

OFFICE OF THE MAYOR

NEW YORK CITY MAYOR'S OFFICE OF HOUSING RECOVERY OPERATIONS

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The New York City Mayor's Office of Housing Recovery Operations ("HRO") is proposing the establishment of a financial and construction assistance program to address damage caused by Hurricane Ida to 1-4 family buildings, pursuant to the authority granted by the November 22, 2021 New York City Executive Order 87.

When and where is the Hearing? HRO will hold a public hearing on the proposed rule. The hearing will take place at **5:30 PM on July 29, 2022**. The hearing will be conducted by video conference accessible via internet or telephone.

- **Internet:** To participate in the hearing, enter at this Microsoft Teams URL: [Click here to join the meeting](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NmQyNDk0YjgtOGVmNC00MjVhLTlmOTQtZWlXODg4NGJINzYx%40thread.v2/0?context=%7b%22Tid%22%3a%2232f56fc7-5f81-4e22-a95b-15da66513bef%22%2c%22Oid%22%3a%22dc5a7cd-b033-4918-8293-93dfb180ca1e%22%7d) or https://teams.microsoft.com/l/meetup-join/19%3ameeting_NmQyNDk0YjgtOGVmNC00MjVhLTlmOTQtZWlXODg4NGJINzYx%40thread.v2/0?context=%7b%22Tid%22%3a%2232f56fc7-5f81-4e22-a95b-15da66513bef%22%2c%22Oid%22%3a%22dc5a7cd-b033-4918-8293-93dfb180ca1e%22%7d.

- **Phone:** To participate in the hearing by phone, dial: (646) 893-7101; then please enter the following:
 - **Phone Conference ID:** 468364825#

If you have low bandwidth or inconsistent internet connection, use the dial-in option for the hearing. This will reduce the possibility of dropped audio and interruptions.

How do I comment on the proposed rule? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to HRO through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to legal@recovery.nyc.gov.
- **Mail.** You can mail written comments to Mehrnoosh Torbatnejad, Deputy General Counsel, HRO, at Church Street Station, P.O. Box 468, New York, New York 10007.
- **Fax.** You can fax written comments to HRO, (212) 312-0857, ATTN: Mehrnoosh Torbatnejad.
- **Speaking at the hearing.** You can speak at the hearing. Anyone who wishes to comment on the proposed rule at the hearing must sign up in advance of the hearing to speak. You can sign up before the hearing by calling (212) 615-8017 or by emailing HRO at

legal@recovery.nyc.gov by July 29, 2022 at 5:30 PM. For those who do not sign up in advance, there will be an opportunity during the hearing to indicate that you would like to provide comments, but we request that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? All written comments must be submitted by 5:30 PM on July 29, 2022.

What if I need assistance to participate in the Hearing? You must inform HRO if you need a reasonable accommodation of a disability at the hearing, including whether you need a sign language interpreter. You can tell us by e-mail or by mail at the addresses given above. You may also tell us by telephone at (212) 615-8017. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:30 PM on July 18, 2022.

Can I review the comments made on the proposed rule? You can review the comments made online on the proposed rule by visiting <https://rules.cityofnewyork.us/proposed-rules/>. All written comments and a summary of the oral comments received by HRO will be made available to the public within a reasonable period of time after the hearing.

What authorizes HRO to make this rule? Section 1043 of the City Charter and the November 22, 2021 New York City Executive 87 authorize HRO to make this proposed rule.

Where can I find the HRO rules? This is HRO's first rulemaking action. HRO rules will be located in Title 43 of the Rules of the City of New York.

What rules govern the rulemaking process? HRO must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Mayor's Office of Housing Recovery Operations ("HRO") was established in 2013 in the aftermath of Hurricane Sandy to oversee the short-term Rapid Repairs Program ("RRP"), and the mid- to long-term Build It Back Program ("BIB"). These programs were established to provide recovery assistance to the owners of 1-4 family homes (*i.e.*, buildings containing one to four dwelling units) impacted by Hurricane Sandy.

On September 1, 2021, Hurricane Ida struck New York City (the "City") and caused rapid, severe, unexpected flooding that damaged homes, infrastructure, and businesses Citywide. Hurricane Ida also claimed the lives of at least 13 people, many of whom were trapped in 1-4 family homes. With the termination of the Federal Emergency Management Agency's ("FEMA") Shelter and Temporary Essential Power ("STEP") Pilot Program in 2019, there were no other sources of federal funding for City-managed rapid repairs. To address the needs created by Hurricane Ida, HRO promulgated an emergency rule, effective May 10, 2022 and published in the City Record on June 1, 2022, that established a financial and construction assistance program to address

damage caused by Hurricane Ida to these homes. This proposed rulemaking seeks to make these programs permanent.

One of the neighborhoods that benefited significantly from this new program is Kissena Park in Queens, which was hit hard by Hurricane Ida, and is surrounded by parkland and also sits at the bottom of a natural basin, which was still a pond as late as 1951. The May 2021 Stormwater Flood Maps, issued in conjunction with the New York City Stormwater Resiliency Plan, show that there could be “deep and contiguous flooding” across significant portions of Kissena Park, even with moderate rainfall. After Hurricane Ida, many homes in the neighborhood had flood waters reach beyond their basements or cellars and up to their first floors, rendering the homes uninhabitable. Kissena Park presented an opportunity for the City to apply the lessons learned from RRP on a smaller scale with more limited funding.

Beyond Kissena Park, Citywide damage has been far more geographically dispersed compared to the more concentrated damage caused by Hurricane Sandy’s coastal storm surge. In response to Hurricane Ida, FEMA declared major disaster zones that qualified for individual assistance (“IA”) in every borough except Manhattan.

Multiple City offices and agencies, including the Mayor’s Public Engagement Unit, the Department of Buildings, and the Department of Housing Preservation and Development, canvassed the 1-4 family homes that were damaged by Hurricane Ida. This effort determined that these homeowners outside of Kissena Park also needed the services of contractors and professional tradespeople (i.e., electricians and plumbers), as well as financial and construction assistance to complete and pay for the necessary repairs to supplement FEMA’s IA benefits.

In sum, the financial and construction assistance programs in this proposed rule would allow all homeowners of 1-4 family homes damaged by Hurricane Ida, like Kissena Park as well as other areas, to return to their properties with restored utilities, lessening the burden on public shelters and reducing the risk of further structural damage to those homes and the development of neighborhood blight.

HRO’s Ida Operations Bureau will provide three forms of assistance to Ida-impacted 1-4 family homes:

Assistance Pathway	Description	Eligible Recipients
Kissena Park Ida Rapid Repair Pilot Program	City-managed construction project designed to provide minimum repairs necessary to make Ida-damaged homes in Kissena Park habitable	Homeowners in Kissena Park with Ida damage who meet citizenship/residency requirements (see Section 19-02)
Contractor Verified Lists	City-developed lists of DCWP-licensed home improvement contractors and DOB-licensed plumbers and electricians who have agreed to promptly undertake (as	Any homeowner with Ida damage Citywide may call a contractor on any of the Verified Lists for assistance, but developing a scope of work and paying the

	capacity allows) Ida-related projects	contractors is that homeowner's responsibility
Supplemental Funding for Ida-Impacted Homeowners	Payments to homeowners who are unable, or whose tenants are unable, to return to their homes because of unrepaired damage from Ida, to supplement assistance received from FEMA for the repair of such damage	Homeowners in Staten Island, Queens, the Bronx, and Brooklyn whose primary residences were rendered uninhabitable by Ida and whose FEMA IA applications were either rejected or resulted in insufficient assistance for the primary residence to become habitable

Immediately after Hurricane Ida struck, HRO moved quickly to operationalize its activities and develop the above pathways to assistance. Rulemaking is needed to provide the necessary regulatory framework for the processes HRO has developed to determine eligibility for City benefits and to distribute assistance to eligible homeowners.

The following proposed rule governs HRO's Hurricane Ida-related programs and are issued pursuant to Section 1043 of Chapter 45 of the New York City Charter.

The rule adopted by HRO on an emergency basis, relating to the repair of damage caused by Hurricane Ida, will remain in effect for an additional sixty days to afford an opportunity for notice and comment on this proposed rule followed by adoption of a final rule.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule

Section 1. Title 43 of the Rules of the City of New York is amended by adding a new chapter 19 to read as follows:

CHAPTER 19: IDA RECOVERY PROGRAM

§ 19-01 Definitions. For the purposes of this chapter, the following terms have the following meanings:

1-4 family building. “1-4 family building” means a building containing at least one and no greater than four dwelling units.

Administrative Code. “Administrative Code” means the Administrative Code of the City of New York.

Building. “Building” has the same meaning as such term is defined in Section BC 202 of the New York City Building Code.

City. “City” means the City of New York.

Cost-reasonable. “Cost-reasonable” (and “cost-reasonableness”) means having a cost that, in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Cost-reasonableness shall be determined by utilizing the methods listed in 2 C.F.R. § 200.404 for federally-funded programs.

Dwelling unit. “Dwelling unit” has the same meaning as such term is defined in Section BC 202 of the New York City Building Code.

Effective date. “Effective date” means May 10, 2022, which is the date the Mayor approved a finding of imminent threat to health, safety, property or a necessary service for the Hurricane Ida Bureau Recovery Emergency Rule pursuant to subdivision i of section 1043 of the City Charter.

Environmental hazard. “Environmental hazard” means the presence of lead, asbestos, or mold in amounts or conditions deemed unsafe by applicable federal, state, or local laws.

Habitable. “Habitable” means that the building, property, or dwelling unit described is structurally sound with interiors protected from the elements; is not subject to a full vacate order by the Department of Buildings; has functioning heat, hot water, electricity, and gas (where applicable) in every dwelling unit for which the owner of such unit is eligible for assistance pursuant to sections 19-02 and 19-04 of this chapter; and contains at least one running tap producing potable water and one functioning toilet in every such unit.

Hurricane Ida. “Hurricane Ida” (or “Ida”) means remnants of Post-Tropical Cyclone Ida that struck the City on September 1 through September 2 of 2021.

HRO. “HRO” means the Mayor’s Office of Housing Recovery Operations, as established by Executive Order number 175, dated November 13, 2012, and as continued by Executive Order number 87, dated November 22, 2021, as amended by subsequent orders.

§ 19-02 Kissena Park Ida Rapid Repair Pilot Program.

a. **Purpose.** The Kissena Park Ida Rapid Repair Pilot Program (“Kissena Repair Pilot” or “KRP”) provides City-managed construction assistance to owners of 1-4 family buildings, or of dwelling units therein, in a small geographic area that suffered concentrated and severe damage from Hurricane Ida. The purpose of such assistance is to ensure all dwelling units in these 1-4 family buildings that suffered damage from Hurricane Ida are habitable.

b. **Definition.** For the purposes of this section, “applicant” means an owner of a 1-4 family building, or a dwelling unit in such building, who is applying for the Kissena Repair Pilot.

c. Eligibility Requirements.

1. To be eligible for the Kissena Repair Pilot, an applicant must satisfy the following criteria:

A. The applicant owns a 1-4 family building, or a dwelling unit therein, located in the area of Queens bounded by 151st Street to the west, Peck Avenue to the north, Kissena Boulevard to the east, and 56th Avenue to the south.

B. Such building or unit is such applicant's primary residence and was the primary residence at the time of Hurricane Ida, and is not a second home as defined in IRS Publication 936;

C. Such building or unit satisfies the following additional criteria:

(i) Such building or unit suffered storm-related damage as a result of Hurricane Ida;

(ii) Such building or unit is not habitable due to damage sustained from Hurricane Ida;

(iii) Such building or unit either (1) had not, prior to Hurricane Ida, received federal flood disaster assistance that required obtaining and maintaining flood insurance coverage on the damaged property, or, (2) if such flood insurance coverage was required, it was obtained and maintained for the damaged building or unit;

(iv) Such building or unit is not the subject of a violation, stop-work order, or vacate order from the Department of Buildings or other entity that would prevent any final sign-off from the Department of Buildings that is required by law in connection with any repairs HRO has conducted;

(v) Such building or unit requires less than \$75,000 worth of repairs (as determined by HRO's damage assessment) in order to be made habitable;

(vi) Such building or unit has no structural damage requiring an alteration or new building permit to repair;

(vii) Such building has no roof damage;

(viii) There are no environmental hazards present in areas of such building or unit undamaged by Hurricane Ida; and

(ix) There is unrestricted access to all areas of such building or unit.

2. In the event that HRO determines that an applicant is not eligible for the Kissena Repair Pilot, HRO will issue a written letter detailing the reason for such determination. An applicant who disagrees with such determination may challenge it only by following the issue resolution procedures described in section 19-05 of this title.

d. Applicant Certifications. An applicant must certify to the following:

1. The applicant has provided complete, true, and accurate information on all documents submitted to HRO, including complete information regarding other disaster assistance funds received for the purpose of home reconstruction, elevation, or

rehabilitation or for temporary housing, and has not misrepresented their eligibility for the KRP;

2. The applicant understands that acceptance of assistance from the KRP may require the applicant to return other assistance received from the federal government or from an insurance company, or might result in the denial of such federal assistance or of such assistance from an insurance company;

3. The applicant is a United States citizen or qualified alien, as such term is defined in 8 U.S.C. § 1641, and is not prohibited from receiving federal public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) of 1996;

4. The applicant has full power, authority, and legal right to execute any documents necessary for HRO to provide necessary repairs on the 1-4 family building or dwelling unit for which the applicant seeks assistance pursuant to this section;

5. The applicant will sign all documents necessary to effectuate the KRP, including but not limited to a notarized repair agreement;

6. The applicant will provide an unqualified right of entry to such 1-4 family building or such unit in order for HRO, its agents and assigns, and any utility companies to perform work eligible for KRP;

7. The applicant will provide all necessary information to HRO upon request and comply with all deadlines and requests HRO may make or set; and

8. The applicant will obtain and/or maintain flood insurance for the damaged property if the damaged property is located within a 100-year floodplain or Special Flood Hazard Area designated by FEMA.

e. Selection Criteria. HRO will select eligible applicants based on the order in which their requests for assistance were received; provided, however, that consistent with the purpose of the Kissena Repair Pilot described in subdivision a of this section, HRO may select an eligible applicant not in the order in which such applicant’s request was received if HRO reasonably determines, based on considerations of logistics and cost-reasonableness, that such a selection would make efficient use of limited resources, materials and labor to ensure that as many homes as possible in the Kissena Park neighborhood are made habitable.

f. Funding Priority. Based on the funds available for this program, the City may not be able to provide assistance pursuant to this section to all eligible applicants. In the event of a funding shortfall, HRO will cease intake for the program and prioritize completion of accepted applications currently in construction, followed by accepted applications with the smallest amount of necessary work to return their properties to habitable status.

g. Scope of Assistance.

1. If an applicant is determined to be eligible for assistance under the KRP, HRO employees and/or contractors will conduct an on-site damage assessment to determine the scope of work for storm-related damage that must be repaired in order for the damaged 1-4 family building or dwelling unit to be habitable.

2. Construction pursuant to KRP will be limited to restoration of the following essential services: heat, hot water, electricity, gas, one tap providing potable water per eligible dwelling unit, and one functioning flush toilet per eligible dwelling unit.

3. Where environmental hazards are identified in areas of such building or unit damaged by Hurricane Ida, a scope of work may include limited remediation efforts.

4. Where necessary, the scope of work may include providing a small refrigerator and/or hot plate per eligible dwelling unit where prior appliances were damaged or destroyed by Hurricane Ida.

5. Prior to commencement of construction, the applicant must sign a repair grant agreement acknowledging the eligible scope of work and other KRP terms and conditions.

6. Once construction pursuant to KRP is complete, HRO and/or its contractors will reinspect the building or dwelling unit to verify the scope of work was completed. Wherever possible, these re-inspections will take place with the applicant present so that any errors or issues may be raised with the contractors present.

7. In the event that construction pursuant to KRP reveals that the applicant is not eligible for assistance under the KRP pursuant to subdivision (c) of this section, HRO and/or its contractors will stop construction pursuant to KRP, leave the property in as stable and/or habitable a condition as possible, and notify the applicant.

h. Compliance.

1. If HRO determines that an applicant made a false certification, refused to provide access or otherwise prevented HRO and/or its contractors from performing work, it may take any or all of the following actions:

A. Provide that the applicant is not eligible for the KRP;

B. Require reimbursement to the City of the funds expended to date on repair of the applicant's 1-4 family building or dwelling unit; and

C. Bar the applicant from City-run storm-related assistance programs for 5 years.

2. An applicant who disagrees with a determination regarding their compliance with this section may challenge such determination only by following the issue resolution procedures described in section 19-05 of this title.

§ 19-03 Contractor Verified Lists.

a. Purpose. At the outset of the City's Ida recovery process, homeowners reported that it was difficult to identify contractors willing and able to conduct necessary storm-related repairs. Accordingly, HRO has three Verified Lists ("VLs"), one each for (a) DCWP-licensed home improvement contractors, (b) DOB-licensed electricians, and (c) DOB-licensed plumbers

(together, the “VL Contractors”) able and willing to prioritize providing assistance to Ida-impacted homeowners.

b. Definitions. For the purposes of this section, the following terms have the following meanings:

Applicant. “Applicant” means a contractor applying to be admitted to a Verified List (“VL”) established pursuant to this section.

Contractor. Unless otherwise specified, “contractor” means a home improvement contractor, plumber or electrician.

Electrician. “Electrician” means a master electrician licensed by the New York City Department of Buildings pursuant to subchapter 1 of chapter 3 of title 27 of the Administrative Code.

Home improvement contractor. “Home improvement contractor” means a home improvement contractor licensed by the New York City Department of Consumer and Worker Protection pursuant to subchapter 22 of chapter 2 of title 20 of the Administrative Code.

Plumber. “Plumber” means a master plumber licensed by the New York City Department of Buildings pursuant to article 408 of chapter 4 of title 28 of the Administrative Code.

VL Contractor. “VL Contractor” means a contractor admitted to a Verified List (“VL”) established pursuant to this section.

c. VL Contractor Eligibility.

To be eligible to be admitted to a VL, a contractor must meet the following requirements:

1. Be a licensed home improvement contractor, plumber, or electrician;
2. Have and maintain all required business and trade licenses and registrations;
3. Provide services in Staten Island, the Bronx, Queens, and/or Brooklyn;
4. Not be subject to any debarments or investigations by DOI; and
5. In the case of a contractor registered in the City’s contracting portal, PASSPort, have no outstanding negative performance evaluations or debarments listed in PASSPort or the City’s prior system of record, Vendex.

d. VL Contractor Certifications. To join a VL, an eligible contractor must certify that they will:

1. Promptly address any questions and provide any documents upon request from DOB, DOI, and/or HRO;
2. Undertake and complete no fewer than three Ida-related home repair projects;
3. Respond to any inquiry from an Ida-impacted homeowner within 24 hours of receiving such inquiry;

4. Obtain any permits necessary to complete the homeowner's scope of work within 24 hours of signing a contract with the homeowner;
5. Complete the scope of work, including obtaining all necessary permit approvals and/or sign-offs, within 3 months of the date that the contract was signed by both parties; and
6. Certify to HRO that the completed scope of work for the contract in question included repair of Ida-related damage.

e. VL Contractor Selection Criteria.

1. Eligible contractors, as described in subdivision c of this section, who make the certifications required by subdivision d of this section, shall be admitted to the VLs in the order in which their applications to participate are received by DOB until each VL contains at least 50 contractors. An eligible contractor who seeks to challenge their failure to be admitted to a VL may bring such challenge only by following the issue resolution procedures described in section 19-05 of this title.

2. HRO may add more eligible applicants to the VLs if, in its discretion, it believes the VLs require additional contractors to serve their purpose.

f. City Payments to VL Contractors.

1. Once an eligible contractor is accepted to a VL, such VL Contractor may apply for a \$2,500 registration payment. As a condition of receiving such registration payment, such VL Contractor must submit three signed contracts for repairing three Ida-damaged properties, together with a certification that the work performed under these contracts was for Ida-related damage, to verify they undertook Ida-related work. HRO may waive the requirement that a VL Contractor repair three Ida-damaged properties as a condition of receiving the registration payment based upon a consideration of the total number of storm-damaged properties in the borough(s) in which the VL Contractor typically operates and the complexity of the repairs of the Ida-damaged properties that the VL Contractor undertook. Should HRO fail to waive such requirement, HRO may require the VL Contractor to return the \$2,500 registration payment it received from the City if such VL Contractor does not complete three projects as required pursuant to subdivision d of this section.

2. For each signed contract and certification that the work performed under such contract was for Ida-related damage and was completed, a VL Contractor will be paid a \$1,000 completion fee for each contract that required obtaining a permit from DOB and a \$500 completion fee for each contract that did not require obtaining a permit from DOB.

3. The maximum amount that a VL Contractor may receive from the City pursuant to this section is \$20,000.

g. Funding Priority. The payments described in subdivision f of this section are subject to the availability of funding.

h. Verification. HRO may seek additional verification of any certification that a VL Contractor submits, including but not limited to determining whether the building or dwelling unit in question was damaged by Hurricane Ida and whether the work completed repaired damage from Hurricane Ida. Such verification may include but not be limited to site visits, review of receipts, and homeowner interviews.

i. Voluntary Withdrawal. A VL Contractor may ask to be withdrawn from a VL at any time. The City will remove such contractor from the VL when the City updates such VL.

j. Compliance.

1. A VL Contractor may be removed from a VL if at any time HRO determines that such contractor or its staff has:

A. Made a false certification or statement to any City, state, or federal entity;

B. Committed or been arrested for fraud or another crime of moral turpitude;

C. Failed to comply with any of the requirements set forth in sections 19-03(c) or (d) of this title; or

D. Behaved in an abusive manner, whether verbally, physically, or in writing, to a homeowner, City employee, or City contractor.

2. A VL Contractor who was removed from a VL will be required to return their registration and/or completion payments to the City. A VL Contractor may challenge a removal determination only by following the issue resolution procedures described in section 19-05 of this title.

k. Homeowner and VL Contractor Responsibility for Repairs. The VLs are intended solely to provide homeowners with access to contractors willing to dedicate a portion of their capacity to serving them. Homeowners and VL Contractors are responsible for:

1. Determining the scope of work to be performed;

2. Negotiating the VL Contractor's payment schedule and the method of payment;

3. Obtaining any necessary permits and obtaining all needed inspections, approvals and sign-offs in connection with permitted work; and

4. Resolving any disputes between the homeowner and the VL Contractor.

§ 19-04 Supplemental Funding for Ida-Impacted Homeowners.

a. Purpose. The City seeks to provide additional financial support ("Supplemental Funding" or the "supplemental benefit") to homeowners whose applications to FEMA for emergency home repair assistance were rejected or resulted in benefits that were insufficient to make the necessary repairs to their homes.

b. Definitions. For purposes of this section, the following terms have the following meanings:

Applicant. “Applicant” means an owner of a 1-4 family building, or a dwelling unit therein, who is applying for financial assistance pursuant to this section.

FEMA housing repair benefit. “FEMA housing repair benefit” means emergency home repair assistance provided by the Federal Emergency Management Agency (“FEMA”) to individuals and households as a direct result of a disaster that receives a federal emergency or major disaster declaration pursuant to FEMA’s Individual Assistance programs.

c. Applicant Eligibility. To be eligible for Supplemental Funding, an applicant must satisfy the following criteria:

1. The applicant owns a 1-4 family building, or a dwelling unit therein, located in Staten Island, the Bronx, Brooklyn or Queens;

2. The applicant applied for FEMA housing repair benefits for such 1-4 family building or dwelling unit and either was rejected or was awarded an amount that was not sufficient to permit such applicant to return such building or unit to a habitable state; provided, however, that an applicant need not have applied for FEMA housing repair benefits for the portion of any 1-4 family building, or any dwelling unit within such building, that is the primary residence of a tenant of such applicant.

3. The applicant must certify that such 1-4 family building or dwelling unit is the applicant or a tenant of such applicant’s primary residence and was the primary residence at the time of Hurricane Ida, and not a second home as defined in IRS Publication 936;

4. The applicant must certify that such 1-4 family building or dwelling unit satisfies the following additional criteria:

A. Such 1-4 family building or dwelling unit suffered storm-related damage as a result of Hurricane Ida;

B. Such 1-4 family building or dwelling unit is not habitable as a result of damage from Hurricane Ida; provided, however, that if such applicant completed repairs on or prior to the effective date, such applicant may certify that such 1-4 family building or dwelling unit was not habitable as a result of damage from Hurricane Ida until such repairs were completed; and

C. Such 1-4 family building or dwelling unit either (i) had not, prior to Hurricane Ida, received federal flood disaster assistance that required obtaining and maintaining flood insurance coverage on the damaged property, or, (ii) if such flood insurance coverage was required, it was obtained and maintained for the damaged property.

d. Applicant Certifications. Applicants for Supplemental Funding must certify as follows:

1. The applicant is a United States citizen or qualified alien, as such term is defined in 8 U.S.C. § 1641, and is not prohibited from receiving federal public benefits under the PRWORA of 1996;

2. The applicant has full power, authority, and legal right to execute any documents necessary for HRO to provide a supplemental benefit;

3. The applicant provided complete, true, and accurate information on all HRO documents and to HRO staff, including complete information regarding other disaster assistance funds

received for the purpose of home reconstruction, elevation, or rehabilitation or temporary housing, and has not misrepresented their eligibility for a supplemental benefit;

4. The applicant will obtain and/or maintain flood insurance for the damaged property if the damaged property is located within a 100-year floodplain or Special Flood Hazard Area designated by FEMA; and

5. The applicant understands that acceptance of Supplemental Funding may require applicant to return other assistance received from the federal government or from an insurance company, or might result in the denial of such federal assistance or of such assistance from an insurance company.

e. Funding Priority. HRO will initially accept applications only from eligible applicants housed in temporary government-provided shelter due to storm damage at their primary residence, or eligible applicants whose tenants are housed in such shelter due to storm damage at such tenants' primary residence. Once HRO has made determinations on such applications, and provided that funding is available, HRO may accept applications, in the following order, from:

1. eligible applicants who are unable to return to their primary residence, or whose tenants are unable to return to their primary residence, and who have exhausted their right to appeal FEMA's determination of eligibility for FEMA housing repair benefits or the amount of FEMA housing repair benefits; and

2. all other eligible applicants.

f. Required Documentation, Damage Assessment, and Approvals.

1. Repairs completed after effective date.

A. An applicant who has not completed repairs to a 1-4 family building or dwelling unit on or prior to the effective date must, once HRO has determined that such applicant is eligible for Supplemental Funding, contact contractors to obtain an itemized scope of work and itemized estimate of the cost required to make the building or dwelling unit habitable. If such applicant wishes to proceed with a contractor, the applicant must contact HRO to provide HRO with such applicant's itemized scope of work and itemized estimate of cost and to schedule a damage assessment.

B. At the damage assessment, HRO and/or its contractors will independently verify that the items listed in such applicant's itemized scope of work and itemized estimate of cost are storm-related repairs, and that the prices for such repairs are cost-reasonable.

C. HRO will approve for Supplemental Funding each item listed on such applicant's itemized scope of work and itemized estimate of cost that is verified pursuant to subparagraphs A and B of this paragraph to be a storm-related repair and to be cost-reasonable, and will inform such applicant of each such approval. Should HRO determine that any such item is not a storm-related repair or is not

cost-reasonable, HRO will deny the inclusion of such item, in whole or in part, in the itemized scope of work and itemized cost, and inform such applicant of each such denial. In instances in which HRO denies the inclusion of any item on an applicant's itemized scope of work or itemized cost, such applicant may elect to take any of the following actions:

- (i) ask the contractor to modify the scope of their work to remove items determined by HRO to not be storm-related repairs, or reduce the cost of items determined by HRO to not be cost-reasonable;
- (ii) pay the difference between HRO's maximum reimbursement amount and the total amount listed on the estimate of cost; or
- (iii) seek a new contractor willing to complete items determined by HRO to not be cost-reasonable at a lower rate (which HRO must review for cost-reasonableness).

2. Repairs completed on or prior to effective date.

A. An applicant who has completed repairs to a 1-4 family building or dwelling unit on or prior to the effective date must provide to HRO an itemized scope of work, invoice with itemized costs, proof of payment and, if available, documentary proof of storm-related damage.

B. Upon review of such applicant's documentation, HRO may schedule a final inspection pursuant to subdivision i of this section to independently verify and approve that the work completed was for storm-related repairs and that the prices paid for such repairs were cost-reasonable. HRO may seek additional verification, including but not limited to receipts from the contractor whose itemized scope of work and invoice provided the basis for the Supplemental Funding request.

C. HRO will approve for Supplemental Funding each item listed on such applicant's itemized scope of work and invoice that is verified pursuant to subparagraphs A and B of this paragraph to be a storm-related repair and to be cost-reasonable, and will inform such applicant of each such approval. Should HRO determine that any such item is not a storm-related repair or is not cost-reasonable, HRO will deny such item, in whole or in part, for Supplemental Funding, and inform such applicant of each such denial.

3. Applicants who disagree with a determination made by HRO regarding their Supplemental Funding may challenge it only by following the issue resolution procedures described in section 19-05 of this title.

g. Maximum amount. The maximum amount of funds that an eligible applicant can receive from the program described in this section is \$72,000.

h. Construction.

1. The applicant will be solely responsible for managing construction at their damaged property, including but not limited to:

A. Negotiating the contractor payment schedule and method of payment;

B. Obtaining any necessary permits; and

C. Resolving any disputes.

2. Any changes to the scope of work that formed the basis of the Supplemental Funding will not automatically result in an increase in the amount of Supplemental Funding. Any potential change orders or supplemental job orders must be reviewed or approved by HRO, and may be rejected even if a contractor determines such orders are necessary to make the building or dwelling unit habitable.

3. Construction must be completed within three months of the date the initial payment was provided to the eligible applicant pursuant to subparagraph A of paragraph 1 of subdivision j of this section. HRO may extend this deadline upon written application by the applicant based upon consideration of the complexity of the scope of work and availability of resources or labor.

i. Final Inspection. Once construction is complete, the eligible applicant must notify HRO and schedule a final inspection so that the scope of work can be verified as completed. HRO may seek additional verification, including but not limited to receipts from the contractor whose itemized scope of work, itemized estimate of cost and/or invoice with itemized costs provided the basis for the Supplemental Funding.

j. Payments.

1. Initial and final payments for repairs completed after effective date.

A. Initial Payment. For repairs completed after the effective date, HRO will make a determination of the total amount of Supplemental Funding to be provided to an eligible applicant, which shall be equal to the total cost of approved items listed on an eligible applicant's itemized scope of work and itemized estimate of cost but which shall not exceed the maximum amount of funding established pursuant to subdivision g of this section. After HRO has made such a determination, the City will provide or cause to be provided 30 percent of such amount to the applicant for the purpose of making an initial payment to the contractor(s) selected by the applicant to undertake the work necessary to make the damaged property habitable.

B. Final Payment. Following HRO's final inspection, HRO will provide or cause to be provided a final payment to the applicant for the items in the itemized scope of work and itemized cost approved pursuant to subdivision f of this section that were verified as completed during the final inspection conducted pursuant to subdivision j of this section. Incomplete or improperly-completed scope of work items will result in a corresponding reduction of an applicant's Supplemental Funding.

2. Reimbursement payment for repairs completed on or prior to effective date. For work completed on or prior to the effective date, as described in paragraph 2 of subdivision f of this section, HRO will make a determination of the total amount of Supplemental Funding to be provided to an eligible applicant, which shall be equal to the total cost of approved items listed on an eligible applicant's itemized scope of work and invoice, but which shall not exceed the maximum amount of funding established pursuant to subdivision g of this section. After HRO has made such a determination, the City will provide or cause to be provided such total amount of Supplemental Funding to the eligible applicant as reimbursement for eligible payments made for the repairs.

k. Compliance.

1. If HRO determines that an applicant made a false certification, refused to provide access, failed to utilize their Supplemental Funding for an approved purpose, failed to obtain or maintain flood insurance despite being required to do so, and/or prevented HRO and/or its contractors from performing work, HRO may take any or all of the following actions:

- A. Provide that the applicant is not eligible for Supplemental Funding;
- B. Require reimbursement to the City of some or all of the Supplemental Funding received by the applicant; and
- C. Bar the applicant from City-run storm-related assistance programs for 5 years.

2. All funds provided to an applicant under this section must be used to pay the contractor(s) for undertaking the approved scope of work, and any unused funds must be returned to the City. If an applicant fails to use all of the Supplemental Funding for such purposes, the City will require reimbursement of the misused or unused amounts. An applicant who fails to use all of the initial payment provided pursuant to subparagraph A of paragraph 1 of subdivision j of this section to pay the contractor(s) for undertaking the approved scope of work will not be eligible to receive a final payment issued pursuant to subparagraph B of such paragraph. Prior to HRO providing or causing to be provided such final payment, HRO may seek additional verification, including but not limited to receipts from the contractor whose itemized scope of work and itemized estimate of cost provided the basis for the Supplemental Funding, to ensure that such initial payment was used to pay the contractor(s) for undertaking the work detailed in the scope of work and estimate of cost.

3. An applicant who disagrees with a determination regarding their compliance with Supplemental Funding requirements may challenge it only by following the issue resolution procedures described in section 19-05 of this title.

§ 19-05 Issue Resolution Process.

a. Purpose. The purpose of the issue resolution process established pursuant to this section is to provide explanations of HRO's determinations and address disagreements in a timely manner. The issue resolution process contains two steps:

1. If an applicant to a program established by this Chapter disagrees with a specific written HRO determination regarding their application, the applicant may file a Request for Review within 14 calendar days from the date of the determination (unless the determination specifically provides for an alternative form of dispute resolution). An applicant applying to be admitted to a Contractor Verified List who received a determination regarding their application prior to the effective date shall be sent a notice from HRO within 30 calendar days of the effective date of such rule informing such applicant that they may file a Request for Review of their original determination within 14 calendar days of the date of such notice (unless such notice specifically provides for an alternative form of dispute resolution).

2. If an applicant disagrees with the outcome of their Request for Review, the applicant may file an Appeal with HRO within 14 calendar days from the date of the written resolution to the applicant's Request for Review.

b. Unwritten Determinations.

1. When HRO makes eligibility, award, or removal determinations regarding the programs established by this chapter, it will do so in writing. If an applicant to any such program believes that any such determination was made without a written decision, the applicant may request that HRO provide such determination in writing.

2. If an 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 pursuant to this Section.

c. Explanation of Determinations. A request for an explanation of an eligibility, award, or removal determination does not extend the time period for an applicant to file a Request for Review of that initial determination.

d. Requests for Review. The following procedures apply to all Requests for Review:

1. The applicant has 14 calendar days from the date the determination was transmitted by HRO to the applicant to file a Request for Review.

2. If the applicant does not submit a Request for Review within 14 calendar days of the date the determination was transmitted to the applicant, the determination is final.

3. An applicant may not file a Request for Review 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 an agreement containing procedures for such an opportunity.

4. A Request for Review should:

A. Be clearly labeled as a "Request for Review";

B. Attach copies of all documentation supporting the applicant's position, if any exists;
and

C. Clearly indicate what written decision (or portion thereof) the applicant disagrees with.

5. HRO will send an acknowledgment within 15 calendar days of receiving a completed Request for Review.

6. HRO may suspend processing of an application until a decision is reached on the Request for Review.

7. HRO will review the submission and make a decision.

8. A written response to the Request for Review will be mailed to the extent practicable within 15 calendar days, and no later than 30 calendar days after the date of receipt of the Request for Review, unless extenuating circumstances necessitate a delay.

9. In the event extenuating circumstances necessitate a delay, 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.

10. If a decision will not be rendered by the estimated date, the applicant will be notified with an updated deadline.

11. Requests for Review will result in one of three outcomes:

A. **Granted (in full or in part).** If the Request for Review identifies an error, discrepancy, or omission on HRO's part, HRO will:

(i) Produce and mail a Request for Review decision notification letter to the applicant, which will clearly state the date by which an applicant must file an appeal in order for it to be considered in the event that any aspect of the Request for Review was denied;

(ii) Resume application processing in accordance with the terms of the decision notification letter; and

(iii) Record the determination in HRO's system of record.

B. **Denied.** If HRO determines that the specified decision was not made in error, HRO will:

(i) Produce and mail a Request for Review decision notification letter to the applicant, which will clearly state the date by which an applicant must file an appeal in order for it to be considered; and

(ii) Record the determination in HRO's system of record.

C. **Administrative Closure.** If HRO determines that the challenge to the specified decision was procedurally improper, moot, or otherwise not subject to a formal determination, HRO will:

(i) Produce and mail a decision notification letter to the applicant;

(ii) Resume application processing (if necessary) in accordance with the terms of the decision notification letter; and

(iii) Record the determination in HRO's system of record.

e. Appeals. The second-level Appeal process is initiated only after an applicant's Request for Review of a written eligibility or award determination is denied, in full or in part. If an applicant chooses to file an Appeal, the following procedures apply:

1. 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 an HRO 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.

2. HRO will send an appeal acknowledgment within 15 calendar days of receiving the completed Appeal form.

3. An HRO Appeals Officer designated by HRO's Director or the Director's designee will review the Appeal and make a final decision.

4. The Appeals Officer shall respond in writing to the appeal to the extent practicable within 15 calendar days, and 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 to determine the appeal. If a decision will not be rendered by the estimated date, the Appeals Officer will notify the applicant with an updated deadline.

5. Appeals will be determined as follows:

A. **Granted (in full or in part).** If the Appeals Officer determines that a portion of the underlying decision was made in error, HRO will:

(i) Produce and mail an appeal decision notification letter to the applicant;

(ii) Resume application processing (if necessary) in accordance with the terms of the appeal decision notification letter; and

(iii) Record the determination in HRO's system of record.

B. **Denied.** If the Appeals Officer determines that the specified decision was not made in error, the Appeals officer will:

(i) Produce and mail an appeal decision notification letter to the applicant;

(ii) Resume application processing (if necessary) in accordance with the terms of the appeal decision notification letter; and

(iii) Record the determination in HRO's system of record.

C. **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:

(i) Produce and mail an appeal decision notification letter to the applicant;

(ii) Resume application processing (if necessary) in accordance with the terms of the appeal decision notification letter; and

(iii) Record the determination in HRO's system of record.

6. An applicant will be deemed to have exhausted all administrative remedies as of the date of transmission by HRO of an appeal decision notification letter.

f. **Extensions.** Decisions to extend filing deadlines for Requests for Review and Appeals will be made on a case-by-case basis by HRO's Director or by the Director's designee(s) based upon a determination that extraordinary circumstances have arisen that warrant such extension or if an extension of such a deadline is in the best interests of HRO's operations.

§ 19-06 Miscellaneous.

a. **No Entitlement to Benefits.**

1. Any benefit that may be offered or conferred pursuant to this Chapter does not constitute entitlement to such benefit. Disaster recovery benefits are an entirely discretionary form of assistance, particularly where, as here, the City intends to seek federal funding and/or reimbursement for its actions. If such funding is not available, or less than is necessary, the City may reduce or eliminate benefits without notice.

2. Every applicant for benefits under any of the programs described in this chapter must certify that they understand they have no entitlement to such benefits and that there is no guarantee they will receive such benefits.

b. Severability. If any provision of this Chapter, or the application of any provision of this Chapter (or guidance issued pursuant to this Chapter), is deemed invalid, illegal, or incapable of being enforced to any extent, the remainder of this Chapter or guidance issued pursuant to this Chapter will not be affected. All valid applications of this Chapter (or guidance issued pursuant to this Chapter) shall be severed from any applications deemed invalid, leaving the valid applications in full force.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Hurricane Ida Financial and Construction Assistance Program (Permanent Rule)

REFERENCE NUMBER: 2022 RG 047

RULEMAKING AGENCY: Mayor's Office of Housing Recovery Operations

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Date: June 17, 2022

Acting Corporation Counsel

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Hurricane Ida Financial and Construction Assistance Program (Permanent Rule)

REFERENCE NUMBER: MO-8

RULEMAKING AGENCY: Mayor's Office of Housing Recovery Operations

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro

Mayor's Office of Operations

June 17, 2022

Date