers that homes constructed prior to 1973, when the use of asbestos was common, are likely to have asbestos building materials, even though they may not be visible during inspection. Asbestos testing is conducted prior to and upon conclusion of a home rehabilitation project so the Program can identify where the asbestos is located in the home and determine the environmental mitigation scope of work.

#### *7.3.3.3 Site Contamination of Soil*

The Program is required to determine whether a residential property has become contaminated from a variety of sources pursuant to 24 CFR Part 58. This is identified during damage assessment site inspection if visible evidence of potentially hazardous substances is observed. Visible spills or stains that are proximate to labelled, unlabeled, or improperly-labelled storage containers, as well as fuel-storage tanks, must be documented and reported as part of the site inspection for the Tier 2 environmental assessment.

If potentially hazardous contamination is suspected, the party preparing the Tier 2, in consultation with the Program, must make a determination as to whether mitigation measures can resolve compliance. In some cases, a Phase I Environmental Site Assessment (ASTM 1527) is required to support the determination. In other cases, environmental sampling is performed before completing a Tier 2 environmental assessment to determine the scope of the mitigation required. The Program recognizes that the presence of soil contamination may not be visible upon site inspection and may only become apparent as a potential hazard once a construction project commences (e.g. upon removal of a fuel storage tank).

Upon the discovery of soil contamination, work must cease on site and the proper parties must be notified for testing, confirmation of contamination, and remediation as required.

Documentation of contamination and subsequent clearance must be attached as supplemental documentation to the reevaluated Tier 2.

Based on the site inspection and/or historical evidence provided by the Environmental Data Report, the party preparing the Tier 2 may determine whether substances used previously on the site or adjacent to the site pose a potential hazard to the occupants of the property.

#### *7.3.3.4 Mold*

The Program does not require mold testing but does anticipate that homes with water damage could have conditions conducive to the excessive growth of mold that may present a potential health hazard to construction workers and residents. The presence of mold may not be visible upon site inspection and only become apparent to the Program as a potential hazard requiring mitigation and scoping once a construction project commences.

### **7.3.4 Program Management of Environmental Review Documents**

The CMS is considered the final repository for all environmental review documents approved for the Program and is subject to audit by the City, HUD and the Office of the Inspector General. The Program has established software tools to support the management of documents, including the environmental review documentation prepared by Contractors and Program staff.

#### *7.3.4.1 Tiered Environmental Review documents*

Contractors are responsible for generating tiered environmental review documents for review by Program staff, as well as for OMB review and signature approval. Tier 1 documents are published in both hard copy and electronic format.

Each Tier 2 environmental assessment prepared for the Program may be supplemented with materials developed to support analysis and decision-making. Such supplemental materials may include agency correspondence, public notices, risk assessments, an Environmental Data Report, Phase I Environmental Site Assessment, environmental sampling reports, and other materials. Supplemental materials developed by the Contractor for each Tier 2 must be submitted for the Program's records before site-specific construction commences. These records are also made available to OMB to support reviews and audit processes. Tier 2 documents and supporting materials are submitted to the Program in electronic format for the ERR.

#### *7.3.4.2 Other Environmental Review Documents*

Some activities are not covered under the Tier 1 or Tier 2 levels of review. In these cases, a separate environmental review determination must be made and incorporated into the ERR prior to proceeding with any work. The Program Standard Operating Procedures for Environmental Compliance provide additional guidance regarding separate environmental review determinations. Certain project activities requiring separate environmental review determinations may be Exempt or Categorically Excluded from further environmental review requirements. Other project activities may require Environmental Assessments or Environmental Impact Statements as defined by 40 CFR 1508.

#### *7.3.4.3 Revisions to Environmental Review Documents*

The Program has anticipated the potential for changes in project conditions and scopes of work after Environmental Review documents are approved by OMB and incorporated into the ERR.

Tier I Re-evaluations are produced to document programmatic changes for OMB review, approval and ERR incorporation.

Tier 2 revisions may be required after OMB approval and prior to construction. Revisions may also be required after construction has been initiated. These cases typically occur due to expanded scope and increased cost such as when a rehabilitation project must become a reconstruction project. The Tier 2 revision must capture the new scope of work, an assessment of the applicable environmental compliance factors and the appropriate mitigation requirements. Tier 2 revisions must be resubmitted to OMB for review, approval and incorporation into the ERR before any further site-specific construction activity can proceed.

## **8 Construction Feasibility Determinations**

Homes in New York City that are potentially eligible for assistance are widely variable in their type and condition and each site upon which a home is located presents unique challenges. Accordingly, each home that was impacted by Hurricane Sandy must be considered a unique project with its own set of factors that must be considered when determining the options that are available to an applicant.

In addition to site-specific factors, the Program must also consider other factors when it determines the options that are available to an applicant such as:

- Compliance with federal, state and local laws and regulations,
- The City of New York's long-term planning goals,
- The Program's capacity to complete certain project types,
- Construction duration,
- Construction cost, and
- HUD and City mandated deadlines to complete the Program in a reasonable period of time.

In order to address the myriad of factors that may impact a project's pathway, the Program makes objective determinations using its procedures, combined with professional judgment, to determine the types of benefits an applicant may be eligible to receive. The Program refers to this decision-making process as its "feasibility determination". Feasibility is a two-step process that first identifies the types of benefits an applicant is eligible to receive within the constraints outlined by various laws, regulations and codes and then determines the most feasible alternative if an applicant is potentially eligible to receive more than one construction benefit type.

### **8.1 Post-Damage Assessment Feasibility Determinations**

The Program performs its first feasibility review of a project upon conclusion of the damage assessment. This review is a planning tool that is designed to identify the options that an applicant may be eligible to receive. The results of the first feasibility analysis are subject to change at later points in the process based upon a more detailed inspection of the applicant's home and property and other factors influencing the project's outcome.

#### **8.1.1 Substantial Damage**

The Program is required to perform a substantial damage determination for each structure that is receiving assistance to ensure compliance with federal funding requirements and New York City's floodplain management ordinance and Building Code. In order to determine if a property is substantially damaged, the Program compares the estimated cost of all repairs that are necessary to restore the structure to its pre-storm condition to the pre-storm value of the structure receiving assistance. The damage value includes all completed permanent repairs noted during the damage assessment plus the damage assessment's estimated cost to complete any remaining storm damage repairs. If the structure's total restoration cost equals or exceeds 50% of the pre-Sandy market value, the building must be brought into compliance with Appendix G of New York City's Building Code even if the structure is not fully restored to its pre-Sandy condition.

### **8.1.2 Preliminary Substantial Improvement**

The Program is required to perform a substantial improvement determination for each structure that is receiving assistance to ensure compliance with federal funding requirements and New York City's floodplain management ordinance and Building Code. In order to determine if a property is substantially improved, the Program compares the estimated cost of all work associated with the potential repair project (including all completed permanent repairs noted during the damage assessment plus the estimated cost of the work that may be included during the design phase) to the pre-storm value of the structure receiving assistance.

The preliminary substantial improvement determination is not binding upon the Program or the applicant. Instead, the preliminary substantial improvement determination is a planning tool that must be reconfirmed after the final scope and cost of the project is prepared during the design phase. The cost that is used to calculate preliminary substantial improvement may not reflect the actual cost that is ultimately incurred to repair the home. Accordingly, a final substantial improvement calculation must be performed when the project's cost is finalized.

### **8.1.3 Preliminary Substantial Improvement Elevation Choice (“SD/SI Choice”)**

In some cases, the substantial damage determination may show that elevation is not required while the preliminary substantial improvement determination shows that elevation may be required. In those cases, during the option selection phase, the applicant may be provided with a choice to proceed with elevation based upon the preliminary substantial improvement determination or to proceed to a non-elevation design consultation where the Program will make a final determination as to whether elevation is required.

### **8.1.4 Reconstruction Choice**

If the estimated cost to repair from the feasibility report falls between 75% and 100% of the estimated cost to reconstruct, the applicant may be provided the option to repair rather than reconstruct. If such an applicant elects to repair even though reconstruction has been offered, the Program will review the project to determine if repair and elevation is practicable. If the Program determines that it can complete repairs after this option is elected by the applicant, the applicant will be required to continue with the repair option and the applicant may not receive reconstruction unless it becomes the only feasible construction alternative. The choice to reconstruct based upon the repair feasibility determination is only offered during the option selection phase. Applicants are not provided this choice during the design phase.

### **8.1.5 Elevation Feasibility**

For elevation projects, the Program must determine if it is feasible to repair and elevate a structure by performing a cost-and-risk-based analysis of the potential repair project. If the estimated cost to repair and elevate (including all elevation, mitigation and associated costs) equals or exceeds 100% of the estimated cost to reconstruct, the structure may be reconstructed. In addition to cost, the Program must also identify conditions which may significantly impair the ability of the Program to successfully complete the elevation of a home, such as structure type, structure condition and safety considerations. Structures which cannot be successfully repaired in a safe, cost-effective and timely manner may be reconstructed, if the Program determines it is reasonable and feasible to do so.

## **8.2 Pre-Construction Feasibility Determinations**

Prior to starting construction, the Program's preliminary pathway determination must be confirmed through a review of the project's proposed design and cost. In some cases, this may alter the Program's offering and require that the project's pathway be altered to a more feasible alternative. The Program has the authority to change a project's pathway even if an applicant accepted another pathway earlier in the process.

### **8.2.1 Substantial Damage**

The substantial damage status of a property or structure is established by the damage assessment report. Substantial damage is not reconfirmed during the design process unless the Program chooses to utilize an alternate calculation methodology to recalculate substantial damage.

### **8.2.2 Final Substantial Improvement**

The Program must compare the cost of all work associated with a repair project (including all completed permanent repairs noted during the damage assessment and remaining work left to be performed by the Program) to the pre-storm value of the structure receiving assistance. This must include all related building permit applications with the scope of the project and any unrelated work if it is being performed during the same time period as the Program's construction.

The cost that is compared shall not include improvements that are unrelated to the repair of Sandy damage provided that such work:

- Was completed prior to the initiation of Program construction and was the subject of a building permit application that has been closed;
- Was completed prior to the initiation of Program construction and did not require a building permit; or
- Was not included in the Program's initial scope of work, but is the subject of a change order that does not require filing a new or amended building permit application.

If this total cost of this work equals or exceeds 50% of the pre-storm value of the structure receiving assistance, the building must be brought into compliance with flood zone regulations for new buildings even if the structure is not fully restored to its pre-Sandy condition.

### **8.2.3 Discretionary/Optional Elevation**

The Program has discretion to offer elevation assistance to homeowners in certain cases. Such cases include, but are not limited to, the following instances:

- If the Program determines that it is reasonably likely that a non-substantially damaged structure in a floodplain will be classified as substantially improved after scoping;
- If the Program determines that it is likely that change orders to a project may result in substantial improvement;
- If the Program determines that a home is at risk of repetitive flooding as evidenced by post-Sandy losses;
- If the Program determines that a home is physically attached to another home that is receiving elevation or reconstruction assistance; or
- If the Program identifies site conditions or other circumstances that the Program determines justify the elevation of the home.

The Program will document the reasons for each discretionary elevation. The Program may also provide elevation assistance to applicants whose homes are not substantially damaged or substantially improved by establishing alternate criteria such as a lower damage or improvement threshold. The Program may adjust the criteria for voluntary elevation throughout the life of the Program based upon construction data, applicant feedback and funding availability.

#### **8.2.4 Final Repair Feasibility**

The Program must determine if it is feasible to repair a structure by performing a cost-and-risk-based analysis of the potential repair project. If the Program determines that the estimated total cost to repair the structure (including all elevation, mitigation and associated costs) equals or exceeds 100% of the estimated cost to reconstruct the structure, the structure may be reconstructed. In addition to cost, the Program must also identify conditions which may significantly impair the ability of the Program to successfully complete repairs, such as structure type, structure condition and safety considerations, on a case-by-case basis. Structures which cannot be successfully repaired in a safe, cost-effective and timely manner may be reconstructed or offered other relief the Program determines is feasible unless conditions exist that demonstrate that the repair of the structure is the only option.

#### **8.2.5 Tier 2 Revision**

All pathway changes must be reevaluated by the Program to determine if a revised Tier 2 environmental assessment is required. The project may not proceed past the design phase until the revised Tier 2 is approved by OMB and the design is evaluated for compliance with the revised Tier 2.

### **8.3 Updated Methods of Calculating Substantial Damage and Substantial Improvement**

#### **8.3.1 New York City's Floodplain Management Requirements**

As a condition of participating in the National Flood Insurance Program, New York City was required to adopt a floodplain management ordinance and building code requirements that govern construction within the City's 100-year floodplain. The responsibility for interpreting and enforcing these requirements is vested in New York City's Floodplain Administrator. Due to the variability in the City's housing stock, it was necessary to adopt certain alternative, updated methods for calculating substantial damage and improvement that were approved by the City's Floodplain Administrator based upon rules announced in FEMA's Substantial Improvement/Substantial Damage Desk Reference.

#### **8.3.2 Substantial Damage and Improvement for Multiple Structures**

The Program may perform substantial damage and improvement determinations on a property basis if the property contains multiple structures. This is required because the DOF records do not provide individual structure values when a parcel of land contains multiple structures. The Program may also conduct appraisals to determine the pre-Sandy market value for individual structures and it may perform individual substantial damage and improvement determinations for each individual structure. In cases where determinations are made for individual structures, the determinations may result in each structure being assigned a different Program pathway. The ability to provide assistance to multiple structures with different pathways may be limited by zoning or other site restrictions.

### **8.3.3 Substantial Damage and Improvement for Units in Condo and Co-op Buildings**

In some cases, the Program is unable to gather data to quantify the damage or improvements within each unit that located within a multi-unit building that is owned by a cooperative or condominium association because the Program does not require that all unit owners participate in the Program. Accordingly, the Program will determine the substantial damage status of such a building by utilizing the FEMA Residential Substantial Damage Estimator (RSDE) consistent with direction provided by NYC's floodplain administrator. The Program will utilize its existing policy on substantial improvements to determine if the Program's repair activities will constitute a substantial improvement and said policy will be applied on a building basis.

### **8.3.4 Cost Alignment**

Build it Back is a federally funded, City-administered disaster recovery housing program that directly procures construction services from contractors using a variety of contracting methods. Accordingly, costs of projects can vary based upon the procuring agency, contract requirements, labor requirements and other factors. While the City's ability to utilize different contracting methods provides additional capacity, it can lead to costs that vary based upon the procurement and contracting method employed for the project. In order to address this issue, FEMA and the City's Floodplain Administrator have authorized the use of a substantial improvement calculation methodology that will level project costs so that they align with the Program's substantial damage cost estimate, regardless of the contracting mechanism used.

### **8.3.5 Actual Cash Value**

As authorized by FEMA and New York City's Floodplain Administrator, the Program may utilize a structure's actual cash value ("ACV") as the denominator in a substantial damage or substantial improvement calculation. The Program uses a projected replacement cost in its construction feasibility calculations that was derived from RSMeans. This cost is based upon a low estimate of the cost to replace the structure that is used during the planning phase to identify possible reconstruction projects when the Program compares the estimated cost to elevate a structure to the estimated cost to replace a structure. The Program also captures depreciation percentages when it performs an appraisal on a home. In cases where a depreciation value has been captured through an appraisal, the Program may utilize the ACV for the structure as the denominator.

### **8.3.6 Exclusions**

As authorized by FEMA and New York City's Floodplain Administrator, the Program may exclude certain costs from the substantial damage and substantial improvement calculations as stated in FEMA's Substantial Improvement/Substantial Damage Desk Reference. The Program may also exclude costs associated with performing certain types of work to correct health and safety related issues, including the cost to abate, remove or address lead based paint and asbestos. In order to exclude lead based paint and asbestos-related costs, the Program must provide approved documentation to the Floodplain Administrator and it must keep a record of the costs excluded.

### **8.3.7 Aggregation of Structure Values for Attached Homes**

As authorized by FEMA and New York City's Floodplain Administrator, the Program may utilize the average, appraised value of the structure(s) participating in the Program for all structures in the row, if available. If an appraised value is not available, the Program will utilize the Department of Finance's pre-storm structure value for the denominator. For the numerator, the Program will

utilize the cost disclosed on all post-storm building permits that were filed relative to all non-applicant attached structures. If no permits were filed or if the cost disclosed on permits deviates significantly from a reasonable damage value, the Program will substitute the average damage of the structure(s) receiving assistance from the Program for the cost disclosed on post-storm permits.

**8.4 Updated Substantial Improvement Calculation for Detached Homes**

$\frac{\text{Completed Storm Damage Repairs (Market Cost Estimate Less Applicable Exclusions) + Cost to Complete Remaining Storm Damage Repairs (Market Cost Estimate Less Applicable Exclusions)}}{\text{Department of Finance (DOF) Pre-Storm Structure Value or Pre-Storm Appraised Value or Actual Cash Value (ACV)}}$	≥ 50%
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**8.5 Updated Substantial Damage Calculation for Attached Homes**

$\frac{\text{Completed Storm Damage Repairs for All Build it Back Attached Homes Receiving Assistance (Market Cost Estimate Less Applicable Exclusions) + Estimated Cost to Complete Remaining Storm Damage Repairs for All Build it Back Attached Homes Receiving Assistance (Market Cost Estimate Less Applicable Exclusions) + Cost Disclosed on Post-Storm Permits Filed for Non-Build it Back Homes or the Average Damage as Extrapolated from the Build it Back Structure(s)}}{\text{Value of All Build it Back Homes Receiving Assistance (DOF Pre-Storm Structure Value or Pre-Storm Appraised Value or ACV) + Aggregated Value of All Non-Build it Back Attached Homes (DOF Pre-Storm Structure Value or Average Appraised Value or ACV as Extrapolated from the Build it Back Structure(s))}}$	≥ 50%
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**8.6 Updated Substantial Improvement Calculation for Attached Homes**

$\frac{\text{Completed Storm Damage Repairs for All Build it Back Attached Homes Receiving Assistance (Market Cost Estimate Less Applicable Exclusions) + Cost to Complete Remaining Storm Damage Repairs for All Build it Back Attached Homes Receiving Assistance (Market Cost Estimate Less Applicable Exclusions) + Cost Disclosed on Post-Storm Permits Filed for Non-Build it Back Homes or the Average Damage as Extrapolated from the Build it Back Structure(s)}}{\text{Value of All Build it Back Homes Receiving Assistance (DOF Pre-Storm Structure Value or Pre-Storm Appraised Value or ACV) + Aggregated Value of All Non-Build it Back Attached Homes (DOF Pre-Storm Structure Value or Average Appraised Value or ACV as Extrapolated from the Build it Back Structure(s))}}$	≥ 50%
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**8.7 Infeasible Construction and Unbuildable Sites**

The Program has implemented certain procedures that are intended to ensure that each project proceeds forward on the most feasible and cost-effective construction pathway. In certain cases, the Program may determine that it is in the best interests of the City to make exceptions to these procedures to allow for safe, cost effective and practical construction because of conditions that were not considered during the Program’s post-damage assessment or pre-construction feasibility analysis. If, during the review of a project’s pathway, the Program determines that a project’s pathway is not appropriate or that a more feasible or less expensive alternative is available, the Program may alter a project’s pathway. All such determinations must be done so that the project maintains compliance with all relevant federal requirements and such decisions must be documented.

### **8.7.1 Pathway Verification for Elevation or Reconstruction Projects**

On January 25, 2017, the Program began reviewing proposed elevation or reconstruction projects that had not yet started construction using the Program's updated substantial damage and substantial improvement calculation methodologies as outlined herein. The purpose of these Pathway Verification Reviews is to verify whether the Program's preliminary determination that it would elevate or reconstruct a home is the most feasible and cost-effective construction alternative in light of the Program's ability to utilize its updated calculation methodologies. If the revised calculation demonstrates that elevation is no longer required, the Program may change the applicant's pathway to repair, reimbursement or repair with reimbursement. The Program may also offer acquisition, relocation or buyout when appropriate.

In conjunction with recalculating substantial damage and substantial improvement, the Program also established criteria for determining whether a structure that no longer had to be elevated was still eligible for elevation assistance under the Program's Optional/Discretionary Elevation policy. Such criteria include, but are not limited to:

- whether the structure is currently in compliance with effective elevation height requirements,
- the minimum elevation height required in order to bring the structure into compliance with Appendix G, and
- the feasibility and cost of the elevation and/or reconstruction project.

### **8.7.2 Adjustments to Designs and Scopes of Work Due to Cost or Other Constraints**

The Program's Minimum Program Standards and Design Guidance documents establish minimum and maximum construction benefits that an applicant is eligible to receive. In certain cases, the Program may determine that it is unable to provide all design elements that an applicant is eligible pursuant to the Program's design procedures due to factors such as excessive cost, difficulty, complexity, zoning or other factors. In such cases, the Program may limit or eliminate design elements such as square footage, unit count, utility elevation or other aspects of a home's design. Determinations to limit a scope of work or design are made on a case by case basis in response to individual project constraints. In all cases, the Program must ensure that the applicant's home is decent, safe and sanitary upon project completion.

### **8.7.3 Unbuildable Sites**

The Program may establish site-specific criteria that define such sites as being inappropriate for repair, elevation or reconstruction. Criteria include, but are not limited to, location in an area that was designed as a buyout area by New York State, location in an area that is designated by New York City as a high-hazard area or location within a Program-designated hazard mitigation zone. The owners of sites that are declared unbuildable may be offered the opportunity to participate in the Program's acquisition and/or relocation options.

## **9 Build It Back Construction Options**

The Build It Back Program offers multiple construction options. Generally, applicants are given the choice between utilizing a City-managed contractor or managing their own construction project. If applicants choose a City-managed contractor, the City will make the decision as to the most appropriate choice of contractor based upon several factors including the location of the project, the type of project, the complexity of the project and the available capacity of contractors. Applicants that choose their own contractors are given additional flexibility in terms of design and construction, but applicant managed projects are still subject to construction oversight by the City.

The following sections outline the different options that are available to both applicants and to the Program. It is important to note that each option is different and is subject to different policies and procedures.

## **10 Construction Using HRO Job Order Contractors**

### **10.1 Standard for Assignment to a JOC**

The City of New York has procured construction contractors through Job Order Contracts (“JOCs”) that are managed through HRO. HRO will fully manage all construction projects performed by Job Order Contractors (JOCs) and will make all payments directly to JOCs upon project completion. Applicants that choose to utilize a City-managed contractor may be routed to a JOC if the applicant’s home is not attached to another home and the home is not designated as being appropriate for assignment to a Construction Manager. The Program may make exceptions to these criteria based upon capacity and need.

### **10.2 Design/Scope of Work**

All HRO JOC projects must have a design and scope of work prepared by the Program to ensure that:

- The scope of work that the Program will be funding is necessary;
- The cost of the project is reasonable;
- The design meets the Minimum Program Standards;
- The scope and design meets the compliance requirements established by the Tier 2 environmental assessment;
- The property will be decent, safe and sanitary upon project completion; and,
- All hazardous materials are abated or mitigated during construction as required by Program guidelines.

### **10.3 Design Consultation**

The City of New York has procured design professionals to prepare detailed scopes of work for each HRO JOC project. This scope of work must include relevant unit priced items and quantities, basic floor plans and elevations and written descriptions of any required mitigation or remediation. The detailed scope of work results in the final estimated construction cost for the project. The detailed scope of work must also note any scope and cost reductions that were made to address unsatisfied transfer amounts. The Program may reevaluate the applicant’s construction pathway prior to construction based upon site conditions, construction factors, environmental compliance factors, cost or other reasons and it may choose to offer the applicant a different construction option.

### **10.4 Homeowner Upgrades and Out of Scope Work**

Applicants are not permitted to have any out of scope work performed or upgrade Program designated finishes or items when participating in the HRO JOC option.

### **10.5 Minimum Program Standards**

The Program has established Minimum Program Standards (MPS) that provide the program standards and policies for all projects. All scopes of work must meet the Minimum Program Standards.

### **10.6 Reasonable Accommodation Requests (RARs)**

Approved requests for reasonable accommodation must be reviewed and included in the scope of work for each project. Applicants may submit such requests during the design phase and the

development of the project's scope should not be finalized until the Program has made a determination as to whether to grant the request. The Program will only make reasonable accommodations by modifying the scope of work that the applicant is already eligible to receive. Examples of potentially eligible reasonable accommodations include, but are not limited to:

- Designing a disabled applicant's reconstructed home so that it is accessible;
- Installing a lift or ramp on a home that is receiving elevation assistance so that a disabled household member may access the home; and
- Designing a bathroom to accommodate for a disability when replacement of the bathroom is part of the Program's storm damage repairs.

The Program will not fund accommodations in areas of a structure that are not receiving other eligible assistance. Examples of potentially ineligible accommodations include, but are not limited to:

- Altering a second-floor bathroom that was not storm damaged and was not already included in an eligible scope of work;
- Installing a lift on a home that is not receiving elevation assistance; and
- Widening doorways in areas of the home that are not already included in an eligible scope of work.

Applicants may only submit reasonable accommodation requests after executing their construction contract if they are able to demonstrate that a new or changed circumstance gave rise to the request or if the applicant was unaware of the opportunity or requirement to request a reasonable accommodation.

### **10.7 Sustainability Standards for Non-Substantially Damaged/Improved Properties**

The Program applies the Green Building Retrofit Checklist to properties that were not substantially damaged and properties that will not be substantially improved by the Program's repair work. The Program recognizes that the scope of work for residential units within a disaster recovery framework may vary widely. Therefore, the specific applicability of the Green Building Retrofit Checklist is contained within the Program's Minimum Program Standards.

### **10.8 Sustainability Standards for Substantially Damaged/Improved Properties**

The Program applies the Enterprise Green Communities standard to properties that were substantially damaged, properties that will be substantially improved by the Program's repair work and properties that will be reconstructed. The Program recognizes that the scope of work for residential units within a disaster recovery framework may vary widely. Therefore, the specific applicability of the Enterprise Green Communities standard is contained within the Program's Minimum Program Standards.

### **10.9 Repairs in Non-Substantially Damaged/Improved Structures**

If the Program determines that a structure located in a SFHA is not substantially damaged and will not be substantially improved, the Program may allow equipment or finishes of the same types in the same locations to be replaced. The Program does not allow for an increase in the degree

of noncompliance with Appendix G of the latest NYC Building Code. Noncompliant actions include, but are not limited to:

- Finishing an unfinished basement;
- Creating a basement apartment;
- Adding new or additional mechanical equipment; or
- Changing occupancy to one with a higher Design Flood Elevation.

### **10.10 Open Building Permits and Violations**

Applicants may be required to close open permits or correct violations before the Program can begin construction work if the open permits or violations will interfere with Program construction or prevent the Program from closing out the project with the Department of Buildings.

### **10.11 Designs**

In order to expedite the preconstruction process, the Program may utilize pre-approved prototype designs, modular designs or individually designed homes that meet site constraints such as lot shape, buildable area, attachment to other homes or other unique factors.

### **10.12 Number of Units Reconstructed**

The Program will reconstruct all units that were present on the applicant's property as determined by the Program's damage assessor provided that:

- The Program determines that it is feasible to reconstruct all units;
- The number of units to be reconstructed are not in conflict with a Certificate of Occupancy;
- The number of units to be reconstructed are not in conflict with Zoning Requirements of NYC;
- The number of units was not the result of an illegal conversion as documented by the NYC Department of Buildings ("DoB"); and
- The reconstruction of units will not require approval by the New York City Board of Standards and Appeals ("BSA"), except those allowable under the "Special Regulations for Neighborhood Recovery".

The Program will not reconstruct more than four units on a property. The Program will attempt to reconstruct multiple units that were previously located in separate, detached structures as a single structure. The Program will only reconstruct the units that were present on the property at the time of the storm and will not increase the number of units.

### **10.13 Reconstructed Square Footage**

The Program will reconstruct the pre-storm square footage of the applicant's home as determined by the Program's damage assessor up to a maximum square footage as stated in the Minimum Program Standards. Basement space may be reconstructed if it meets the Program's criteria for habitable space. If the Program must reduce the property's unit count, the Program will attempt to replace the square footage of the units that will not be rebuilt. The Program may reconstruct additional square footage if the applicant's pre-storm square footage was lower than the Program's minimum square footage for its home designs or if the Program relocates the applicant in a new home constructed in another location.

#### **10.14 Elevation Height**

The Program may elevate a reconstructed home higher than required where zoning regulations and site conditions allow.

#### **10.15 Sustainability Standards for Reconstruction Projects**

All reconstruction designs must meet specifications allowing them to be Energy Star certified. The Program does not require that each individual home be certified.

#### **10.16 Other Reconstruction Design Requirements**

The Program has established program standards and design policies for all reconstruction projects. All reconstruction scopes of work must meet the reconstruction standards that were in effect at the time of the design.

#### **10.17 Program Contractor Repair Construction Contracts**

If the applicant has opted to utilize a Program contractor, the Program contractor and each property owner must execute the Program's Tri-Party Agreement that describes the respective responsibilities of the contractor and applicant(s) during construction. This contract will also include the Job Order. The Tri-Party Agreement must be signed by the Program's Design Specialist and a Program representative. If one or more of the owners have granted rights to another owner or party to execute documents on their behalf through a power of attorney, the party with rights to sign may sign on that owner's behalf.

#### **10.18 Submittals**

JOC contractors must provide "program-wide" submittals of materials for all unit price items for Program approval. Where the Program specifications refer to a brand name or equal description of the technical requirements, the contractor may specify an "equal" product that meets the requirements. Contractors may be required to provide "Job Order Specific" submittals related to specific work unique to a particular address.

#### **10.19 Collection of Funds**

If an applicant is receiving construction assistance from the Program and the coordination of benefits calculation shows that the applicant has a transfer amount, the applicant must satisfy their transfer amount before construction can begin. Payment may be made after design is completed.

#### **10.20 Scope Reduction**

If the applicant cannot fully fund the transfer amount, the Program may review the applicant's scope of work to determine if the cost of the project can be reduced by an amount equal to or greater than the unsatisfied transfer amount, while complying with the Minimum Program Standards and NYC Building Code. If the cost cannot be reduced, the Program will notify the applicant that the Project cannot proceed until sufficient funds are paid to the Program. The Program may limit the kinds and types of scope items that may be removed. All scope reductions must be documented and show the items removed from the scope of work and the cost of the items removed.

### **10.21 Program Inspections**

Every home undergoing repair must undergo a minimum of two progress inspections to evaluate the contractor's progress, confirm that the NYC Building Code and regulations have been met, confirm that all Program and contractual requirements have been satisfied and verify quality of workmanship. The number and type of inspections that are required will vary by job type and will be established by the Program prior to construction initiation.

### **10.22 NYC Department of Buildings (DoB) Inspections**

Contractors must schedule and pass all pre-requisite DoB inspections prior to scheduling Program inspections. All projects are subject to additional special inspections by a third-party architect/engineer pursuant to DoB requirements. At final inspection, all required DoB inspections and certifications are required to be passed and closed.

### **10.23 Change Orders**

Contractors may submit requests for supplemental job orders ("change orders"), including a time extension to complete work. The Program must review and issue an approval or rejection of supplemental job orders. Supplemental job orders which exceed a Program-mandated cost and schedule threshold must be routed for additional approval. The Program will also make a substantial improvement determination prior to the approval of any change orders for a repair project if the change order requires the filing of a new or amended permit with the NYC Department of Buildings.

### **10.24 JOC Payments**

Payments to JOC construction contractors will be made after passing a Program progress inspection. The number of payments will vary by job type and will be established by the Program prior to construction initiation. The Program may make partial payments for properly completed work, but may not make payments for work that was not properly completed.

### **10.25 Warranty Provisions**

The Program's construction contract will contain standard warranty provisions that mandate warranty coverage for the applicant's home. The Program will provide support for applicants to file warranty claims related to defects in workmanship with their contractor via a Program-supplied Warranty Claim Form. The Program will not provide support if the defect is covered under a manufacturer's warranty. The Program will provide applicants with notice of a contractor's determination after a Warranty Claim Form is submitted. If a contractor ultimately denies a warranty claim, applicants can address the matter directly with the contractor's insurance provider.

### **10.26 Contractors Required to Comply with Section 3**

All Program-assigned contractors repairing homes with awards over \$100,000 with NYC Build It Back funds must comply with the Build It Back Section 3 policy. Contractors must complete annual reports required by the Program in a timely manner. The data collected from the reports will be submitted by OMB to HUD. Further information can be found in the Section 3 section of this Manual.

## **11 Construction Using the Department of Design and Construction**

### **11.1 Standard for Assignment to a CM**

New York City has procured design and construction services through the Department of Design and Construction (“DDC”). These services are provided by a Construction Manager (“CM”) who provides design and construction management services and who also holds contracts with general contractors that will perform construction. Applicants that choose to utilize a City-managed contractor may be routed to a CM if the home is attached to another home, if the project is especially complex, if the home is located in a DDC area or if the home is located within an area that has been identified as presenting unique construction challenges such as a court or redevelopment area or hazard mitigation area. The Program may make exceptions to these criteria based upon capacity and/or need.

### **11.2 Design/Scope of Work**

All DDC CM projects must have a design and scope of work. This consists of plans and specifications prepared by the Program to ensure that:

- The scope of work that the Program will be funding is necessary;
- The cost of the project can be assessed and is reasonable;
- The design meets the Minimum Program Standards and reconstruction standards;
- The scope and design meets the compliance requirements established by the Tier 2 environmental assessment;
- The property will be decent, safe and sanitary upon project completion; and
- All hazardous materials are abated or mitigated during construction as required by Program guidelines.
- The scope and design meet all NYC DOB requirements.

The City of New York has procured Construction Managers to prepare detailed scopes of work, plans, and specifications for each project.

### **11.3 Homeowner Upgrades and Out of Scope Work**

Applicants are not permitted to have any additional out of scope work performed or upgrade Program designated finishes or items when participating in the CM option.

### **11.4 Reasonable Accommodation Requests (RARs)**

Approved requests for reasonable accommodation must be reviewed and included in the scope of work for each project. Applicants may submit such requests during the design phase and the development of the project’s scope should not be finalized until the Program has made a determination as to whether to grant the request. The Program will only make reasonable accommodations by modifying the scope of work that the applicant is already eligible to receive. Examples of potentially eligible reasonable accommodations include, but are not limited to:

- Designing a disabled applicant’s reconstructed home so that it is accessible;
- Installing a lift or ramp on a home that is receiving elevation assistance so that a disabled household member may access the home; and

- Designing a bathroom to accommodate for a disability when replacement of the bathroom is part of the Program's storm damage repairs.

The Program will not fund accommodations in areas of a structure that are not receiving other eligible assistance. Examples of potentially ineligible accommodations include, but are not limited to:

- Altering a second-floor bathroom that was not storm damaged and was not already included in an eligible scope of work;
- Installing a lift on a home that is not receiving elevation assistance; and
- Widening doorways in areas of the home that are not already included in an eligible scope of work.

Applicants may only submit reasonable accommodation requests after executing their construction contract if they are able to demonstrate that a new or changed circumstance gave rise to the request or if the applicant was unaware of the opportunity or requirement to request a reasonable accommodation.

### **11.5 Open Building Permits and Violations**

Applicants may be required to close open permits or correct violations before the Program can begin construction work if the open permits or violations will interfere with Program construction or prevent the Program from closing out the project with the Department of Buildings.

### **11.6 General Requirements**

At a minimum, each repair or rehabilitation with elevation scope of work must contain:

- A listing of the items and quantities to be repaired or replaced;
- Basic floor plans and elevations;
- Written descriptions of any required mitigation or remediation as noted on the Program's Tier 2;
- The estimated cost of construction; and
- Any scope and cost reductions that were made to address unsatisfied transfer amounts.

The Program may reevaluate the applicant's construction pathway prior to construction based upon site conditions, construction factors, environmental compliance factors, cost or other reasons. The Program may choose to offer the applicant a different construction option.

### **11.7 Minimum Program Standards**

The Program has established Minimum Program Standards (MPS) that provide the program standards and policies for all projects. All scopes of work must meet the Minimum Program Standards.

### **11.8 Sustainability Standards for Non-Substantially Damaged/Improved Properties**

The Program applies the Green Building Retrofit Checklist to properties that were not substantially damaged, properties that will not be substantially improved by the Program's repair work and properties that will be reconstructed. The Program recognizes that the scope of work for residential units within a disaster recovery framework may vary widely. Therefore, the specific

applicability of the Green Building Retrofit Checklist is contained within the Program's Minimum Program Standards.

### **11.9 Sustainability Standards for Substantially Damaged/Improved Properties**

The Program applies the Enterprise Green Communities standard to properties that were substantially damaged and properties that will be substantially improved by the Program's repair work. The Program recognizes that the scope of work for residential units within a disaster recovery framework may vary widely. Therefore, the specific applicability of the Enterprise Green Communities standard is contained within the Program's Minimum Program Standards.

### **11.10 Repairs in Non-Substantially Damaged/Improved Structures**

If the Program determines that a structure located in a Special Flood Hazard Area (SFHA) is not substantially damaged and will not be substantially improved, the Program may allow equipment or finishes of the same types in the same locations to be replaced. The Program does not allow for an increase in the degree of noncompliance with Appendix G of the latest NYC Building Code. Noncompliant actions include, but are not limited to:

- Finishing an unfinished basement;
- Creating a basement apartment;
- Adding new or additional mechanical equipment; or
- Changing occupancy to one with a higher Design Flood Elevation (DFE).

### **11.11 Designs**

In order to expedite the preconstruction process, the Program may utilize pre-approved prototype designs, modular designs or individually designed homes that meet site constraints such as lot shape, buildable area, attachment to other homes or other unique factors.

### **11.12 Number of Units Reconstructed**

The Program will reconstruct all units that were present on the applicant's property as determined by the Program's damage assessor provided that:

- The Program determines that it is feasible to reconstruct all units;
- The number of units to be reconstructed are not in conflict with a Certificate of Occupancy;
- The number of units to be reconstructed are not in conflict with Zoning Requirements of NYC;
- The number of units was not the result of an illegal conversion as documented by the NYC Department of Buildings ("DoB"); and
- The reconstruction of units will not require approval by the New York City Board of Standards and Appeals ("BSA"), except those allowable under the "Special Regulations for Neighborhood Recovery".

The Program will not reconstruct more than four units on a property. The Program will attempt to reconstruct multiple units that were previously located in separate, detached structures as a single structure. The Program will only reconstruct the units that were present on the property at the time of the storm and will not increase the number of units.

### **11.13 Reconstructed Square Footage**

The Program will reconstruct the pre-storm square footage of the applicant's home as determined by the Program's damage assessor up to a maximum square footage as stated in the Minimum Program Standards. Basement space may be reconstructed if it meets the Program's criteria for habitable space. If the Program must reduce the property's unit count, the Program will attempt to replace the square footage of the units that will not be rebuilt. The Program may reconstruct additional square footage if the applicant's pre-storm square footage was lower than the Program's minimum square footage for its home designs or if the Program relocates the applicant in a new home constructed in another location.

### **11.14 Elevation Height**

The Program may elevate a reconstructed home higher than required where zoning regulations and site conditions allow.

### **11.15 Sustainability Standards for Reconstruction Projects**

All reconstruction designs must meet specifications allowing them to be Energy Star certified. The Program does not require that each individual home be certified.

### **11.16 Other Reconstruction Design Requirements**

The Program has established program standards and design policies for all reconstruction projects. All reconstruction scopes of work must meet the reconstruction standards that were in effect at the time of the design.

### **11.17 Construction Contractors**

DDC has selected construction contractors to participate in the Program through the use of its pre-qualification process. Selected contractors are included on a regularly updated DDC Pre-Qualified List ("PQL"). Participation in the Program is open to all contractors who meet the DDC's PQL requirements.

### **11.18 Construction Contractor Selection**

Each DDC CM may develop its own unique methodology for selecting construction contractors for individual projects. The methodology utilized must be compliant with all NYC and federal procurement rules. DDC will review and approve each methodology prior to its use by a CM.

### **11.19 Construction Hard Costs**

Each DDC CM may develop its own unique methodology for determining the final cost of a project. The methodology utilized must be compliant with all NYC and federal procurement rules and it must be in compliance with the requirements listed in this manual. DDC will review and approve each methodology prior to its use by a CM. At a minimum, all construction hard costs must be:

- Appropriately documented at the applicant level using an auditable methodology for tracking, reporting and monitoring purposes;
- Reasonable and consistent with federally mandated cost principles; and
- Necessary and consistent with the Program's Minimum Program Standards or Design Guidance for Reconstruction Projects.

## **11.20 Submittals**

CMs may accept submittals from contractors pursuant to the DDC approved procedures governing the review and approval of submittals.

## **11.21 Collection of Funds**

If an applicant is receiving construction assistance from the Program and the coordination of benefits calculation shows that the applicant has a transfer amount, the applicant must satisfy their transfer amount before construction can begin. Payment may be made after design is completed. The payment of transfer amounts to the City is coordinated through the NYC Mayor's Office of Housing Recovery Operations ("HRO").

## **11.22 Scope Reduction**

If the applicant cannot fully fund the transfer amount, the Program may review the applicant's scope of work to determine if the cost of the project can be reduced by an amount equal to or greater than the unsatisfied transfer amount, while complying with the Minimum Program Standards or the Design Guidance for Reconstruction Projects and NYC Building Code. If the cost cannot be reduced, the Program will notify the applicant that the Project cannot proceed until sufficient funds are paid to the Program. The Program may limit the kinds and types of scope items that may be removed. All scope reductions must be documented and show the items removed from the scope of work and the cost of the items removed.

## **11.23 Program Inspections**

Every home undergoing repair must undergo progress inspections conducted by the CM to evaluate the contractor's progress, confirm that the NYC Building Code and regulations have been met, confirm that all Program and contractual requirements have been satisfied and verify quality of workmanship. The number and type of inspections that are required will vary by job type and will be established by the Program prior to construction initiation.

## **11.24 NYC Department of Buildings (DoB) Inspections**

Contractors must schedule and pass all pre-requisite DoB inspections prior to scheduling Program inspections. All projects are subject to additional special inspections by a third-party architect/engineer pursuant to DoB requirements. At final inspection, all required DoB inspections and certifications are required to be passed and closed.

## **11.25 Change Orders**

Contractors may submit change order requests to the relevant CM when contractors encounter unforeseen field conditions, additional items not included in the original scope of work, or when scope of work items are removed from the original contract; this also includes requests for an extension of time to complete work. The Construction Manager (CM) must review and issue a written approval or rejection for each change order and the disposition of each change order must be documented and tracked so that any additional costs are included in the project's cost. All change order requests must be reviewed by the Program, and independently reviewed by DDC's Engineering Audit Office (EAO) prior to approval. The Program will also make a substantial improvement determination prior to the approval of any change orders for a repair project if the change order requires the filing of a new or amended permit with the NYC Department of Buildings.

## **11.26 Payments**

The DDC will review, process, and approve payments to the CM from the different allowances set forth in the agreement between the DDC and each CM. Each allowance will have its own payment procedures and or milestone payment schedule.

For Construction work, the construction contractors (general contractors) submit payment requests to the CM based on completed construction milestones. The DDC has established a Subcontractor Payment Fund (“SPF”) to provide an expedited payment mechanism that allows the CMs to pay general contractors for construction work completed. The SPF is reconciled each month as part of the CM payment requisition process. The CMs also submit payment requisitions monthly to DDC for verification of progress related to each application and each construction milestone as established in the agreement between the DDC and each CM. Upon approval by the DDC program unit, the EAO performs an independent audit of the payment requisition before payment is issued.

The DDC will review, process and approve payment requests from the Contractor (the Construction Manager) based on allowances for:

- Scoping and Design Services,
- Architectural and Engineering Services,
- Staffing Expenses,
- Field Operations & Office Setup,
- Fee for Profit,
- Emergency Work,
- Insurance,
- Miscellaneous Expenses,
- Environmental Testing, and
- Construction.

The CM will make payments to Subcontractors (construction contractors) as selected from the Pre-qualified list (PQL) of construction contractors. PQL subcontractors shall submit payment requests to the CM based on 6 completed construction milestones including Mobilization, Construction Completion at 25%,50% & 75%, Substantial Completion and Final Acceptance.

The CM will draw from the allowance for Construction work from which payments to GC’s will be made. Payments to general construction contractors will be first reviewed by the CM and upon approval submitted to DDC for processing, review and final approval. Payments will only be made after successfully passing required progress inspection(s) and only if all supporting documentation is included. The Program will make milestone payments for properly completed work. The Program will not make advanced payments to subcontractors. DDC may provide funding to the CM for construction projects through a Subcontractor Payment Fund allowing the CM to make payments directly to construction subcontractors for completed work prior to the CM submitting payment requisitions to DDC for the same.

## **11.27 Direct Moving and Storage Assistance for DDC Applicants**

Applicants that are receiving construction assistance through a DDC Construction Manager option may receive direct assistance from the Program to defray the cost of moving and storing furniture

that must be removed from a home due to the Program’s construction activities. Moving and storage expense claims will be subject to the following requirements:

- The applicant must be required to relocate due to Build It Back’s construction activities.
- The moving and storage expense payment will be fixed and the payment amount will be determined by the Program during the design phase and it will be based upon the number of rooms of furniture that must be removed from the home.
- The payment is not based upon actual expenses incurred and applicants are not required to submit receipts to the Program for review.
- The fixed payment amount contained in the schedule below is twice the amount listed in Fixed Residential Moving Cost Schedule approved by the Federal Highway Administration and published in the *Federal Register* on a periodic basis because the applicant will be required to move twice.
- Applicants are only allowed to file one claim form. The Program will not adjust claim amounts if the applicant is required to move additional rooms of furniture during construction.
- The claim will be processed for payment after the applicant signs their construction grant agreement and a claim form.
- Applicants will not be permitted to appeal approved claim amounts after signing a claim form.
- Applicants receiving a direct payment for moving and storage expenses must agree to commence construction in an expeditious manner and they must cooperate with construction activities. Applicants that fail to proceed to or complete construction will be required to repay any moving and storage claim amounts received.

The payment schedule will be as follows:

<b>Number of Furnished Rooms</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8 or More</b>
<b>Moving and Storage Payment</b>	\$1,200	\$1,600	\$2,000	\$2,400	\$2,800	\$3,200	\$3,600	\$4,000

For the CYOC, Direct Grant, JOC and HPD Developer options, this assistance is included in an applicant’s scope of work. The Program may opt to provide moving and storage assistance directly to an applicant that is receiving assistance through these options if the Program identifies a need to provide such assistance. In such cases, the Program must ensure that moving and storage costs/line items are removed from the applicable scope of work for the project.

### **11.28 Supplemental Storage Expenses**

Applicants that are required to store items from their homes for greater than six (6) months are eligible to receive an additional monthly payment to defray the cost of storing furniture that must be removed from a home due to the Program’s construction activities. Supplemental storage expense claims are subject to the following requirements:

- The applicant must be required to relocate due to Build It Back’s construction activities for a period of greater than six (6) months.
- Applicants are eligible to receive supplemental storage expense payments following six (6) months after they were directed to move the contents out of their home.
- Applicants must provide a bill or contract that states the monthly storage expense that was incurred for the most recent month prior to receiving supplemental storage assistance.
- The maximum moving and storage expense payment is the lesser of the monthly storage expense that was incurred for the most recent month of storage expense prior to receiving supplemental storage assistance or the maximum reimbursement amount determined by the Program based upon the number of rooms of furniture that must be removed from the home per the schedule, below.
- Applicants are not required to submit monthly receipts to the Program for review. Applicants are to be informed to save their receipts for such expenses for possible post-benefit auditing.
- The payment amount contained in the schedule below is the competitively procured base Xactimate price of \$1.57 per square foot, per month for offsite storage space used by the JOC Program option.<sup>1</sup> This price does not include any adjustment factor for profit, overhead and general conditions.
- Applicants are allowed to file one claim form per month. The applicant’s first claim form must include documentation of the monthly storage expense that was incurred for the most recent month prior to receiving supplemental storage assistance.
- Monthly payments are capped at the amount of the applicant’s first, approved supplemental storage expense claim payment. The Program will not adjust claim amounts if the applicant is required to move additional rooms of furniture during construction or if storage costs increase.
- Applicants will not be permitted to appeal approved claim amounts after signing a supplemental storage claim form.
- Applicants receiving a direct payment for supplemental storage expenses will have already agreed to cooperate with construction activities. Applicants that fail to complete construction may be required to repay any supplemental storage claim received.

The maximum payment schedule will be as follows:

<b>Number of Furnished Rooms</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8 or More</b>
<b>Square Foot Basis</b>	50	75	100	125	150	175	200	225
<b>Supplemental Monthly Storage Payment</b>	\$79	\$118	\$157	\$196	\$236	\$275	\$314	\$353

For the CYOC, Direct Grant, JOC and HPD Developer options, this assistance is included in an applicant’s scope of work. The Program may opt to provide supplemental storage assistance directly to an applicant that is receiving assistance through these options if the Program identifies

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<sup>1</sup> Rounded to the nearest dollar.

a need to provide such assistance. In such cases, the Program must ensure that storage costs/line items were removed from the applicable scope of work for the project prior to construction start. If the scope of work included any payments for storage expenses to a contractor, the Program may not provide any supplemental storage assistance.

### **11.29 Warranty Provisions**

Construction contractors are required to provide standard statutory warranties on all projects. Applicants with warranty issues are required to contact their construction contractor directly to resolve any warranty issues. The Program will also provide support for applicants to file warranty claims related to defects in workmanship with their contractor via a Program-supplied Warranty Claim Form. The Program will not provide support if the defect is covered under a manufacturer's warranty. If a contractor ultimately denies a warranty claim, applicants can address the matter directly with the contractor's insurance provider.

### **11.30 Contractors Required to Comply with Section 3**

All construction contractors repairing homes with awards over \$100,000 with NYC Build It Back funds must comply with the Build It Back Section 3 policy. Such contractors must complete annual reports required by the Program in a timely manner. The data collected from the reports will be submitted by OMB to HUD. Further information can be found in the Section 3 section of this Manual.

## **12 Rebuild Using HPD Selected Developers**

### **12.1 Standard for Assignment to a NYC Developer**

The City of New York selected three developers to complete reconstruction projects through a Request for Qualifications process by the Department of Housing Preservation and Development (HPD). The developers will be fully responsible for all construction projects and must enter into agreements with applicants that govern the execution of the reconstruction project. The City will make payments directly to developers through a Disbursement Agreement after the applicant executes their grant agreement. Applicants that choose to utilize a City-selected developer for a reconstruction project may be routed to a City-selected developer if the City determines that the project is appropriate for completion by one of the HPD developers.

### **12.2 Review of Project**

All reconstruction projects must undergo a review of designs and project budgets by the Program to ensure that:

- The reconstruction work that the Program will be funding is necessary;
- The cost of the portion of the project that is being funded by the Program is reasonable;
- The design meets the Program's reconstruction standards;
- The scope and design meets the requirements established by the Tier 2 environmental assessment;
- The property will be decent, safe and sanitary upon project completion; and
- All hazardous materials are abated or mitigated during construction as required by Program guidelines.

### **12.3 Prototype Designs**

In order to expedite the preconstruction process, developers may utilize pre-approved prototype designs. In certain cases, developers may be required to design a home to meet specific site conditions such as lot shape, buildable area or other unique factors.

### **12.4 Number of Units Reconstructed**

The Program will reconstruct all units that were present on the applicant's property as determined by the Program's damage assessor provided that:

- The Program determines that it is feasible to reconstruct all units;
- The number of units to be reconstructed are not in conflict with a Certificate of Occupancy;
- The number of units to be reconstructed are not in conflict with zoning requirements;
- The number of units was not the result of an illegal conversion as documented by the NYC Department of Buildings ("DoB"); and
- The reconstruction of units will not require approval by the New York City Board of Standards and Appeals ("BSA"), except those allowable under the "Special Regulations for Neighborhood Recovery".

The Program will not reconstruct more than four units on a property. The Program will attempt to reconstruct multiple units that were previously located in separate, detached structures as a single structure. The Program will only provide funding to reconstruct the units that were present on the property at the time of the storm and will not increase the number of units.

## **12.5 Reconstructed Square Footage**

The Program will reconstruct the pre-storm square footage of the applicant's home as determined by the Program's damage assessor up to a maximum square footage as stated in the Minimum Program Standards. Basement space may be reconstructed if it meets the Program's criteria for habitable space. If the Program must reduce the property's unit count, the Program will attempt to replace the square footage of the units that will not be rebuilt. The Program may reconstruct additional square footage if the applicant's pre-storm square footage was lower than the Program's minimum square footage for its home designs or if the Program relocates the applicant in a new home constructed in another location.

## **12.6 Elevation Height**

The Program may elevate a reconstructed home higher than required when zoning and site conditions allow.

## **12.7 Sustainability Standards for Reconstruction Projects**

All reconstruction designs must meet specifications allowing them to be Energy Star certified. The Program does not require that each individual home be certified.

## **12.8 Other Reconstruction Design Requirements**

The Program has established program standards and design policies for all reconstruction projects. All reconstruction scopes of work must meet the reconstruction standards that were in effect at the time of the design.

## **12.9 Design and Budget Review**

The Program will review all reconstruction designs and budgets to ensure cost reasonableness and feasibility. The Program will also review the project ensure compliance with all zoning, building code, land use, and Tier 2 environmental assessment requirements. Only reconstruction projects with designs and budgets approved by the Program may receive reconstruction assistance.

## **12.10 Open Building Permits and Violations**

Applicants may be required to close open permits or correct violations before the Program can begin construction work if the open permits or violations will interfere with Program construction or prevent the Program from closing out the project with the Department of Buildings.

## **12.11 Reconstruction Caps**

The Program limits the amount of assistance it will provide to reconstruct a property based upon the 2013 FHA Mortgage Limits that apply to the number of units that are being reconstructed. This limit includes all construction hard and soft costs that will be funded with CDBG-DR funds and the applicant's transfer amount. Costs not included in the cap include certain programmatic soft costs and site-specific costs incurred due to zoning, code, or land use requirements and site-specific costs including the cost of demolition, abatement, piles, and requests for reasonable accommodations.

The 2013 FHA Mortgage Limits are as follows:

- One Unit: \$729,750
- Two Units \$934,200

- Three Units: \$1,129,250
- Four Units: \$1,403,400

### **12.12 Limitations on Upgrades**

At its discretion, the Program may allow applicants to provide additional non-CDBG funding to upgrade materials and finishes materials, finishes, appliances or other items. The Program may limit the items that can be upgraded based upon factors such as time constraints, the practicality of construction and site characteristics.

### **12.13 Closing Requirements**

Applicants receiving reconstruction assistance must execute a grant agreement when project design and budgets are finalized and approved. The project will have a closing and construction will start when the developer has secured all permits and approvals to start construction, and completed all due diligence items required for a closing.

### **12.14 Collection of Transfer Amounts and Other Funds**

If an applicant is receiving reconstruction assistance from the Program and the coordination of benefits calculation shows that the applicant has a transfer amount, the applicant must provide that transfer amount to the Program before any predevelopment work occurs.

### **12.15 Scope Reduction**

If the applicant cannot fully fund the transfer amount, the Program may review the applicant's scope of work to determine if the cost of the project can be reduced by an amount equal to or greater than the unsatisfied transfer amount, while complying with program standards and NYC Building Code. Scope reduction can be in the form of a smaller home or a home with lesser amenities than what the applicant would have otherwise received. If the cost cannot be reduced, the Program will notify the applicant that the Project cannot proceed until sufficient funds are paid to the Program.

### **12.16 Using Transfer Amounts for Temporary Housing Reimbursement**

The Program allows rebuild applicants with transfer amounts to deposit funds with the Program and be reimbursed a portion of their transfer amount funding to pay for temporary housing expenses prior to the start of construction. The Program will not provide this assistance to applicants who do not have transfer amounts or to applicants who are not in the Reconstruction Program. This policy shall not apply to any applicant that is receiving Temporary Relocation Assistance from the Program and the Program will not allow applicants to utilize this policy after April 1, 2015. Following April 1, 2015, applicants may retain up to \$20,000 of their transfer amount to pay for temporary housing expenses during predevelopment. The difference between the documented expenses and the \$20,000 amount must be paid to the Program prior to signing the grant agreement.

### **12.17 Construction Inspections**

All homes undergoing Reconstruction will undergo monthly construction inspections by a construction monitor. The construction monitor will review the project for construction progress and approve disbursement of funds based on construction progress. The construction monitor will also review the construction for construction quality. All projects are subject to a 10% retainage until construction completion. All projects are subject to additional special inspections

by a third-party architect/engineer as part of DoB requirements. All projects must schedule and pass all required inspections, and secure a Permanent Certificate of Occupancy prior to final payout of grant assistance. Lastly, the homeowner will conduct a punch list inspection prior to move-in to the home.

### **12.18 Contingency and Change Orders**

All projects will have a contingency funded into the project for unforeseen hard cost and soft cost expenses. Requests to draw on the contingency will require approval by the construction monitor and will be subject to Program review.

### **12.19 Contractors Required to Comply with Section 3**

All Program assigned contractors reconstructing homes with NYC Build It Back funds must comply with the Build It Back Section 3 policy. Contractors must complete annual reports required by the Program in a timely manner. The data collected from the reports will be submitted by OMB to HUD. Further information can be found in the Section 3 section of this Manual.

## **13 HRO Choose Your Own Contractor Repair and Reconstruction**

### **13.1 Use of CYOC Contractors**

Applicants may choose their own construction contractor if the applicant's home requires repair or repair and elevation. If an applicant chooses to participate in the CYOC option, the Program will prepare the project's scope of work. The applicant will be responsible for procuring their own construction contractor and managing their own construction project to completion. The Program will concurrently manage the project to ensure project compliance and completion. The Program may restrict an applicant's ability to choose the CYOC option based upon the project's anticipated scope of work or site conditions such as when the applicant's home is attached to another home or where the applicant's home is located within an area that has been identified as presenting unique construction challenges.

### **13.2 Design/Scope of Work**

All CYOC projects must have a design and scope of work prepared by the Program to ensure that:

- The scope of work that the Program will be funding is necessary;
- The cost of the portion of the project that is being funded by the Program is reasonable;
- The design meets the Minimum Program Standards;
- The scope and design meets the requirements established by the Tier 2 environmental assessment;
- The property will be decent, safe and sanitary upon project completion; and
- All hazardous materials are abated or mitigated during construction as required by Program guidelines.

### **13.3 Design Consultation**

The City of New York has procured design professionals to prepare detailed scopes of work for each CYOC project that may be used by applicants who wish to utilize their own contractors. This scope of work must include relevant unit priced items and quantities, basic floor plans and elevations and written descriptions of any required mitigation or remediation. The detailed scope of work results in the final estimated construction cost for the project. The detailed scope of work must also note any scope and cost reductions that were made to address unsatisfied transfer amounts. The Program may reevaluate the applicant's construction pathway prior to construction based upon site conditions, construction factors, environmental compliance factors, cost or other reasons and it may choose to offer the applicant a different construction option.

### **13.4 Homeowner Upgrades and Out of Scope Work**

Applicants are not permitted to perform out of scope work or add square footage if they participate in the HRO CYOC option. Applicants may upgrade materials, finishes, appliances or other items from the grade that was included in the Program's scope of work. The Program will reimburse the applicant's contractor at the Program established unit price for completed work. Determining the cost and type of upgrades is solely within the control of the applicant and the applicant's contractor. Applicants participating in the CYOC option bear all of the risk associated with the

project and the Program will not pay for scope items that are incomplete or missing regardless of the reason.

### **13.5 Minimum Program Standards**

The Program has established Minimum Program Standards (MPS) that provide the program standards and policies for all projects. All scopes of work must meet the Minimum Program Standards regardless of whether the design and scoping was prepared by a Program designated designer or an applicant designated designer.

### **13.6 Reasonable Accommodation Requests (RARs)**

Approved requests for reasonable accommodation must be reviewed and included in the scope of work for each project. Applicants may submit such requests during the design phase and the development of the project's scope should not be finalized until the Program has made a determination as to whether to grant the request. The Program will only make reasonable accommodations by modifying the scope of work that the applicant is already eligible to receive. Examples of potentially eligible reasonable accommodations include, but are not limited to:

- Designing a disabled applicant's reconstructed home so that it is accessible;
- Installing a lift or ramp on a home that is receiving elevation assistance so that a disabled household member may access the home; and
- Designing a bathroom to accommodate for a disability when replacement of the bathroom is part of the Program's storm damage repairs.

The Program will not fund accommodations in areas of a structure that are not receiving other eligible assistance. Examples of potentially ineligible accommodations include, but are not limited to:

- Altering a second-floor bathroom that was not storm damaged and was not already included in an eligible scope of work;
- Installing a lift on a home that is not receiving elevation assistance; and
- Widening doorways in areas of the home that are not already included in an eligible scope of work.

Applicants may only submit reasonable accommodation requests after executing their construction contract if they are able to demonstrate that a new or changed circumstance gave rise to the request or if the applicant was unaware of the opportunity or requirement to request a reasonable accommodation.

### **13.7 Sustainability Standards for Non-Substantially Damaged/Improved Properties**

The Program applies the Green Building Retrofit Checklist to properties that were not substantially damaged and properties that will not be substantially improved by the Program's repair work. The Program recognizes that the scope of work for residential units within a disaster recovery framework may vary widely. Therefore, the specific applicability of the Green Building Retrofit Checklist is contained within the Program's Minimum Program Standards.

### **13.8 Sustainability Standards for Substantially Damaged/Improved Properties**

The Program applies the Enterprise Green Communities standard to properties that were substantially damaged, properties that will be substantially improved by the Program's repair work and properties that will be reconstructed. The Program recognizes that the scope of work for residential units within a disaster recovery framework may vary widely. Therefore, the specific applicability of the Enterprise Green Communities standard is contained within the Program's Minimum Program Standards.

### **13.9 Repairs in Non-Substantially Damaged/Improved Structures**

If the Program determines that a structure located in a SFHA is not substantially damaged and will not be substantially improved, the Program may allow equipment or finishes of the same types in the same locations to be replaced. The Program does not allow for an increase in the degree of noncompliance with Appendix G of the latest NYC Building Code. Noncompliant actions include, but are not limited to:

- Finishing an unfinished basement;
- Creating a basement apartment;
- Adding new or additional mechanical equipment; or
- Changing occupancy to one with a higher Design Flood Elevation.

### **13.10 Open Building Permits and Violations**

Applicants may be required to close open permits or correct violations before they begin construction work if the open permits or violations will interfere with Program construction or prevent the Program from closing out the project with the Department of Buildings.

### **13.11 Designs**

In order to expedite the preconstruction process, the Program may utilize pre-approved prototype designs, modular designs or individually designed homes that meet site constraints such as lot shape, buildable area, attachment to other homes or other unique factors.

### **13.12 Number of Units Reconstructed**

The Program will reconstruct all units that were present on the applicant's property as determined by the Program's damage assessor provided that:

- The Program determines that it is feasible to reconstruct all units;
- The number of units to be reconstructed are not in conflict with a Certificate of Occupancy;
- The number of units to be reconstructed are not in conflict with Zoning Requirements of NYC;
- The number of units was not the result of an illegal conversion as documented by the NYC Department of Buildings ("DoB"); and
- The reconstruction of units will not require approval by the New York City Board of Standards and Appeals ("BSA"), except those allowable under the "Special Regulations for Neighborhood Recovery".

The Program will not reconstruct more than four units on a property. The Program will attempt to reconstruct multiple units that were previously located in separate, detached structures as a single

structure. The Program will only reconstruct the units that were present on the property at the time of the storm and will not increase the number of units.

### **13.13 Reconstructed Square Footage**

The Program will reconstruct the pre-storm square footage of the applicant's home as determined by the Program's damage assessor up to a maximum square footage as stated in the Minimum Program Standards. Basement space may be reconstructed if it meets the Program's criteria for habitable space. If the Program must reduce the property's unit count, the Program will attempt to replace the square footage of the units that will not be rebuilt. The Program may reconstruct additional square footage if the applicant's pre-storm square footage was lower than the Program's minimum square footage for its home designs or if the Program relocates the applicant in a new home constructed in another location.

### **13.14 Out of Scope Work and Square Footage Increases**

Applicants that are receiving reconstruction assistance through the HRO CYOC option may not add out of scope items to their reconstruction design and they may not increase the square footage of their reconstructed home.

### **13.15 Elevation Height**

The Program may elevate a reconstructed home higher than required where zoning regulations and site conditions allow.

### **13.16 Sustainability Standards for Reconstruction Projects**

All reconstruction designs must meet specifications allowing them to be Energy Star certified. The Program does not require that each individual home be certified.

### **13.17 Other Reconstruction Design Requirements**

The Program has established program standards and design policies for all reconstruction projects. All reconstruction scopes of work must meet the reconstruction standards that were in effect at the time of the design.

### **13.18 CYOC Contractors**

Applicants choosing the CYOC option must have their contractor reviewed for suitability by the City. CYOC contractors must hold a current Home Improvement Contractor license from the NYC Department of Consumer Affairs and must meet minimum requirements regarding business integrity and bonding capacity. All approved CYOC contractors are required to sign documents outlining the terms and conditions of participation in the CYOC option before commencing any work.

### **13.19 CYOC Home Improvement Contracts**

If the applicant has opted to utilize the CYOC option, the selected contractor and each property owner must execute a Home Improvement Contract provided by the Program for that individual project which describes the respective responsibilities of the construction contractor and applicant(s) before and during construction period. The Home Improvement Contract must include the Program's approved Job Order. If one or more of the owners have granted rights to another owner or party to execute documents on their behalf through a power of attorney, the

party with rights to sign may sign on that owner's behalf. Out of scope items are not permitted to be part of the Home Improvement Contract.

### **13.20 Submittals**

Contractors participating in the CYOC option are not required to provide submittals.

### **13.21 Collection of Funds**

If an applicant is receiving construction assistance from the Program and the coordination of benefits calculation shows that the applicant has a transfer amount, the applicant must satisfy their transfer amount before construction can begin. Payment may be made after design is completed.

### **13.22 Alternative Payment Methods**

The Program will allow applicants to finance their transfer amount through their construction contractor in lieu of paying their transfer amount to the Program, subject to agreement by the contractor. In such cases, the applicant will not pay their transfer amount to the Program and will instead pay their transfer amount directly to their CYOC contractor pursuant to an independent financing arrangement.

### **13.23 Scope Reduction**

If the applicant cannot fully fund the transfer amount, the Program may review the applicant's scope of work to determine if the cost of the project can be reduced by an amount equal to or greater than the unsatisfied transfer amount, while complying with the Minimum Program Standards and NYC Building Code. If the cost cannot be reduced, the Program will notify the applicant that the Project cannot proceed until sufficient funds are paid to the Program. The Program may limit the kinds and types of scope items that may be removed. All scope reductions must be documented and show the items removed from the scope of work and the cost of the items removed.

### **13.24 Program Inspections**

Every home undergoing repair must undergo a minimum of two progress inspections to evaluate the contractor's progress, confirm that the NYC Building Code and regulations have been met, confirm that all Program and contractual requirements have been satisfied and verify quality of workmanship. The number and type of inspections that are required will vary by job type and will be established by the Program prior to construction initiation.

### **13.25 NYC Department of Buildings (DoB) Inspections**

Contractors must schedule and pass all pre-requisite DoB inspections prior to scheduling Program inspections. All projects are subject to additional special inspections by a third-party architect/engineer pursuant to DoB requirements. At final inspection, all required DoB inspections and certifications are required to be passed and closed.

### **13.26 Change Orders**

Contractors may submit requests for supplemental job orders ("change orders"). The Program must review and issue an approval or rejection of supplemental job orders. Supplemental job orders which exceed a Program-mandated cost and schedule threshold must be routed for additional approval. Homeowners are notified of any approved supplemental job orders. The

Program will also make a substantial improvement determination prior to the approval of any change orders for a repair project if the change order requires the filing of a new or amended permit with the NYC Department of Buildings.

### **13.27 CYOC Payments**

Payments to CYOC construction contractors will be made after passing a Program progress inspection. The number of payments will vary by job type and will be established by the Program prior to construction initiation. The Program may make partial payments for properly completed work, but may not make payments for work that was not properly completed.

### **13.28 Warranty Provisions**

If an applicant has opted to use the CYOC option, the Program requires that the contractor provide a minimum maintenance period warranty of one (1) year. The Program will provide support for applicants to file warranty claims related to defects in workmanship with their contractor via a Program-supplied Warranty Claim Form. The Program will not provide support if the defect is covered under a manufacturer's warranty. The Program will provide applicants with notice of a contractor's determination after a Warranty Claim Form is submitted. If a contractor ultimately denies a warranty claim, applicants can address the matter directly with the contractor's insurance provider. Contractors participating in CYOC may also provide a warranty or guarantee that exceeds one year, but the Program will not assist in processing Warranty Claim Forms beyond the one-year time frame for standard Program warranties.

### **13.29 Choose Your Own Designer and Contractor (CYOD) Option**

The Program no longer actively offers a Choose Your Own Designer (CYOD) option for elevation projects. CYOD applications that were approved prior to May 1, 2015, should be allowed to proceed with that option pursuant to the policies announced in Policy Manual Version 1.5. The Program may opt to make interim payments for projects that were previously authorized under the CYOD option, or evaluate individual proposals to shift applicants into the CYOD pathway on a case-by-case basis if no other options are available. Specific guidance for managing any such projects will issue on an individual basis to ensure compliance with Program procedures beyond Policy Manual Version 1.5.

## **14 HPD Choose Your Own Contractor Reconstruction**

### **14.1 Use of CYOC Contractors**

Applicants may choose their own construction contractor if the applicant's home requires reconstruction. If an applicant chooses to participate in the CYOC option, the Program will review and approve the applicant's reconstruction plans and the Program will establish a maximum funding amount for the project. The applicant will be responsible for procuring their own construction contractor and managing their own construction project to completion. The Program may restrict an applicant's ability to choose the CYOC option based upon the project's anticipated scope of work or site conditions such as when the applicant's home is attached to another home or where the applicant's home is located within an area that has been identified as presenting unique construction challenges. The Program will assign a Rebuild Program project manager who will assist the applicant, their architect, and general contractor from predevelopment, grant agreement, construction, and construction completion.

### **14.2 Applicant Generated Designs**

The Program will not provide designs to applicants that are participating in the Reconstruction CYOC option. Instead, applicants must prepare their own reconstruction designs that will then be reviewed and approved by the Program for completeness, accuracy, and compliance with general zoning and code requirements.

### **14.3 CYOC Reconstruction Budget**

The applicant's grant assistance will be based on the budget allowance to reconstruct the pre-storm size and unit count within a cost reasonable parameter. An applicant may rebuild a larger home or a home with more expensive amenities (upgrades), provided that the applicant pays the difference between the cost to rebuild the home to its pre-storm size versus that of a larger or more expensive home.

### **14.4 Number of Units Reconstructed**

The Program will reconstruct all units that were present on the applicant's property as determined by the Program's damage assessor provided that:

- The Program determines that it is feasible to reconstruct all units;
- The number of units to be reconstructed are not in conflict with a Certificate of Occupancy;
- The number of units to be reconstructed are not in conflict with zoning requirements;
- The number of units was not the result of an illegal conversion as documented by the NYC Department of Buildings ("DoB"); and
- The reconstruction of units will not require approval by the New York City Board of Standards and Appeals ("BSA"), except those allowable under the "Special Regulations for Neighborhood Recovery".

The Program will not reconstruct more than four units on a property. The Program will not fund any projects that propose to reconstruct units that were not present on the property at the time of the storm.

#### **14.5 Reconstructed Square Footage**

The Program will reconstruct the pre-storm square footage of the applicant's home as determined by the Program's damage assessor up to a maximum square footage as stated in the Minimum Program Standards. If the Program must reduce the property's unit count, the Program will attempt to replace the square footage of the units that will not be rebuilt.

#### **14.6 Elevation Height**

The Program may elevate a reconstructed home higher than required when zoning and site conditions allow.

#### **14.7 Sustainability Standards for Reconstruction Projects**

All reconstruction designs must meet specifications allowing them to be Energy Star certified. The Program does not require that each individual home be certified.

#### **14.8 Other Reconstruction Design Requirements**

The Program has established program standards and design policies for all reconstruction projects. All reconstruction scopes of work must meet the reconstruction standards that were in effect at the time of the design.

#### **14.9 Design and Budget Review**

The Program will review all reconstruction designs and budgets to ensure cost reasonableness and feasibility. The Program will also review the project ensure compliance with all zoning, building code, land use, and Tier 2 environmental assessment requirements. Only reconstruction projects with designs and budgets approved by the Program may receive reconstruction assistance.

#### **14.10 Open Building Permits and Violations**

Applicants may be required to close open permits or correct violations before the Program can begin construction work if the open permits or violations will interfere with Program construction or prevent the Program from closing out the project with the Department of Buildings.

#### **14.11 Reconstruction Caps**

The Program limits the amount of assistance it will provide to reconstruct a property based upon the 2013 FHA Mortgage Limits that apply to the number of units that are being reconstructed. This limit includes all construction hard and soft costs that will be funded with CDBG-DR funds and the applicant's transfer amount. Costs not included in the cap include certain programmatic soft costs and site-specific costs incurred due to zoning, code, or land use requirements and site-specific costs including the cost of demolition, abatement, piles, and requests for reasonable accommodations.

The 2013 FHA Mortgage Limits are as follows:

- One Unit: \$729,750
- Two Units: \$934,200
- Three Units: \$1,129,250
- Four Units: \$1,403,400

#### **14.12 Limitations on Upgrades**

The Program may limit the items that can be upgraded based upon factors such as time constraints, the practicality of construction and site characteristics.

#### **14.13 Pre-qualification Requirements**

Applicants participating in the CYOC Reconstruction option are required to submit all pre-qualification documentation to the Program within ninety (90) days of selecting the CYOC Reconstruction option. Required items include, but are not limited to:

- Reconstruction plans and specifications demonstrating compliance with the Program's design requirements including its sustainability standards and the City's elevation, code, zoning and land use requirements;
- Proposed Reconstruction Budget demonstrating that the project is cost-reasonable;
- Architect's Qualifications; and
- General Contractor Qualifications.

Review and approval of the pre-qualification requirements along with Energy Star Certified Homes approval and permits are required before the Program will consider the project for reconstruction assistance. The proposed general contractor is subject to a background check and review by the Program before being approved for reconstruction. The general contractor must also, agree to the Rebuild Program's terms and conditions.

#### **14.14 Closing Requirements**

Applicants receiving reconstruction assistance will be required to participate in a closing where assistance will be provided to the applicant in the form of a grant. All applicants must execute a grant agreement and subrogation agreement at the closing.

#### **14.15 Collection of Transfer Amounts and Other Funds**

If an applicant is receiving reconstruction assistance from the Program and the coordination of benefits calculation shows that the applicant has a transfer amount, the applicant must provide that transfer amount to the Program at the closing.

#### **14.16 Scope Reduction**

The Program will not perform scope reductions for applicants participating in the Reconstruction CYOC Option because the Program does not control the scope of work for the project. Instead, the Program will reduce the applicant's grant amount allowance by the amount of the applicant's unpaid transfer amount.

#### **14.17 Using Transfer Amounts for Temporary Housing and Predevelopment Expenses**

The Program allows rebuild applicants with transfer amounts to submit proof of temporary housing and predevelopment expenses incurred after an applicant's transfer amount was first calculated, but before the applicant executes their grant agreement, in order to further reduce their transfer amount. Such expenses must not have already been considered when calculating an applicant's unmet need.

#### **14.18 Construction Inspections**

All homes undergoing Reconstruction will undergo monthly construction inspections by a construction monitor. The construction monitor will review the project for construction progress and approve disbursement of funds based on construction progress. The construction monitor will also review the construction for construction quality. All projects are subject to a 10% retainage until construction completion. All projects are subject to additional special inspections by a third-party architect/engineer as part of DoB requirements. All projects must schedule and pass all required inspections, and secure a Permanent Certificate of Occupancy prior to final payout of grant assistance. Lastly, the homeowner will conduct a punch list inspection prior to move-in to the home. The Program may withhold the final payout of retainage to the general contractor during the required 1-year warranty period for the CYOC option if there are major concerns regarding the quality of construction.

#### **14.19 Contingency and Change Orders**

All projects will have a contingency funded into the project for unforeseen hard cost and soft cost expenses. Requests to draw on the contingency will require approval by the construction monitor and will be subject to Program review.

## **15 Direct Grants for Repair**

### **15.1 Direct Construction Payment Grants**

The Program will provide direct construction payment grants (“direct grants”) to eligible applicants to complete certain types of construction work without requiring Program construction management. The Program will provide the direct grant funding to eligible applicants upon completion of the project and upon passing a final inspection.

### **15.2 Project Eligibility Requirements**

Applicants that are otherwise eligible to receive repair assistance from the Program are eligible to receive direct grants unless certain conditions exist on the property that would place either the applicant or the Program at risk of non-compliance or non-completion.

### **15.3 Feasibility Conditions That Prohibit Direct Grants**

Applicants are not eligible to receive a direct grant if the following conditions exist in the Program’s feasibility analysis:

- The feasibility report identified that the property was substantially damaged and qualifies for elevation assistance;
- The repairs that will be made by the applicant will result in a substantial improvement requiring elevation.

### **15.4 Hazardous Material Conditions That May Prohibit Direct Grants**

The Program may provide direct grant if the project will require the mitigation or abatement of lead based paint, asbestos or other hazardous environmental conditions. However, if such conditions are present on the applicant’s property, the Program must perform an analysis to determine if it is likely that the cost to address such hazardous conditions may result in a substantial improvement. If the Program determines that such conditions are likely to result in a substantial improvement, the Program may decline to offer a direct grant.

### **15.5 Environmental Conditions That Prohibit Direct Grants**

Applicants are not eligible to receive a direct grant if the following conditions are found during the Program’s Environmental Review:

- The project will require federal permits including, but not limited to, permits for construction within designated floodways and regulated wetlands;
- The project will require a Coast Erosion Hazard Area (CEHA) permit;
- The project will require compliance with the Coastal Barrier Resources Act (CBRA); or
- The project will require compliance with the National Historic Preservation Act (NHPA).

### **15.6 NYC Department of Buildings (DoB) Permit Requirements That Prohibit Direct Grants**

Applicants are not eligible to receive a direct grant if the Program determines that:

- The project will require a permit and the applicant has open pre-storm or post-storm permits or violations that would hamper the applicant’s ability to achieve project completion. The Program may reevaluate the applicant’s project for a direct grant after such conditions are satisfactorily closed.

- The property which is the subject of the application is subject to a stop work order issued by the NYC DoB. The Program may reevaluate the applicant's project for a direct grant after the stop work order is lifted.
- The Program has determined that the project may require a NYC DoB Alteration Type 1 ("Alt-1") or Alteration Type 2 ("Alt-2") building permit.

### **15.7 Other Conditions That Prohibit Direct Grants**

Applicants are not eligible to receive a direct grant if the Program determines that:

- The applicant has received emergency repair assistance that requires project completion in order to achieve compliance with Program objectives;
- The applicant opts to receive a design consultation and the final substantial improvement percentage indicates that the property must be elevated; or
- The project is not suitable for a direct grant due to inherent risk or other factors that present a substantial risk that the project will not be completed including, but not limited to the presence of structural repairs that pose a risk that the project will require elevation due to substantial improvement or the likelihood of material, undiscovered conditions that pose a risk that the project will require elevation due to substantial improvement.

### **15.8 Coordination of Benefits for Direct Grants**

The Program will calculate unmet need and award amounts for applicants receiving direct grants using the Program's repair award calculation. The Program will not allow applicants receiving direct grant awards to receive allowable activity credit for any post-damage assessment life-safety repair expenses.

### **15.9 Scope of Work for Direct Grants**

The Program will prepare a scope of work for each applicant. The scope of work may be based upon data collected during the Program's damage assessment or upon a design consultation performed by the Program that may be initiated at the applicant's request. Applicants that have received allowable activity credits through the Program's Permanent Repair Expense Review (PRER) process must have their direct grant scope of work prepared at a design consultation and may not utilize a scope of work prepared based upon the damage assessment in order to avoid a potential duplication of benefits.

### **15.10 Items Included in the Scope of Work**

The scope of work must include the following items:

- Program-eligible repairs that are necessary to address storm damage together with addressing life, health and safety issues;
- Required mitigation or abatement necessary to address issues including, but not limited to, lead based paint, asbestos and mold;
- Permitting, work or other items required by the Program's Tier 2 environmental assessment, if the presence of such requirements do not make the project ineligible for a direct grant;
- A line-item cost for each identified scope item using the Program's Job Order Contract pricing for the applicable region. The Program may use the pricing that was in effect at the time of the damage assessment or design consultation;

- A notification that a permit is required to perform some or all of the identified scope of work and a list of the type of permits that may be required to perform the work; and
- A schedule within which the work must be completed.

### **15.11 Minimum Program Standards**

The Program has established Minimum Program Standards (MPS) that provide the program standards and policies for all repair projects, including projects receiving direct grants. All scopes of work must meet the Minimum Program Standards.

### **15.12 Sustainability Standards**

The Program applies the Green Building Retrofit Checklist to properties that are receiving direct grants. The Program recognizes that the scope of work for residential units within a disaster recovery framework may vary widely. Therefore, the specific applicability of the Green Building Retrofit Checklist is contained within the Program's Minimum Program Standards.

### **15.13 Elements Excluded from the Scope of Work**

The following items must not be included in the scope of work for a direct grant unless specifically approved by the Program:

- Repair or replacement of detached structures such as sheds and garages, swimming pools, decks and docks, or boat ramps;
- Replacement of special features, trims, and designer features that exceed basic livability requirements and features of standard grade homes such as solar panels, sky lights, wainscoting and wood paneling, hot tubs, copper gutters and non-standard roofs unless the damage to these items present a health or safety hazard (whereby they will be replaced with the Program standard quality of material) or are determined to be protected historic features;
- Repair or replacement of fencing or security systems;
- Replacement of clothes washer and/or dryer; or
- Repair of units that are undocumented according to NYC DoB records.

### **15.14 Scope of Work Pricing**

The Program will utilize its Xactimate pricing to determine the cost to complete for each direct grant scope of work. The Xactimate price will include the Program's CYOC adjustment factor, which is a factor based upon the competitively procured JOC pricing. The Program will not accept documentation of actual cost incurred from applicants and it will not base an applicant's grant award upon actual cost incurred in order to ensure consistency with the Program's JOC and CYOC program options.

### **15.15 Review and Approval of the Scope of Work**

All scopes of work will be reviewed and approved by the Program prior to issuance to an applicant to verify that the scope of work is in compliance with all Program requirements.

### **15.16 Agreement to the Scope of Work**

In order to be eligible for the direct grant option, applicants must agree to the scope of work and the cost to complete the scope of work as prepared by the Program. Applicants must also agree not to undertake voluntary elevation while receiving a direct grant. The Program may not

negotiate pricing with applicants. If an applicant does not agree with the scope of work that is prepared based on the Program's damage assessment, the Program may adjust the damage assessment to add, subtract or change scope items based upon independent verification that the scope must be amended. Applicants that disagree with their damage assessment scope of work may request a design consultation where the Program will prepare a revised and updated scope of work. If the applicant does not agree to the scope of work or cost prepared during the design consultation, the applicant will not be eligible to receive a direct grant. Applicants may not receive more than one design consultation and the Program shall not issue any payments to applicants based upon a cost to complete prepared by the applicant or by a third party. Applicants participating in the direct grant option bear all of the risk associated with the project and the Program will not pay for scope items that are incomplete or missing regardless of the reason.

### **15.17 Upgrades and Out of Scope Work**

Applicants participating in the direct grant option may upgrade program specified items and may also perform out of scope work. The out of scope work may not include the elevation of the home. The applicant must fund all upgrades and out of scope work and the applicant is solely responsible for negotiating the cost of such work with their contractor.

### **15.18 Permits**

The Program is unable to determine permit requirements triggered by upgrades or out of scope work. Applicants must agree to seek building permits from the NYC DoB for all work performed if such permits are required.

### **15.19 Inability to Assess Completed Work**

Upgrades or out of scope work may result in substantial alterations to the property that impairs the Program's ability to verify that the Program authorized scope of work was completed. In such cases, the applicant bears all risk of nonpayment for scope items that the Program cannot verify were completed.

### **15.20 Construction**

The Program will provide a Notice to Commence (NTC) to each applicant upon final approval of the project by the Program and by the applicant. Applicants are solely responsible for securing an appropriate construction contractor, negotiating pricing, securing all necessary permits and approvals and otherwise managing the construction project to completion. Applicants may choose to begin construction at their own risk prior to the issuance of a NTC if such work takes place after the approval of the Tier 2 environmental assessment by the Program and OMB.

### **15.21 Permit Costs**

The Program will, to the best of its ability, identify the building permits that will be required for each construction project based upon the scope of work identified by the Program. If the scope of work requires a building permit, the need for the permit will be clearly identified in the scope of work. The Program will also provide the applicant a waiver for any permit fees that the applicant may present to the NYC Department of Buildings. The Program recognizes that applicants may wish to do other work during construction. The Program will not provide a building permit fee waiver if the requirement for a permit is triggered by out of scope work.

## **15.22 Substantial Improvement**

If the applicant's permit application indicates that the cost of the project triggers a requirement to elevate due to a substantial improvement, the applicant must notify the Program immediately. If the requirement to elevate was triggered by upgrades or out of scope work, the applicant must revise the scope of work so that elevation is no longer required. If the project cannot proceed without elevation, the project is ineligible to receive a direct grant.

## **15.23 Contractor Choice**

Applicants who opt to receive a direct grant are wholly responsible for choosing their contractor and applicants are also responsible for determining whether the contractor has the ability to complete the project while complying with all rules and requirements governing the applicant's residential construction project. The Program will not review the contractor's suitability, capability or capacity to complete the project. This includes, but is not limited to, reviews to determine whether the contractor is debarred or is the subject of complaints or whether the contractor holds appropriate or required licenses. The Program will not require that the contractor carry bonding or insurance or require that the contractor provide optional or required warranties. The Program advises applicants to consult with the New York City Department of Consumer Affairs to obtain information about selecting a contractor.

## **15.24 Changes to the Scope of Work during Construction**

Applicants that receive direct construction grants are wholly responsible for the cost of the project and the Program's contribution towards the cost of the project may not be adjusted upwards. The Program will not process any change orders or requests to increase funding from an applicant or an applicant's contractor once an applicant agrees to receive a direct construction payment. This prohibition shall not be lifted regardless of the circumstances underlying the request. Such circumstances include, but are not limited to:

- Damage in enclosed spaces that could not be observed during the scoping process;
- Damage to electrical or plumbing systems caused by saltwater intrusion;
- Damage that was not observed because the Program does not perform destructive testing; or
- Any other conditions that were not observed due to error, omission or for any other cause.

## **15.25 Project Conversion during Construction**

If, at any point during the construction project, an applicant determines that they wish to have the Program provide construction management assistance, the Program may assume management of the project subject to the following conditions:

- The applicant must agree to forfeit any payments for work completed that cannot be confirmed at the time of the design consultation;
- The applicant must agree that payment for work completed prior to the design consultation will be made only upon the Program's completion of the project;
- The applicant must agree to allow the Program to alter any upgraded items, finishes or materials that must be removed, replaced or destroyed in order for the Program to complete construction utilizing Program-grade materials or finishes and Program mandated construction methods;

- The applicants' contractor must agree to vacate the construction site and must agree in writing that he will not file any liens on the property for any work completed;
- The applicant must agree to utilize a Program construction contractor; and
- The applicant must not have caused any damage or alterations to the property that would necessitate the Program expending substantial funds that it would not have otherwise expended if it had managed the project from the beginning.

### **15.26 Time Extensions**

Failure to complete work within the mandated schedule may result in disqualification from the Program. Applicants may request up to two reasonable extensions to the deadline for completion that is provided in the scope of work.

### **15.27 Disputes**

The Program will not intervene in any disputes between the applicant and the applicant's chosen contractor or any other third-party.

### **15.28 Inspection**

Upon completion of the project, the applicant must request that the Program perform a final inspection. All required DoB and special inspections must be completed and all building permits must be closed prior to the initiation of a final Program inspection. The sole purpose of the final inspection will be to verify that the scope of work has been completed, to verify that the completed work meets the Program's minimum standards and to identify incomplete or improperly completed scope items.

### **15.29 Inspections of Projects That Include Out of Scope Work**

If the applicant performed out of scope work that substantially altered the scope of work authorized by the Program, the Program may not be able to confirm that the some or all of the Program authorized scope of work was properly completed. In such a case, the Program will evaluate the completed work to determine that it does not create a life, health or safety hazard and the applicant will receive no credit for the completed work that cannot be verified.

### **15.30 Hazardous Materials**

If the scope of work included the mitigation or abatement of lead based paint or asbestos, the applicant must provide the required clearance report or other required documentation to the Program before the final inspection is scheduled. Such documentation must meet HUD and NYC mandated guidelines.

### **15.31 Incomplete or Improperly Completed Scope Items**

The Program inspector will note each scope item that is incomplete, was improperly completed or that was not completed to the Program's minimum standards. The Program will only provide funding for scope items that were included in the Program's approved scope of work and that were properly completed pursuant to the Program's requirements. Proper completion is defined as full completion of the required scope item utilizing materials and methods that meet the Minimum Program Standards.

### **15.32 Standard for Evaluating Incomplete or Improperly Completed Scope Items**

Each scope item that is incomplete, improperly completed or that was not completed to the Program's minimum standards shall be classified by the inspector as either "required" or "optional". Required work includes:

- Work necessary to address life, health and safety issues;
- Required environmental mitigation or abatement necessary to address issues including, but not limited to, lead based paint, asbestos and mold; and
- Work required by the Program's Tier 2 environmental assessment.

### **15.33 Notice of Deficiency**

If an applicant failed to properly complete required work, the Program will issue a Notice of Deficiency to the applicant that identifies the required work that must be completed before payment may be issued. The applicant will also be provided a schedule within which they must complete the work. The Program will not issue a Notice of Deficiency for optional work.

### **15.34 Re-inspections**

Applicants may request that the Program perform a re-inspection upon completion of the work listed in the Notice of Deficiency that was issued to the applicant. The Program will not perform a re-inspection if the applicant failed to complete optional work only. During the re-inspection, the Program will identify any required and optional work that was completed after the Notice of Deficiency was issued and the applicant may receive credit for work completed. Applicants are limited to one (1) re-inspections. The Program may reduce the applicant's final grant amount in an amount equal to the cost to perform each re-inspection.

### **15.35 Basis of Payment**

The Program will make a single payment to applicants upon completion of all required scope items. The payment will be based upon the Program defined line-item cost for each scope item that is completed by the applicant.

### **15.36 Deductions**

Applicants will not receive payment for any incomplete or deficient scope items and the project cost will be reduced accordingly.

### **15.37 Transfer Amounts**

All deductions will be made first against the applicant's transfer amount as a method of complying with the Program's policy on scope reduction.

### **15.38 Assignment**

Applicants may assign their direct grant payments to non-profits and Voluntary Organizations Active in Disaster (VOADs) upon review and approval of the assignment by the Program's legal department.

## **16 Residential Antidisplacement and Relocation Assistance Plan**

### **16.1 Summary**

This Residential Antidisplacement and Relocation Assistance Plan (“RARAP”) is prepared by the City of New York’s Build it Back Single-Family Program (“Build it Back” or “the Program”) in accordance with the Housing and Community Development Act of 1974, as amended; and Department of Housing and Urban Development (“HUD”) regulations at 24 CFR 42.325 and is applicable to the Community Development Block Grant Disaster Recovery (“CDBG-DR”) used to fund Build it Back.

### **16.2 Minimize Displacement**

Consistent with the goals and objectives of activities assisted under Housing and Community Development Act of 1974, the City of New York will take the following steps to minimize the direct and indirect displacement of persons from their homes:

- Provide optional relocation assistance to impacted homeowners pursuant to 24 CFR Part 570.606(d) through the City’s Temporary Relocation Assistance (TRA) and Temporary Housing Services (THS) programs;
- Provide assistance to impacted tenants through the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”), as amended, and implementing regulations at 49 CFR Part 24;
- Provide robust and continuing counseling and case management services to homeowners and tenants to assist them with accessing TRA, THS and URA assistance from the Program and from other City and non-profit resources that will help them remain in their neighborhood during construction;
- Where feasible, give priority to the repair, elevation or reconstruction of housing, as opposed to demolition, to avoid displacement;
- Where feasible and allowed pursuant to federal, state and local laws, regulations and codes, repair or replace all residential units;
- Target only those properties that were damaged by Hurricane Sandy and that are in need of assistance through the Program;
- Coordinate the Program’s construction activities with New York City’s Department of Buildings and other regulatory agencies to reduce the duration of displacement; and
- Adopt policies to identify and mitigate displacement resulting from the Build it Back Single-Family Program;
- Provide long-term property tax relief to the owners of properties that were repaired, elevated or reconstructed after Hurricane Sandy in order to reduce the impact of increasing property tax assessments on lower income owner-occupants or tenants in storm-impacted areas.<sup>2</sup>

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<sup>2</sup> (Ch. 14 (A.B. 5620), Laws 2015; NYC L.L. 34 (Intro. No. 727), Laws 2015)

### **16.3 Relocation Assistance to Displaced Persons**

New York City has implemented the following steps to address the relocation needs of impacted homeowners and tenants who occupy properties assisted by Build it Back.

- Tenants that must temporarily relocate from their units during construction receive assistance under the URA. Assistance to defray any increased rent amounts and moving expenses resulting from displacement is provided by landlords with oversight and coordination from the City to ensure that required assistance is provided.
- Tenants that must permanently relocate from their units due to construction or due to the purchase of their unit by the Program are provided assistance under the URA by the City. Such assistance includes payments for rental or downpayment assistance and payments for moving and related assistance.
- Homeowners that voluntarily relocate from their homes for more than thirty days during construction may participate in the Program's TRA program, which reimburses homeowners for a portion of their out-of-pocket relocation costs.
- Homeowners that voluntarily relocate from their homes for more than thirty days during construction may also participate in the Program's THS program, which provides an array of temporary housing assistance options, including placement assistance, direct rent payments to landlords, and other rental related assistance.
- Homeowners that voluntarily relocate from their homes are provided assistance to defray moving and storage costs.
- Homeowners that agreed to sell their properties through the City's acquisition option are provided a housing incentive to defray the cost of renting or purchasing new housing.
- The owners of homes in the Breezy Point and Edgewater Park Cooperatives are provided a housing incentive to defray the cost of purchasing replacement housing if they agree to move to a new primary residence and agree to allow the City to demolish their current home.
- Homeowners that agreed to sell their properties through the City's acquisition, buyout and cooperative relocation programs are eligible to receive supplemental housing incentives to assist them in purchasing new housing.<sup>3</sup>

### **16.4 One-for-One Replacement of Lower-Income Dwelling Units**

New York City will replace all occupied and vacant occupiable lower-income dwelling units demolished or converted to a use other than lower-income housing by the Build it Back Single-Family Program in accordance with 24 CFR 42.375 unless such a dwelling unit is determined to be not suitable for rehabilitation pursuant to the waiver granted in 78 FR 14329.<sup>4</sup>

#### **16.4.1 Definition of Not Suitable for Rehabilitation**

The Program defines "not suitable for rehabilitation" as units that:

- may pose a threat to public health and safety and may impede economic revitalization,

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<sup>3</sup> This option was made available after September 2016.

<sup>4</sup> Build it Back's Single-Family Program provides assistance to the owners of privately owned 1-4 family dwelling units only. The Program does not provide assistance for public housing or to the owners of multi-family properties (5+ units).

- the Program is not permitted to repair or replace pursuant to New York City’s Building Code, zoning and other applicable laws and regulations that govern the use of space in a residential structure as a separate dwelling unit,
- The Program is not permitted to repair or replace pursuant to New York City or New York State environmental regulations that govern the use of property;
- The Program is not permitted to repair or replace pursuant to applicable CDBG regulations regarding flood plain compliance;
- Were within structures that were substantially damaged by Hurricane Sandy or that would be substantially improved when the Program carried out repairs on the structure,
- the Program cannot repair or replace pursuant to its Minimum Program Standards, or
- the Program cannot repair or replace because the Program has determined that the repair or replacement of the unit is not feasible pursuant to the procedures outlined in its Policy Manual.

#### **16.4.2 One for One Replacement**

Before entering into a contract committing New York City to provide funds for a project that will directly result in the demolition or conversion of lower-income dwelling units, New York City will make public by posting on its recovery website, <http://www.nyc.gov/html/recovery> and submit to HUD the following information in writing:

- A description of the proposed assisted project;
- The address, number of bedrooms, and location on a map of lower-income dwelling units that will be demolished or converted to a use other than as lower- income dwelling units as a result of an assisted project;
- A time schedule for the commencement and completion of the demolition or conversion;
- To the extent known, the address, number of lower-income dwelling units by size (number of bedrooms) and location on a map of the replacement lower-income housing that has been or will be provided.
- The source of funding and a time schedule for the provision of the replacement dwelling units;
- The basis for concluding that each replacement dwelling unit will remain a lower- income dwelling unit for at least 10 years from the date of initial occupancy; and
- Information demonstrating that any proposed replacement of lower-income dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1- bedroom units), or any proposed replacement of efficiency or single-room occupancy (SRO) units with units of a different size, is appropriate and consistent with the housing needs and priorities identified in the HUD-approved disaster recovery Action Plan and 24 CFR 42.375(b).

To the extent that the specific location of the replacement dwelling units and other data in items 4 through 7 are not available at the time of the general submission, New York City will identify the general location of such dwelling units on a map and complete the disclosure and submission requirements as soon as the specific data is available.

#### **16.5 RARAP Contact Information**

For questions regarding the replacement of units or if you have questions about relocation payments and other relocation assistance for lower-income persons displaced by the demolition

of any dwelling unit or the conversion of lower-income dwelling units to another use, please call Build it Back at (212) 615-8329 or email the Program at [housing@recovery.nyc.gov](mailto:housing@recovery.nyc.gov).

## **17 Temporary Relocation Assistance**

The New York City Build It Back Program (“the Program”) provides construction assistance to eligible applicants whose homes were damaged by Hurricane Sandy. The Build It Back Program has determined that certain types of projects will result in the voluntary displacement of owner-occupant households. Examples include:

- the abatement of hazardous materials such as lead or asbestos,
- projects that require the interruption of gas, water or electric service,
- the detection of hazardous conditions in a home that pose a risk to occupants,
- the elevation of a home, or
- the reconstruction of a home.

The Program deems it in the best interest of applicants to provide relocation assistance to owner-occupants (hereinafter “applicants”) who voluntarily move from their homes for limited periods of time prior to or during Program-provided repair, repair and elevation or reconstruction activities.

Federal funds may be used to provide temporary relocation assistance payments to persons who voluntarily relocate to another location pursuant to 24 CFR Part 570.606(d). These persons are not subject to the Displaced Person requirements found at 24 CFR Part 570.606. This section of the Policy Manual serves as the Program’s Optional Relocation Plan.

### **17.1 Household Eligibility**

This Plan establishes a voluntary program that is made available to all TRA-eligible applicants that agree to its conditions. In order to be eligible for TRA, the household receiving the assistance must meet the following criteria.

#### **17.1.1 Ownership**

The household receiving relocation assistance must have an ownership interest in the property and satisfy the Build it Back Program’s ownership requirements. Households may still qualify for TRA if the property is owned by a trust, corporation or other entity, as long as one member of the household is a beneficiary or owner of the entity.

#### **17.1.2 Primary Residency**

The household receiving relocation assistance must satisfy the Program’s primary residency requirements.

#### **17.1.3 Construction Assistance**

The household receiving relocation assistance must have been eligible to receive construction assistance at the time that the Program determined TRA eligibility. This includes applicants that moved out of their homes in anticipation of construction but were subsequently changed to another Program pathway.

#### **17.1.4 Multiple Owner-Occupied Units**

In certain cases, a property or a home may contain more than one owner-occupant household, such as when two households occupy different units but share ownership of the property. In these cases, each owner-occupant household is eligible to receive relocation assistance. Additional households seeking assistance must meet the Program’s ownership and primary residency

requirements. The total amount of assistance provided to all households may not exceed the Housing Benefit Cap.

## **17.2 Grant Agreements**

The Program may not provide relocation assistance until the applicant has signed the appropriate construction grant agreement.

### **17.2.1 Withdrawal or Violation of the Grant Agreement**

The Program shall cease providing assistance to any household that withdraws from the Program prior to the completion of the construction project or if the applicant violates the terms of their grant agreement or is otherwise determined to be ineligible for assistance. Funds expended prior to such an event may be subject to recapture from the applicant.

## **17.3 Temporary Relocation Assistance (TRA) and Temporary Housing Services (THS)**

The Program may provide relocation assistance to eligible applicants in order to assist applicants with securing apartments or other housing while the Program is performing construction. Such assistance may be provided directly to applicants on a reimbursement basis (TRA) or in the form of placement in housing paid for by the Program (THS). Reimbursement payments will be issued based upon actual costs incurred as demonstrated by documentation.

### **17.3.1 Types of Benefits Provided**

Applicants are provided a choice as to whether they wish to receive optional relocation assistance under the Program's TRA option or its THS option, subject to either option's availability. Applicants that participate under the TRA option receive rental assistance on a reimbursement basis and must submit all required information for such reimbursement no later than sixty (60) days after their relocation end date. Applicants that participate in the Program's THS option are provided an array of temporary housing assistance options, including placement assistance, direct rent payments to landlords, and other rental related assistance. The benefits provided under each option are as follows.

#### *17.3.1.1 TRA Benefit Types*

- Reimbursement for expenses incurred to rent replacement housing (apartments, rental homes, hotels and other temporary lodging arrangements) up to 125% of FY 2015 FMR for New York, NY HUD Metro Area. Reimbursement will not include payments for brokers fees, security deposits, and pet fees.
- Reimbursement for basic utility expenses (electricity, hot water, heat, gas) incurred if the cost of utilities is included in the cost of the rental. If utility costs are not included in the rental lease, the Program will not reimburse applicants for utility costs incurred. Utility costs are subject to the cap on rental expenses as stated above.
- Reimbursement for lost rental income when an applicant moves to rental home that they own instead of moving to other rental housing. Reimbursement is limited to 125% of FY 2015 FMR for New York, NY HUD Metro Area and will not include reimbursement for basic utility expenses, condo fees, coop fees or other expenses. Applicants must submit a lease for the period immediately preceding their occupancy to prove their loss of income and the amount of rent charged to their previous tenant will provide the basis for their claim.

#### 17.3.1.2 THS Benefit Types

- Replacement housing (apartments, rental homes, hotels and other temporary lodging arrangements). Expenses incurred by the Program are capped at 125% of FY 2015 FMR for New York, NY HUD Metro Area.
- Security deposits associated with renting replacement housing, provided that they are returned to the Program at the conclusion of the lease. Expenses incurred by the program are capped at 1 month's rent.
- Pet fees associated with renting replacement housing. Expenses incurred by the program are capped at 1 month's rent.
- Broker's fees as a moving cost related to paying customary fees in NYC that are associated with leasing and accessing a rental unit. Such expenses are not associated with searching for a replacement dwelling. Expenses incurred by the Program are capped at 15% of the annualized rent and must be supported by documentation showing the need to pay the fee.
- Basic furnishings associated with furnishing a rental unit. Expenses incurred by the Program are capped at \$1,000 per room and \$3,500 per household.
- Moving expenses associated with relocating to replacement housing if the applicant has not already received such assistance from the Program. Expenses incurred by the Program are capped at \$3,000.
- Emergency transportation associated with accessing replacement housing. Expenses incurred by the Program are capped at \$250.

In addition to the above stated benefits and costs, the Program may also provide the following THS benefits and incur the following costs if the unit that is being rented by the Program is associated with a THS master lease. The Program may allow THS master lease units to exceed the rental caps stated below by an additional 25% with sufficient reason and documentation. Exceeding the rental caps for master lease units by more than 25% will require pre-approval of the Program's Director.

- Fees paid to a property owner that are associated with allowing an applicant to access a master lease unit including, but not limited to, application fees and credit checks. Expenses incurred by the Program are capped at \$150 per applicant.
- Renter's Insurance if such insurance is required as a condition of leasing a unit. Expenses incurred by the Program are capped at \$300.
- Cleaning costs associated with cleaning a unit to ensure that is habitable and ready for a tenant. Expenses incurred by the Program are capped at \$500 per applicant.
- Minor unit repairs associated with repairing a unit to ensure that is habitable and ready for a tenant. Expenses incurred by the Program are capped at \$2,000 per lease agreement.
- Recurring utility expenses associated with maintaining basic utility services (e.g. electricity, water, gas) at a unit. Expenses incurred by the Program are capped at \$500 per month.

#### 17.3.1.3 Housing Assistance Above the Program's Cap

The Program may provide additional relocation assistance above the Program's daily cap upon documenting that any costs incurred above the cap are both necessary and reasonable.

#### *17.3.1.4 Additional Assistance*

The Program may opt to provide additional housing-related relocation assistance upon documenting that such assistance is eligible under federal requirements and that any costs incurred are both necessary and reasonable. Such assistance will be provided directly by the Program to a provider on behalf of applicants.

### **17.3.2 Determination of Relocation Assistance Need**

The Program may not provide relocation assistance to a household unless it first makes a determination of need. The Program has determined that households that must relocate from their homes for a period of greater than 30 days have a relocation need. Overall construction duration of greater than 30 days shall not be an indicator of whether a household is eligible for relocation because many projects do not require relocation while construction is underway. Accordingly, in order to be eligible for relocation assistance, the Program must determine that it is likely that the household will be required to vacate their home for more than 30 days.

### **17.3.3 Relocation Start Date and End Date**

The Program establishes the start date and end date for relocation based upon estimated construction durations. Accordingly, the relocation start date may precede the actual start of construction to ensure that the Program can begin construction when permits are approved and contractors become available. In certain cases, the relocation end date may extend past the completion of construction to ensure that all work is inspected and approved prior to occupancy. Relocation assistance may be provided to applicants that voluntarily relocate from their homes because of the presence of dangerous conditions or in order to facilitate a construction project that will occur in the future.

### **17.3.4 Safe-Harbor Provision**

The Program anticipates that lease durations and relocation durations will not always be identical and that relocation costs may be incurred both before and after the Program-established relocation start and end dates. In these cases, the Program has established a safe-harbor period of thirty (30) days to allow for lease periods that do not coincide with relocation start and end dates. Accordingly, the Program may incur relocation expenses and/or reimburse applicants for relocation expenses for a period of up to thirty (30) days before the relocation start date and for a period of up to thirty (30) days after the relocation end date. The Program may, upon a showing of good cause, extend this period if the cost is both reasonable and justified by the circumstances. The Program will not provide funding for other costs incurred outside of the safe-harbor period including termination penalties, deposits, additional rent or other expenses.

### **17.3.5 Housing Benefit Cap for Relocation**

The relocation benefit amount is calculated based upon 125% of the HUD established Fiscal Year 2015 Fair Market Rent (FMR) for the New York, New York HUD Metro FMR Area.<sup>5</sup> The Program

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<sup>5</sup> The Program determined that 125% of the FMR is justified due to the limited availability of short-term rental units in the impacted areas and the additional cost associated with leasing units on a month-to-month or short term basis that is less than the normal one-year lease period in NYC.

may opt to adjust this amount each year as HUD issues new FMRs, but the Program is not obligated to adjust the amount. The relocation benefit amount is capped at a fixed daily rate based upon the size of the household seeking assistance. The following table contains the daily cap based upon household size:

**Table 4: Temporary Relocation Housing Assistance Benefit Cap<sup>6</sup>**

Household Size	1-person household	2-person household	3-person household	4-person household	5+ person household
<b>125% of 2015 Fair Market Rent (FMR)</b>	\$1,495	\$1,561.25	\$1,851.25	\$2,380	\$2,667.50
<b>Daily Cap</b>	\$50.00	\$52.00	\$62.00	\$79.00	\$89.00

#### **17.4 Emergency Overnight Hotels (EOH)**

The Program may provide short-term hotel stays to eligible applicants who must immediately relocate from their homes due to unsafe conditions or other immediate housing needs. Such assistance will be provided directly to applicants through the Program in the form of placement in a hotel paid for by the Program. Assistance will not be provided directly to applicants on a reimbursement basis.

##### **17.4.1 Determination of Emergency Relocation Need**

The Program may not provide emergency relocation assistance to a household unless it first makes a determination of need. The Program documents a need for emergency relocation assistance on a case by case basis based upon a determination that the applicant has an immediate housing need that cannot be met through normal TRA or THS assistance.

##### **17.4.2 Limits on Emergency Relocation Duration**

Emergency relocation duration may not exceed ten (10) days unless the Program grants an extension based upon good cause. Good cause may include, but is not limited to, delays in securing longer term housing that were not caused by applicant actions. The emergency relocation duration may not exceed twenty-eight (28) days unless the Program approves an extension.

##### **17.4.3 Housing Benefit Cap for Emergency Relocation**

The emergency relocation benefit amount is capped at \$279.00 per night. This cap is calculated based upon the average of the General Services Administration’s (GSA) lodging rates for the first six (6) months of 2016 with an allowance for taxes.<sup>7</sup> The Program may opt to adjust this amount each year as GSA issues new lodging rates, but the Program is not obligated to adjust the amount. The emergency relocation cap is not based upon household size.

<sup>6</sup> Based on FY 2015 Fair Market Rents (FMRs) for the New York, New York HUD Metro FMR Area. The daily rate is calculated at 125% of the FMR divided by a standard 30-day month. The daily rate shall apply regardless of the number of days in any given month for which reimbursement is provided.

<sup>7</sup> January through June 2016 GSA rates excluding taxes average \$240 per night. Total taxes for a hotel room in New York City are 14.75% plus \$3.50 per night.

## **17.5 Other Benefits Received**

Funds received by the household from other sources for temporary housing or relocation assistance are considered potentially duplicative benefits and must be considered when calculating the applicant's unmet relocation need. Such funds include FEMA temporary housing assistance, insurance additional living expenses (ALE) and other funds such as rental assistance provided by a charitable organization received by the applicant household on an ongoing basis while relocation assistance is being provided. The receipt of such funds may decrease the amount of relocation assistance that can be provided to an eligible applicant.

## **18 Uniform Relocation Act**

The Uniform Relocation Act (“URA”) provides protection to tenants that are involuntarily removed from their dwellings, either permanently or temporarily, as a result of participation in a federal program. URA protections will not apply to homeowners participating in the Program, as homeowner participation is voluntary. Tenants, however, may be involuntarily required to leave the property during construction activities. The Program may also be required to provide URA notifications and/or benefits with respect to acquired properties if those properties contain occupied rental units. The Program’s policies and procedures governing the URA are contained in a separate manual.

## **19 Acquisition, Relocation and Buyout Program Options**

The State of New York offers Acquisition or Buyout program options for certain properties. The City may also offer Acquisition, Relocation or Buyout assistance in certain cases. The policies governing these Program options are discussed in further detail in the City's Acquisition, Relocation and Buyout Policy Manual for 1-4 Unit Properties.

## **20 Reimbursement Program Option**

The Program offers reimbursement to certain applicants who incurred out-of-pocket expenses in the repair or reconstruction of their home.

### **20.1 Trigger for Reimbursement Processing**

The Program will only evaluate applications for reimbursement if the coordination of benefits calculation demonstrates that the applicant expended personal funds on eligible construction activities and there is no transfer amount.

### **20.2 Reimbursement Eligibility**

Reimbursement payments are made regardless of the income classification of the property. In order to be eligible for reimbursement, the application must meet the following criteria:

- Applications for reimbursement must meet the personal, environmental and property eligibility requirements for repair unless otherwise stated herein in order to be eligible for reimbursement;
- The property must not have any uncorrectable environmental deficiency that would prevent the use of federal funds for reimbursement;
- If the property was reconstructed, all construction must be complete, the property must have been properly elevated (if required) and it must have been issued a Certificate of Occupancy by the NYC Department of Buildings;
- The property must not be receiving Rebuild or Relocation assistance from the Program; and
- The property must not be receiving Acquisition for Redevelopment or Buyout assistance from New York State.

### **20.3 Elevation Requirements**

#### **20.3.1 Substantial Damage**

The determination of whether an applicant's home was substantially damaged by Sandy is made after the damage assessment. Substantially damaged homes are not eligible to receive reimbursement unless the applicant elevated the home in compliance with NYC Building Code. Substantially damaged properties that are receiving elevation assistance from the Program are not eligible to receive reimbursement assistance.

#### **20.3.2 Substantial Improvement**

Applicants who are receiving reimbursement and repair assistance will undergo a review after their repair scope of work is completed by the Program to determine if the applicant's home will be substantially improved by the Program's scope of work. If an applicant has already received reimbursement from the Program and it is determined that the home will be substantially improved by the Program's repairs, the applicant's home must be elevated in accordance with NYC Building Code requirements if the homeowner opts to receive repair assistance. If the applicant declines to receive repair assistance from the Program, the home will not be substantially improved and there is no requirement that the home be elevated.

#### **20.4 Reimbursement and Repair**

Reimbursement may be issued to an eligible applicant before construction is completed regardless of the cost of the remaining repairs.

#### **20.5 Reimbursement and Decent, Safe and Sanitary (“DSS”) Issues**

If the Program identifies DSS scope items during its assessment of the applicant’s property, the applicant must certify that all DSS issues have been corrected or will be corrected in the future before reimbursement may be issued to the applicant.

#### **20.6 Lead Based Paint Requirements for Reimbursement Only Applications**

If the Program determines that a home which is receiving only reimbursement assistance contains lead based paint hazards which must be addressed in order to meet federal requirements, the applicant must agree to have the hazard appropriately addressed before reimbursement may be issued by the Program. The Program will provide assistance to the applicant in order to bring the structure into compliance with lead based paint requirements, and such assistance may be provided before or after reimbursement is issued. If an applicant agrees to receive assistance to address a lead hazard, but fails to allow the Program to provide such assistance or otherwise achieve compliance, that applicant will be in breach of the grant agreement.

#### **20.7 Uniform Relocation Act (“URA”) for Reimbursement Only Applications**

The requirements of the Uniform Relocation Act shall not apply to applications that are receiving only reimbursement assistance from the Program because no displacement will occur. Applications that are receiving reimbursement and construction assistance from the Program will be subject to URA requirements to the extent that such requirements are applicable to the construction project.

#### **20.8 Open Building Permits and Reimbursement**

Applicants with open pre-storm or post-storm building permits or violations are eligible to receive reimbursement.

#### **20.9 Determination of Reimbursement Amounts for Repaired Properties**

Applicants are eligible to be reimbursed for permanent repairs made to their structure if the expenses were incurred prior to the reimbursement deadline, which is the date the applicant executed the Program’s F1 Form or October 29, 2013, whichever is earlier. Because completed repairs are assessed at the time of the Damage Assessment, applicants must either certify on the applicant’s reimbursement worksheet that that they incurred expenses equal to their reimbursement amount before their reimbursement deadline or, if the calculated reimbursement amount exceeds the amount of expenses they incurred prior to the reimbursement deadline, the applicant must certify the amount of expenses incurred prior to the reimbursement deadline. The Program assessment estimates the value of completed permanent repairs using a standardized pricing model to ensure that all applicants are reimbursed fairly and equally, the costs are reasonable and the repairs were necessary.

During the assessment, applicants must identify repairs which were performed as a result of Hurricane Sandy and who performed the repairs (e.g., applicant, private contractor, philanthropic organization or NYC Rapid Repairs). Applicants may not be reimbursed for repairs that were paid

for by philanthropic organizations or NYC Rapid Repairs. The Program will assess and evaluate identified repairs for potential reimbursement funding.

The reimbursement amount is determined after the amount of disaster recovery funding intended for home repair and not used for other eligible purposes is deducted from the amount spent on reimbursable expenses.

#### **20.10 Additional Reimbursement Amount for Elevated Properties**

Applicants are eligible to be reimbursed for permanent repairs made to their structure together with the cost of elevating their structure if the expenses were incurred prior to the reimbursement deadline, which is the date the applicant executed the Program's F1 Form or October 29, 2013, whichever is earlier. In order to be eligible for an additional reimbursement amount related to elevation, the elevation of the structure must have been completed in accordance with the elevation requirements that were in place at the time that the elevation design was approved by the NYC DoB and the permit was issued. The Program's award review determination estimates the value of the completed elevation using a standardized pricing model. This amount is then added to the value of completed repairs from a site inspection.

The structure must have been properly elevated according to NYC Building Code as evidenced by the Elevation Certificate if the property is located in a Special Flood Hazard Area. The lowest floor must be located above the design flood elevation and all below-grade spaces such as basements or cellars must be filled. The Program requires that the elevation of the structure be completed in order for the applicant to be eligible for reimbursement. If the applicant has not completed all repairs, the Program may choose to allow an applicant to complete the repair portion of their project using the CYOC or Direct Grant Program options after reimbursement is issued.

#### **20.11 Determination of Reimbursement Amounts for Reconstructed Properties**

Applicants are eligible to be reimbursed for out of pocket costs incurred to reconstruct Sandy damaged or destroyed properties if the expense was incurred prior to the date the applicant executed the Program's F1 Form or October 29, 2013, whichever is earlier. The Program requires applicants to complete construction and provide a certificate of occupancy to the Program showing that the NYC DoB has determined that construction is complete. The structure must have been properly elevated according to NYC Building Code as evidenced by the Elevation Certificate (if the property is located in a Special Flood Hazard Area) and/or final Certificate of Occupancy. The lowest floor must be located above the design flood elevation and all below-grade spaces such as basements or cellars must be filled.

The Program will reimburse the lesser of the actual cost incurred by the applicant to reconstruct their home (including foundation costs) as demonstrated by documentation provided by the applicant or the cost the Program would have incurred had it rebuilt the applicant's property to the lesser of the home's pre-storm square footage or the square footage which was actually rebuilt (collectively "reconstruction reimbursable expenses"), together with foundation costs as established during the assessment of the reconstruction.

The reconstruction reimbursement amount is determined after the amount of disaster recovery funding intended for home reconstruction and not used for other eligible purposes is deducted from the amount spent on reimbursable reconstruction expenses.

## **20.12 Reimbursement Reduction Percentage**

The Program does not currently have sufficient funding to reimburse all applicants at 100% of their eligible reimbursement amount. The Program's standard reimbursement amount is 60% of an applicant's total, eligible reimbursement amount. The Program may increase the reimbursement amount in the following cases.

- The Program recognizes that many Program applicants paid for repairs or reconstruction using funds provided through an SBA loan. Although the SBA loan must be repaid with interest, the Program is required to count the SBA loan as a duplicative benefit. This reduces the applicant's eligible reimbursement amount. Accordingly, reimbursement-eligible applicants who also have SBA loans that the Program counted as a duplicative benefit will receive additional reimbursement of the lesser of the remaining 40% of the eligible reimbursement amount or the current disbursed amount of all SBA loans (including non-duplicative loans such as loans for contents replacement) as calculated at the point and time when the reimbursement calculation is performed.
- The Program recognizes that landlords that were originally eligible to receive elevation or reconstruction assistance, but whose pathways were changed by the Program to repair and/or reimbursement and whose tenants moved out of their rental units as directed by the Program, incurred expenses in accordance with their obligations under the Uniform Relocation Act. Accordingly, reimbursement-eligible landlords whose elevation or reconstruction pathways were changed by the Program to repair and/or reimbursement will receive additional reimbursement of up to the remaining 40% of their eligible reimbursement amount. In order to receive the additional reimbursement, the landlord must be in compliance with their obligations under the Uniform Relocation Act and all other applicable Program policies.

The Program reserves the right to increase the reimbursement percentage for all other applicants based upon funding availability. In no case will the Program reimburse applicants in an amount that exceeds 100% of the eligible reimbursement amount.

## **20.13 Mixed Use Properties**

Portions of the home which are used for non-residential purposes such as professional services, retail, commercial or other will not be evaluated for reimbursement, and applicants may not receive reimbursement for repairs done to those portions of the home or building.

## **20.14 Coordination of Benefits for Reimbursement**

### **20.14.1 Sources of Funding**

Applicants may only receive reimbursement for repairs that were paid for using personal funds. Sources of such funds include personal funds and private sector loans that are not subsidized by the government. Applicants may not seek reimbursement for repairs paid for with fully or partially utilized SBA Loans, FEMA funds, private insurance proceeds, flood insurance proceeds, philanthropic funds or any other funding source which may be considered a duplication of benefits as per federal regulations. Work performed by a philanthropic source or NYC Rapid Repairs,

including donated materials, are also considered duplicative and are not subject to reimbursement.

#### **20.14.2 Reimbursement for Construction Related Expenses**

Construction related expenses that were incurred by applicants for activities other than permanent repairs to the main home are no longer directly reimbursable as of July 16, 2014. Such expenses include, but are not limited to, pre-construction design and permitting expenses, temporary repairs not observed during the damage assessment and other post-storm recovery expenses related to repairing Hurricane Sandy damage. Valid construction related expenses may be considered when calculating an applicant's reimbursement amount and they may increase the amount of reimbursement the applicant is eligible to receive for pre-damage assessment completed permanent repairs. Construction related expenses documented by receipts are not directly reimbursable.

#### **20.14.3 Review Standard for Construction Related Expenses**

Applicants may be given credit for construction-related expenses for activities other than permanent repairs if those expenses meet all of the review requirements necessary to consider the expenditures as valid. Applicants are only to receive allowable activity credit for temporary repairs and other post-storm recovery activities that were incurred during the 12-month period following Hurricane Sandy. Applicants will not receive allowable activity credit for temporary repair and other post-storm recovery expenses incurred after October 29, 2013. This date restriction shall not apply to pre-construction design or investigative services expenses that are verified by the Program.

#### **20.14.4 Reimbursement Reconciliation and Adjustment Payments**

The Program issues reimbursement payments for eligible applicants as early as possible since many applicants that completed repairs using their own funds face financial hardship due to the expenses that they incurred. In some cases, reimbursement payments are issued before all allowable activities have been credited to an applicant. The Program may make a reimbursement adjustment payment to account for an increase in unmet need if an applicant becomes eligible to receive additional reimbursement after the initial reimbursement payment was issued.

## **21 Grant Agreements**

All applicants that receive assistance from the Program must execute a grant agreement prior to receiving assistance. The grant agreement defines the applicant's responsibilities and obligations related to the receipt of funding and the Program's obligations to the applicant. Grant agreements may differ based upon an applicant's pathway and the agency that is delivering assistance.

### **21.1 Construction Grant Agreement**

If an applicant is receiving construction assistance, the applicant must execute a grant agreement prior to receiving such assistance. The construction grant agreement contains certain requirements that the applicant(s) must agree to follow, such as cooperating with construction and maintaining flood insurance. Applicants receiving rebuild or elevation assistance are required to maintain ownership of the property for one (1) year. The penalty for selling a home within this period is repayment of the applicant's construction grant amount or a fixed cost, whichever is less. The penalty for breaching other provisions of the grant agreement may be up to the full grant amount. The penalty for breaching the agreement will not include any funds provided by the applicant as a transfer amount or upgrade amount.

### **21.2 Construction Grant Agreement Rider**

Applicants receiving construction assistance through DDC are also required to execute the DDC Grant Agreement Rider, which contains additional requirements that are specific to DDC projects.

### **21.3 Post-Grant Agreement Modifications to Pathway or Scope of Work**

The Program may, at its option, modify a scope of work or pathway after the execution of a grant agreement or grant agreement rider. Such modifications may include, but are not limited to, changing an applicant's pathway, adding to a scope of work, reducing a scope of work or changing a scope of work. Applicants may not unilaterally change or alter a scope of work or pathway.

### **21.4 Reimbursement Grant Agreement**

If an applicant is receiving reimbursement assistance, the applicant is required to execute a separate reimbursement grant agreement that contains certain requirements related to the receipt of reimbursement assistance such as maintaining flood insurance. Applicants that receive only reimbursement assistance do not have any obligation to maintain ownership of the property after such assistance is provided.

### **21.5 Grant Agreement Modifications**

Applicants may not modify a grant agreement by changing language in the grant agreement or by adding any codicils or addenda. Grant agreements containing modifications or additions will be rejected by the Program.

## **22 Application Closeout and Recapture**

Application closeout is the process of performing a final review of a completed project to ensure that the applicant's file contains all information that is required to support the Program's expenditure of federal funds and to verify that the City's request for reimbursement from HUD is correct and complete. The Program's closeout review will also determine if recapture from an applicant is required. The closeout of individual applications will also support the final closeout of the City's overall HUD grant.

### **22.1 Closeout**

The Program will perform a file closeout review upon every application where a property owner received assistance from the Program. The purpose of the closeout review is to:

- ensure that the file contains all required records needed to support an applicant's eligibility to receive assistance,
- ensure that the file contains all financial records needed to support the Program's expenditure of federal funds,
- resolve any open compliance issues that were detected at an earlier stage in the Program's processes,
- detect instances where expenditures are not fully supported,
- detect instances where an applicant was not eligible to receive Program assistance,
- detect instances where the Program provided an incorrect amount of assistance to an eligible applicant,
- detect instances where the applicant received potentially duplicative funds after the applicant's unmet need was calculated, and
- detect instances where the Program did not consider potentially duplicative funds when calculating an applicant's unmet need.

#### **22.1.1 Issue Resolution**

If a deficiency is discovered during a file closeout review, the Program will first attempt to resolve the issue. Issue resolution actions may include updating information or documentation in an applicant's file to support Program determinations, preparing supplemental documentation to explain Program actions or reconciling an applicant's benefits and eligible disaster recovery expenditures to update an applicant's unmet need calculation.

#### **22.1.2 Failure to Resolve Issues**

Deficiencies that cannot be resolved through the issue resolution process will be referred to the Program's legal and compliance teams for further action. This includes instances of potential noncompliance and cases where an applicant's unmet need has decreased due to the receipt of additional disaster recovery benefits. If the Program determines that the unresolved issue has financial implications, such as an overpayment or a payment to an ineligible applicant, the Program will determine the amount of financial liability and will determine whether the Program will be required to take action against an applicant to recapture all or part of the federal funds used for the project.

### **22.1.3 False Certification, Fraud and Potential Criminal Liability**

Applicants certify at grant agreement that they have provided true and accurate information on Program documents and to Program staff and that they have not misrepresented their eligibility to receive assistance. The Program investigates complaints of fraud during application processing through the City's ongoing Department of Investigation (DOI) internal monitoring procedures. If the City determines that an applicant has made a false certification or has committed fraud, the applicant may be in default of the grant agreement. The Program will establish procedures to afford applicants an appropriate opportunity to be heard in the event of a preliminary determination of default.

## **22.2 Recapture**

The Program has identified four instances where it may be required to compel applicants to repay some or all of the disaster recovery grant funds that were provided through Build it Back:

1. If the Program determines that an applicant was not eligible to receive some or all of the disaster recovery assistance that was provided by Build it Back.
2. If the Program determines that direct payment assistance was provided in an amount that was greater than the applicant was eligible to receive. This condition is known as an overpayment.
3. If the applicant failed to comply with the terms of his or her grant agreement.
4. If the applicant received duplicative assistance that was not considered at the time that an applicant's unmet disaster recovery need was calculated during the coordination of benefits process. This type of recapture is also known as subrogation or reconciliation.

The Program has determined that it is not required to compel applicants to repay certain disaster recovery grant funds through the Program to reimburse for eligible storm-related expenses if subsequent analysis demonstrates that the applicant received more than 60% but less than 100% of their eligible reimbursement award, as per Section 20.12 of this Manual and pages 34-35 of the Action Plan (incorporating Amendments 1-19).

### **22.2.1 Recapture and Reimbursement Applicants**

In some cases, the Program reduces an applicant's eligible reimbursement amount by a percentage before issuing a reimbursement payment. Accordingly, such an applicant receives a reimbursement payment that is less than the applicant's eligible reimbursement amount. If such an applicant becomes subject to recapture due to subrogation, the recapture amount (the amount the applicant owes to the Program) will be reduced by the difference between the eligible reimbursement amount and the reimbursement payment. If the recapture amount exceeds the difference, the Program will initiate recapture procedures for the remaining amount. This policy does not apply to applicants who are subject to recapture due for reasons other than subrogation.

## **22.3 Method of Recapture**

The Program will follow the following steps after it determines that recapture is required, except in circumstances where an applicant has already received a formal determination of default on the terms of a grant agreement. In such circumstances, the Program may elect to begin the recapture process by issuing a Recapture Demand Letter as detailed in Section 22.3.3.

### **22.3.1 Repayment in Full Prior to Initiation of Recapture**

If an applicant repays the full recapture amount at any time prior to the initiation of recapture, the Program will consider the issue resolved and the application will continue through the closeout process to completion. The Program will adjust its HUD drawdown data to reflect the repayment.

### **22.3.2 First Notice: Recapture Notification and Opportunity to Object**

The Program will provide written notice to the applicant that lists the reason for recapture, the amount that is subject to recapture and repayment instructions. This written notice will provide that the applicant may repay the full recapture amount or file a written objection to the determination within thirty (30) calendar days of the date of the notice. Written objections will be handled in the same manner as Program appeals. If an applicant fails to object to the recapture, the Program will deem the recapture reason and amount as valid.

### **22.3.3 Second Notice: Recapture Demand Letter**

If an applicant fails to repay following first notice or if an applicant objects to repayment and the Program finds that the applicant's objection is without merit, the Program will provide a second written notice that demands repayment of the recapture amount. This written notice will provide that the applicant must repay the full recapture amount within thirty (30) calendar days of the date of the notice.

### **22.3.4 Pre-Litigation Analysis**

If an applicant fails to repay after receiving a Recapture Demand Letter, the Program will consider the case to be contested and ripe for litigation. Prior to referral to outside counsel for legal proceedings, the Program will review the facts of the case to determine if it is appropriate to proceed to litigation.

#### *22.3.4.1 Decision to Proceed Based Upon Cost*

The Program, in consultation with outside counsel, has determined that the cost to litigate a collection action will range from \$30,000 to \$50,000, depending upon factors such as the facts of the case and the experience of opposing counsel. Based upon this analysis, the Program may choose to decline its option to proceed to litigation if the recapture amount is less than \$50,000. If the Program declines to proceed to litigation due to cost, the cost-benefit analysis supporting the decision will be documented in the applicant's file and the application will continue through the closeout process to completion.

#### *22.3.4.2 Decision to Proceed on the Merits*

Prior to proceeding to litigation, the Program must also review the merits of the case to determine if litigation is appropriate. The Program's legal team will perform this review prior to referring the case to outside counsel for litigation to ensure that a lawsuit is not initiated if the case does not have a likelihood of success. If the Program declines to proceed to litigation due to the merits of the case, the analysis supporting the decision will be documented in the applicant's file and the application will continue through the closeout process to completion.

### **22.3.5 Third Notice: Pre-Litigation Demand Letter**

If the Program determines that the recapture action should proceed to litigation, the Program will refer the case to outside counsel. Prior to initiating litigation, outside counsel will make a final attempt to collect by providing written notice that demands repayment of the recapture amount.

This written notice will provide that the applicant must repay the full recapture amount within thirty (30) calendar days of the date of the notice.

#### **22.3.6 Litigation**

If the applicant fails to respond to the pre-litigation demand letter within the prescribed time period, the Program's outside counsel will be instructed to initiate civil proceedings against the action in a manner that the outside counsel deems to be appropriate in consultation with the Program's legal team.

#### **22.3.7 Write-off Analysis During Litigation**

The Program, in partnership with its outside counsel, will perform a cost benefit analysis at each phase of litigation to determine if it is appropriate to continue civil proceedings against an applicant. The Program will also have the authority to make suitable settlement offers or accept settlement offers if it is determined that it is in the Program's best interest to accept partial satisfaction of a recapture amount.

### **22.4 Conditions That Do Not Require Recapture**

The Program has identified certain conditions that will not require the recapture of funds. In order to determine that recapture is not required, the Program must make an independent finding that the applicant did not materially contribute to the condition that resulted in a potential recapture.

#### **22.4.1 Error or Mistake**

If the Program made a good faith error in determining an applicant's eligibility for benefits or the amount of benefits an applicant is eligible to receive, the Program may opt to not proceed with recapture or repayment. In order to make a determination of error or mistake, the Program must:

- make a finding that the Program made an error or mistake,
- make a finding that the applicant did not contribute to the error or mistake through fraud, false certification or a through a failure to disclose relevant facts, and
- document the Program's findings and receive approval for those findings from the Program's Director and General Counsel.

#### **22.4.2 Conversion of a Repair and/or Reimbursement Project to Reconstruction**

The Program will not seek repayment from an applicant when the Program determines that a home should be reconstructed after a repair and/or reimbursement benefit has already been provided to the applicant. The Program will document the change in the applicant's unmet need and the justification for the determination that the applicant's home should be reconstructed.

## **23 Issue Resolution Process**

In accordance with 24 CFR § 91.105 (Citizen Participation Plan) and 24 CFR § 570.486(a)(7) (Housing and Urban Development Community Development Block Grant Local Government Requirements), the Program has established multiple processes to resolve applicants' concerns. The formal method by which most disputes regarding the Program's eligibility and/or award determinations are addressed is the issue resolution process set forth in this Section. Complaints regarding other determinations or Program conduct are addressed in the Complaints section of this Manual.

### **23.1 Overview**

The purpose of the issue resolution process is to provide explanations of the Program's determinations and address disagreements in a timely manner. The issue resolution process contains two steps, which are outlined below:

- If an applicant disagrees with a specific written Program determination regarding their application, the applicant may file a Request for Review with the Program within 14 calendar days from the date of the determination (unless the determination specifically provides for an alternative form of dispute resolution).
- If an applicant disagrees with the outcome of their Request for Review, the applicant may file an Appeal with the Program within 14 calendar days from the date of the written resolution to the applicant's Request for Review.

### **23.2 Unwritten Determinations**

When the Program makes eligibility or award determinations, it will do so in writing. If an applicant believes that an eligibility or award determination was made without a written decision, the applicant may request a written explanation of the alleged decision, in person or by mail. Such requests will be resolved by Customer Operations or Housing Recovery Specialists (HRS).

If the applicant disagrees with the written explanation of the alleged decision, and believes that the alleged decision and/or explanation contains an eligibility or award determination, the applicant may file a Request for Review using the methods described in Section 23.4.

### **23.3 Explanation of Determinations**

All applicants may request an explanation of a written eligibility or award determination, in person or by mail. If an applicant chooses to request an explanation, then the determination will be explained by Customer Operations or an HRS using a FAQ sheet. If an applicant is not satisfied with the explanation of the determination, and believes the explanation to contain a separate or distinct eligibility or award determination, then he or she may file a Request for Review of the explanation using the methods described in Section 23.4.

A request for an explanation of an eligibility or award determination **does not** extend the time period for an applicant to file a Request for Review of that initial eligibility or award determination.

### **23.4 Request for Review**

The following procedures apply to all Requests for Review:

- The applicant has 14 calendar days from the date the determination was transmitted to the applicant to file a Request for Review.

- If the applicant does not submit a Request for Review within 14 calendar days of the date the determination was transmitted to the applicant, then the determination is final.
- An applicant may not file a Request for Review or Appeal of a determination if the determination specifically offers the applicant a dispute resolution process other than a Request for Review, such as an opportunity to be heard after a preliminary determination of default on a grant agreement.
- A Request for Review should:
  - ✓ Be filed using the Request for Review form that accompanies the Program’s written determinations as to Program eligibility and/or awards, or be clearly labeled as a “Request for Review”;
  - ✓ Attach copies of all documentation supporting the applicant's position, if any exists;
  - ✓ Comply with all other requirements of the determination seeking review (i.e., provide photographs in challenging a proposed warranty claim resolution);
  - ✓ Clearly indicate what written decision (or portion thereof) the applicant disagrees with.
- The Program will send a Request for Review acknowledgment within 15 calendar days of receiving a completed Request for Review.
- Application processing for applicants who file a Request for Review of an application eligibility decision may be put on hold until a decision is reached on the Request for Review.
- The Program will review the submission and make a decision.
- A written response to the Request for Review will be mailed preferably within 15 calendar days, but no later than 30 calendar days after the date of receipt of the Request for Review, unless circumstances necessitate a delay.
- If more than 30 days are required for a response, then the Program will respond within 30 calendar days after the date of receipt of the Request for Review with an estimate of the amount of time needed for a response.
- If a decision will not be rendered prior to the estimated date, the applicant will be notified with an updated deadline. Requests for Review will result in one of two outcomes:
  - ✓ Granted (in full or in part) – If the Request for Review identifies an error, discrepancy, or omission on the part of the Program, the Program will:
    - ❖ Produce and mail a Request for Review decision notification letter to the applicant.
    - ❖ Resume application processing in accordance with the terms of the decision notification letter.
    - ❖ Record relevant information and the Request for Review outcome in the CMS.
    - ❖ Close the Request for Review in the CMS.
  - ✓ Denied – If the Program decides that the specified decision was not made in error, the Program will:
    - ❖ Produce and mail a Request for Review decision notification letter to the applicant. The notice will clearly state the date by which an applicant must file an appeal in order for it to be considered.
    - ❖ Add comments and the Request for Review outcome to the CMS.

- ❖ Close the Request for Review in the CMS.
- ✓ Administrative Closure – If the Program determines that the challenge to the specified decision was procedurally improper, moot, or otherwise not subject to a formal determination, the Appeals Officer will:
  - ❖ Produce and mail an appeal decision notification letter to the applicant.
  - ❖ Resume application processing (if necessary) in accordance with the terms of the appeal decision notification letter.
  - ❖ Record relevant information and appeal decision outcome to the CMS.

## **23.5 Appeals**

The second-level appeals process is initiated only after an applicant's Request for Review of a written eligibility or award determination is denied. If an applicant chooses to file a formal appeal, the following procedures apply:

- The applicant has 14 calendar days from the date on the Request for Review decision notification letter to file an Appeal form, accompanied by any additional documentation that demonstrates that a Program policy or procedure was misapplied, if applicable. Deadlines set forth in the Request for Review decision notification letter are not stayed merely because an applicant files or intends to file an Appeal form.
- An applicant may not file an appeal a final determination that provides alternative methods of resolution beyond the Issue Resolution Process (i.e., a determination after an opportunity to be heard or a Request for Review decision notification regarding a warranty claim).
- The Program will send an appeal acknowledgment within 15 calendar days of receiving the completed Appeal form.
- A Program Appeals Officer designated by the Program's Director and/or the Director's designee will review the Appeal and make a final decision.
- The Appeals Officer shall respond in writing to the appeal preferably within 15 calendar days, but no later than 30 calendar days, after the date of receipt of the appeal unless the circumstances of the appeal necessitate a delay. If more than 30 days are required for a response, then the Appeals Officer will respond within 30 calendar days with an estimate of the amount of time needed for the appeal. If a decision will not be rendered prior to the estimated date, the Appeals Officer will notify the applicant with an updated deadline.
- Appeals will be determined as follows:
  - ✓ Granted (in full or in part) – If the Appeals Officer determines that a portion of the underlying decision was made in error, the Program will:
    - ❖ Produce and mail an appeal decision notification letter to the applicant.
    - ❖ Resume application processing (if necessary) in accordance with the terms of the appeal decision notification letter.
    - ❖ Record relevant information and appeal decision outcome in the CMS.
    - ❖ Close the appeal in the CMS.
  - ✓ Denied – If the Appeals Officer determines that the specified decision was not made in error, the Appeals officer will:

- ❖ Produce and mail an appeal decision notification letter to the applicant.
  - ❖ Resume application processing (if necessary) in accordance with the terms of the appeal decision notification letter.
  - ❖ Record relevant information and appeal decision outcome to the CMS.
  - ❖ Close the appeal in the CMS.
- ✓ Administrative Closure – If the Appeals Officer determines that the challenge to the specified decision was procedurally improper, moot, or otherwise not subject to a formal determination, the Appeals Officer will:
- ❖ Produce and mail an appeal decision notification letter to the applicant.
  - ❖ Resume application processing (if necessary) in accordance with the terms of the appeal decision notification letter.
  - ❖ Record relevant information and appeal decision outcome to the CMS.
  - ❖ Close the appeal in the CMS.

An applicant will be deemed to have exhausted all administrative remedies as of the date of transmission of an appeal decision notification letter.

### **23.6 Identifying Potential Change in Program Policy**

Throughout the issue resolution process, the Appeals Officer may identify and suggest a change in program policy, based on successful Requests for Review or Appeals that overturn an original program determination. Similarly, the Program will periodically review inquiries and may identify and suggest a change in Program policy. Any suggestions from these review bodies to change program policy or procedures must be made through NYC Housing Recovery Operations.

### **23.7 Extension of Filing Deadlines**

Decisions to extend filing deadlines shall be made on a case-by-case basis by the Program Director or by the Director's designees. The Program may extend the deadlines for applicants to file Requests for Review and Appeals based upon extraordinary circumstances or if the extension of such a deadline is in the best interests of the Program. The Program may decline to extend a deadline if such an extension will jeopardize the Program's completion schedule or the schedule of an individual construction project.

## **24 Section 3**

The Program has adopted and is administering a plan to satisfy Section 3 requirements of the U.S. Department of Housing and Urban Development Act of 1968 consistent with the March 5, 2013 Notice. This Section provides the basic information for the Program regarding Section 3. Any question not covered by this Section will follow guidance issued by HUD.

### **24.1 Section 3 Target Goals**

It is the policy of the Program to utilize Section 3 residents and other eligible persons and businesses in contracts partially or wholly funded with monies from HUD. The Program has established minimum aspirational targets that Program contractors and subcontractors should meet in order to comply with Section 3.

The numerical goals established herein represent minimum numerical targets (see 24 CFR 135.30 – Numerical goal for meeting the greatest extent feasible requirement). These targets include:

- 30 percent of the aggregate number of new hires/training opportunities annually;
- 10 percent of the total dollar amount of all Section 3 covered construction contracts annually;
- Section 3 covered construction projects include building trades work arising in connection with housing rehabilitation, housing construction and other public construction (ex. Demolition, street repair and other infrastructure projects);
- 3 percent of the total dollar amount of covered non-construction (ex. professional services) contracts annually. Section 3 covered non-construction projects include professional service contracts associated with construction (ex.: architectural, engineering, legal services, accounting, marketing, etc.)

### **24.2 Section 3 Individuals**

#### **24.2.1 Resident Hiring Requirements**

Consistent with 24 CFR 135.30, the Program has adopted a 30 percent goal for Section 3 resident hiring that is to be used on construction contracts. A prime contractor may satisfy resident hiring requirements through its subcontractors. In addition, any person hired through the New York City Housing Authority (NYCHA) REES Program will be considered to be eligible for Section 3, either as a direct hire or as part of a company's full-time employee pool.

It is not intended for contractors and subcontractors to terminate existing employees, but to make every effort feasible to employ Section 3 program participants before any other person when hiring additional employees needed to complete proposed work on Section 3 covered activities.

#### **24.2.2 Contractor's Requirements in Employing Section 3 Residents**

Under the Program's Section 3 Policy, contractors and subcontractors are required to provide employment opportunities to Section 3 residents/participants in the priority order listed below in accordance with 24 CFR 135.34(a)(2):

- Category 1 Residents - Section 3 residents residing in the service area or neighborhood in which the Section 3 covered project is located.
- Category 2 Residents – Participants in HUD Youthbuild program.

- Where the Section 3 project is assisted under the Steward B. McKinney Homeless Act (ESGP, SHDP, etc. as per 42 U.S.C. 11301 et seq.), homeless persons residing in the service area or neighborhood in which the Section 3 project is located shall be given the highest priority.
- Other Section 3 Residents:
  - ✓ Recipients of housing assistance programs administered by the Assistant Secretary for Housing herein provide a preference to residents of the housing development receiving the Section 3 covered assistance within the service area or neighborhood where the Section 3 covered project is located.
  - ✓ Recipients of community development programs herein provide priority to recipients of government assistance for housing including recipients of certificates or vouchers under the Section 8 housing assistance program within the service area or neighborhood where the Section 3 covered project is located.

### **24.3 Section 3 Business Concerns**

#### **24.3.1 Qualification for a Section 3 Businesses**

A Section 3 Business Concern is defined as a business concern:

- that is 51 percent or more owned by Section 3 resident; or
- whose permanent full-time employees include persons at least 30 percent of whom are currently Section 3 residents or within three years of the date of first employment with the business concern were Section 3 residents; or
- that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontractors to be awarded to business concerns that meet the qualifications. Designations will be reviewed by the Section 3 Coordinator upon receipt of signed self-certification form.

The Program has opted to accept any other HUD recipient certifications of Section 3 Business compliance as well. The certification will be valid for three years from the date of execution.

#### **24.3.2 Evidence of Section 3 Certification**

Any business seeking Section 3 preference in the awarding of contracts or purchase agreements must be able to provide a copy of the Section 3 certification form received and acknowledged by the Program as evidence of eligibility for preference under the Section 3 Program. The certification shall be submitted along with bid packages and must be received prior to bid opening.

Each applicant, recipient, contractor, and subcontractor on a Section 3 covered project shall sign the attached Section 3 Assurance of Compliance (Exhibit C) or fill out the NYCHA Form at the following link: <http://opportunitynycha.org/business-development/section-3-business-concern>

### **24.4 Reporting Requirements**

The Program will track annual accomplishments regarding employment and other economic opportunities provided to low and very low-income person under Section 3. The form HUD-60002 is currently being utilized for reporting accomplishments. This reporting forms are updated annually by OMB. Annually the Program will provide each contractor with a copy of required reports. The Program will collect the contractor reports and send to OMB to submit to HUD. At

a minimum, Contractors are required to submit to the Program a quarterly compliance form as provided.

## **25 Complaints**

### **25.1 Formal Complaints**

The Program accepts written complaints through United States mail and electronic mail from citizens on issues related to the Build It Back disaster recovery program. The Program will make every effort to provide a timely written response to every citizen complaint within fifteen (15) working days of the receipt of the complaint, where practicable.

### **25.2 Informal Complaints**

The Program also receives informal complaints through telephone calls and verbal communication. Informal complaints are responded to by Customer Service Representatives when practicable or they are escalated to the appropriate party for response.

### **25.3 Discrimination Complaints**

Under the New York City Human Rights Law, Program applicants cannot be denied housing because of the applicant's actual or perceived race, creed, color national origin, age, disability, gender (including gender identity and sexual harassment), sexual orientation, marital status, partnership status, alienage or citizenship status, lawful occupation, lawful source of income, or because children may be residing with the applicant. In addition, under federal law, it is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status, or national origin. Applicants may file discrimination by dialing the City's 311 system to reach the NYC Commission on Human Rights, by visiting [www.nyc.gov/cchr](http://www.nyc.gov/cchr) or by making a complaint directly to HUD.

### **25.4 Complaints of Fraud, Waste or Abuse**

Complaints of fraud, waste or abuse must be escalated to Program Supervisors regardless of whether they are received in writing or verbally. The Program will provide a written acknowledgement of the receipt of the complaint to the complainant where appropriate. The Program will perform an initial investigation of the complaint to determine if it may be valid, and forward all valid complaints to the appropriate local, state or federal authorities for investigation. The Program will document all investigative findings, facts or other relevant information in a memorandum to be forwarded.

### **25.5 Fair Housing and Discrimination Complaint**

All complaints about Fair Housing or discrimination based on race, color, creed, national origin, gender, disability, or family status should be directed to the NYC Commission on Human Rights at <http://www.nyc.gov/html/fhnyc/html/home/home.shtml> or to the Regional HUD office. If the caller needs assistance with a Fair Housing complaint, the Program should take the information and refer the complaint to the NYC Commission on Human Rights with a follow-up to the complainant. For purposes of this Program, claims of discrimination will be processed as a Fair Housing Complaint.

### **25.6 Customer Service**

Applicants or other interested parties can contact Customer Service via email or by phone during regular business hours. If applicants have general questions about the program, want clarification about their applications or have a complaint, they may contact Customer Service. Build It Back

Customer Service Representatives utilize scripts to answer frequently asked questions about the Program and provide explanations.

**25.7 Notification**

The Program's Complaint Policy will be posted in each Housing Recovery Center and will be available on the Program's website.

## **26 Miscellaneous Provisions**

### **26.1 Severability**

Every process or procedure documented in this Manual or in any guidance issued pursuant to this Manual's procedures is severable. If any provision (or application of any provision) of this Manual (or guidance issued pursuant to this Manual) is deemed invalid, illegal, or incapable of being enforced to any extent, the remainder of the Manual or guidance will not be affected. All valid applications of this Manual (or guidance issued pursuant to this Manual) shall be severed from any applications deemed invalid, leaving the valid applications in full force.

### **26.2 Saving Construction**

This Manual, and all guidance issued pursuant to its provisions, is intended to be implemented up to but no further than the maximum possible extent consistent with the federal, state, and local laws that govern the Program, even if a construction permitting such implementation is not readily apparent, as such constructions are authorized only to the extent necessary to save the Manual and any guidance issued pursuant to its provisions from invalidation.

## 27 References

- Action Plan and Amendments
- NYC Build It Back Tier One Environmental Review and Revisions
- OMB Compliance Manual
- Single-Family Compliance and Monitoring Plan
- NYC Build It Back Section 3 Plan
- Minimum Program Standards
- Language Access Plan
- UD CDBG Allocations, Waivers and Alternative Requirements – Federal Register Notice
- 79 FR 5969, March 5, 2013
- Action Plan for Disaster Recovery Waiver and Alternative Requirements
- Citizen Participation Waiver and Alternative Requirements
- Waiver of Requirements under 42 U.C.C. 5306
- Consolidate Plan Waiver
- Overall Benefit Waiver and Alternative Requirement
- Waiver and Alternative Requirement
- Recordkeeping
- Change of Use of Real Property-Applicable to State Grantees only
- Program Income Alternative Requirement
- One-for-One Replacement, Relocation and Real Property Acquisition Requirements
- Housing-Related Eligibility Waiver
- Building for the General Conduct of Government
- Waiver for Public Benefit Standard for Economic Development Activities Designated to Create or Retain Jobs or Business
- Waiver and Modification of the Job Relocation Clause to Permit Assistance to Help a Business Return
- Certification Waiver
- Guidance for Changing Pre-Award Costs of Homeowner, Business, and Other Qualifying Entities to CDBG Disaster Recovery Grants, Notice CPD-13-05, July 30, 2013
- 24 CFR Part 58.15
- 40 CFR Part 745 and Title X of the 1992 Housing and Community Development Act
- 24 CFR § 570.505
- 24 CFR 91 Citizen Participation Plan
- 24 CFR § 570.486(a) (7) Housing and Urban Development Community Block Grant Local Government Requirements
- Appendix G of the 2008 NYC Building Code

## 28 Substantive Changes from Previous Versions

Policy Manual Version 2.0 served as a substantial rewrite of the previous version (1.7) with the goal of providing additional details on existing policies and announcing new Program policies. This version fully superseded all other versions of the Policy Manual and was used as the basis for evaluating all situations encountered in implementing the Program from the date of its issuance. Please review all sections that are relevant to you to ensure that you have the most up to date information. See the change log below for updates subsequent to Policy Manual Version 2.0:

### Version 2.0 to 2.1:

- **Section 1 (Overview)**: Minor edits for clarity.
- **Sections 10, 11, & 13 (pathways of City-managed construction assistance)**: Clarified the availability and potential usages of the Program's Warranty Claim Form.
- **Section 13 (CYOC)**: Clarified current status of CYOD pathway.
- **Section 17 (TRA and TRS)**: Clarified pathways subject to availability & added 60-day limit for applicants to seek TRA reimbursement.
- **Section 22 (Application Closeout and Recapture)**: Clarified, per HUD guidance, the Program's position on recapturing certain funds used to reimburse applicants for eligible storm-related expenses.
- **Section 23 (Issue Resolution Process, formerly Appeals)**: Renamed section. Updated deadline for administrative appeals of determinations on a Request for Review. Clarified situations where Program determinations may not be administratively appealed.