



HURRICANE HARVEY  
RELIEF FUND FOR TEXAS  
SMALL BUSINESS

# **ECONOMIC REVITALIZATION PROGRAM (ERP)**

## Program Guidelines

January 29, 2021



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# 1. INTRODUCTION

Hurricane Harvey, a Category 4 hurricane with sustained winds over 130 mph, made landfall between Port Aransas and Port O'Connor on August 25, 2017. Due to two high-pressure systems to the east and west, the hurricane remained fixed over the Texas coast for the next 4 days. During this period, as much as 60 inches of rain fell over the impacted area. Hurricane Harvey resulted in a record rainfall total of 34 trillion gallons of water. Tens of thousands of homes that had never been flooded took on water and evacuations and rescues continued for days after landfall.

The U.S. Department of Housing and Urban Development (HUD) has allocated \$5.024 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) funds to the State of Texas in response to Hurricane Harvey, DR-4332, through the publication Vol. 83, No. 28 of the Federal Register, Friday, February 9, 2018. This allocation was made available through the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Act, 2017 that allocated CDBG-DR funds in response to major disasters declared in 2017. The General Land Office (GLO) has been designated to administer CDBG-DR funds on behalf of the State of Texas.

Of the \$5.024 billion made available by HUD to fund recovery efforts, the GLO has allocated \$100 million to fund an Economic Revitalization Program (ERP) to assist impacted small businesses. Under the ERP, funds will be provided for economic development activities eligible under the Housing and Community Development Act of 1974, as amended, and the accompanying implementation regulations at 24 C.F.R. Part 570. The ERP is not allowed to duplicate funds received by an impacted small business from other sources such as insurance policies, Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), or other federal or state agencies with disaster recovery program grants or similar assistance.

The GLO has procured a vendor to administer the ERP for 49 disaster-impacted Texas counties listed in the State of Texas Plan for Disaster Recovery dated June 25, 2018, as amended (Action Plan). Program is charged with ensuring that all ERP activities are carried out in a manner that complies with applicable laws under the United States Code, including the Housing and Community Development Act of 1974, the Disaster Relief Act of 1974 amended as the Stafford Act (1988); regulations under the Code of Federal Regulations (C.F.R.) including 2 C.F.R. Part 200 (*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*) and 24 C.F.R. Part 570 (*Community Development Block Grants*); applicable Federal Register notices, including 83 Fed. Reg. 5844 (February 9, 2018) and 83 Fed. Reg. 40314 (August 14, 2018); and any other laws, regulations, or notices that may be applicable.

In an effort to create and/or retain jobs for low- and moderate-income persons and provide improved access to goods and services in low- and moderate-income neighborhoods, ERP assistance shall be provided to applicant businesses in the form of grant awards. Grant funds can be used for the purchase of equipment and inventory, for working capital, or any ERP-eligible business need.

The purpose of these Guidelines is to provide information regarding the ERP's policies and rules to all Program applicants and participants. These Guidelines may be supplemented or modified to address changes to rules, regulations, or changing unmet recovery needs of the applicant population. All revisions to the Guidelines will be posted to the Program's ERP website ([www.texasbackinbusiness.com](http://www.texasbackinbusiness.com)) and the GLO's CDBG-DR website (<https://recovery.texas.gov/local-government/Programs/economic-revitalization-program/index.html>).

## 2. ELIGIBILITY

### 2.1 APPLICANT BUSINESS QUALIFICATIONS

Assistance under the ERP is available to sole proprietorships, corporations, partnerships, limited liability corporations, or other forms of business organizations that are recognized by the State of Texas and listed with the Texas Secretary of State and the Texas Comptroller of Public Accounts.

An applicant business is qualified to be considered for an award under the ERP if the business:

- (1) is located in one of the disaster-impacted 49 counties listed in the Action Plan (Section 2.1.1., below);
- (2) was conducting business on August 24, 2017, the date Hurricane Harvey made landfall;
- (3) suffered direct damage or indirect economic impact as a result of Hurricane Harvey;
- (4) is a “small business” as defined by SBA in 13 C.F.R. Part 121 or a business engaging in “farming operations” as defined at 7 C.F.R. 1400.3;
- (5) not located within a regulatory floodway (Section 2.1.2, below);
- (6) is not a privately-owned utility company; and
- (7) is not a “debarred entity” on the System for Award Management (SAM) electronic roster or as registered with the Texas State Comptroller’s Office.

#### 2.1.1 Location in an eligible county or MID area

An applicant business must be located in one of the Harvey declared 49 counties.

Program will further categorize applicant businesses by location in a HUD-identified “most impacted and distressed” (MID) area. At least 80% of ERP funds must benefit businesses located in MID counties and ZIP codes. The HUD-identified MID areas are: Aransas, Brazoria, Chambers, Fayette, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Nueces, Orange, Refugio, San Jacinto, San Patricio, Victoria, and Wharton Counties; 75979, 77320, 77335, 77351, 77414, 77423, 77482, 77493, 77979, and 78934 ZIP Codes.

#### 2.1.2 Location of business in floodway prohibition

Due to the heightened risk of flooding, an applicant business shall not be eligible to receive an ERP grant if the location of the applicant business is in a regulatory floodway. A “regulatory floodway” comprises the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

## 2.2 NATIONAL OBJECTIVE REQUIREMENTS

To be eligible for ERP assistance, an applicant business must perform activities that meet one or more of the following National Objectives, as defined by HUD regulations and guidance:

- The applicant business must create or retain one or more jobs for each \$50,000 of grant funds received, of which at least 51% are for low-and-moderate-income person (LMJ); or
- The applicant business must create or retain one or more jobs for each \$50,000 of grant funds received, of which at least 51% are for persons qualifying for a presumption of low-and moderate-income (LMJP); or
- The applicant business must document a benefit to a low- and moderate-income area (LMA); and must create or retain one or more jobs for each \$50,000 of grant funds received; or
- The applicant business must be a microenterprise with five or fewer employees, one or more of whom owns the business and the owner(s) (who have at least 20% ownership interest) of the microenterprise are a low-and-moderate-income persons (LMCMC); and the microenterprise must create or retain one or more jobs for each \$50,000 of grant funds received.
- The applicant business was impacted by the storm, has a verifiable Urgent Need (URG) and demonstrates how a grant award under ERP will allow for job creation and/or retention.

### 2.2.1 National Objective Descriptions

LMJ – The applicant business demonstrates how an award under ERP will allow for the creation and/or retention of jobs for low- and moderate- income (LMI) persons. To satisfy the LMI jobs benefit requirement, HUD will consider an employee income-qualified if the annual wages, salary of the job, or income of the new employee at date of hire is at or under the HUD-established income limit for a one-person family.

LMJP – The applicant business and the created/retained job(s) are located in a pervasive poverty Census Tract of 20% pervasive poverty (30% if in a central business district); or the employee resides in a pervasive poverty Census Tract or an Census Tract of 70% low- and moderate-income, in accordance with 24 C.F.R. 570.208(a)(4).

LMA – To qualify under this National Objective, an applicant business must be located in and directly benefit a low- and moderate-income area (LMA). If the applicant business is located in and provides a service to all residents of an LMA (e.g. laundromats, grocery stores, or pharmacies), it qualifies a meeting a National Objective; and any created or retained jobs are considered to be LMI.

LMCMC – A microenterprise can qualify under this National Objective if all owner(s) (who have at least 20% ownership interest) of the business meets the income requirements established by HUD for each county that falls at or below 80% of the median income for such county. Job retention or creation is required for all LMCMC businesses receiving assistance from ERP, but all created or retained jobs are presumptively considered to be LMI.

URG – Applicant business may be considered for this National Objective, if they cannot meet the LMI National Objectives listed above and the business was impacted by the storm, has a verifiable Urgent Need and demonstrates how a grant award under ERP will allow for job creation and/or retention.

### **2.3 ELIGIBLE ACTIVITIES AND USES**

ERP funds economic development activities listed at 24 C.F.R. 58.35(b)(4), including but not limited to, purchasing equipment, financing inventory, working capital, and similar business costs not associated with construction or expansion of existing operations, such as:

- Lease and mortgage payments
- Moveable equipment lease payments
- Moveable equipment repairs and maintenance
- Merchant services fees, such as: VISA, AMEX and Master Card
- Marketing costs
- Business related travel and transportation (e.g. parking fees, tolls, gas, metro cards, air fare)
- Licenses and permits (including inspections)
- Delivery charges
- Current business taxes
- Professional services
- Utility bills
- Staff payroll (non-owners)
- Inventory purchases
- Insurance premiums (property, liability, workers compensation, etc.)

#### Working capital calculation

Working capital is defined as “Current Assets minus Current Liabilities” on the business’s balance sheet. In other words, working capital is the amount of cash needed to fund one year’s worth of liabilities (i.e., one year’s worth of mortgage payments and other debt, tax and utilities, yearly wages, and accounts payable) after subtracting other current assets such as inventory and accounts receivable. Working capital, for the purpose of this Program, does not include any expense for any repairs or installation of equipment, or any form of construction or expansion of existing facilities, whether “hard” or “soft” costs. Therefore, an applicant business should not include expenses for equipment repairs or installation, or construction or expansion of existing facilities in any calculation involving working capital.

HUD acknowledges that “determining the amount of working capital that is necessary and reasonable for a business can be complex and subjective in nature. The factors in each case are

unique and do not lend themselves to a ‘cookie cutter’ approach to underwriting.”

#### Ineligible ERP activities

ERP funding **may not** be used for:

- Renovation, repair, or improvement to buildings;
- Purchases of equipment that must be affixed to a building;
- Acquisition of real property;
- Reimbursement for inventory or equipment purchased prior to the award;
- Any pre-hurricane working capital expenses;
- Any working capital expenses paid before the date of Grant Agreement execution;
- Purchase of alcoholic beverages;
- Relieving bad debts;
- Paying for staff entertainment;
- Settling governmental fines, penalties or damages resulting from violations;
- Paying for lobbying activities;
- Suing the federal government;
- Buying out any stockholder or equity holder in the applicant business;
- Buying out or reimbursing any family member;
- Investment in instruments for the sole purpose of a return on investment;
- Idle capacity/facility cost recovery (costs of maintenance, repair, rent, insurance, interest, taxes, depreciation);
- Replacement of lost income or revenue;
- Paying all or part of the outstanding balance on an SBA loan

#### **2.4 UNIFORM RELOCATION ACT COMPLIANCE**

Program anticipates no compliance obligations under the ERP with regard to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 since it is limiting ERP assistance to activities that do not include acquisition of property or the displacement or relocation of a business.

### **3. OUTREACH AND ACCESSIBILITY**

#### **3.1. GENERAL OUTREACH**

Program shall conduct general outreach to obtain as many potentially eligible applications as possible, with the goal of capturing the vast majority of applicant businesses that sustained an economic impact due to Hurricane Harvey, such as direct damage or indirect financial hardships.

General outreach is performed via coordination with local business associations, governments and non-profits, online marketing, media marketing, and other avenues in multiple formats.

All outreach materials will include the web address for the online application portal, the mailing address for applications, and a toll-free telephone number that applicant businesses may call for more information.

### **3.2. AFFIRMATIVELY FURTHERING FAIR HOUSING**

ERP activities must be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), the Fair Housing Act (42 U.S.C. §§ 3601– 3619), implementing regulations, and HUD affirmatively furthering fair housing guidance. ERP affirmatively furthers fair housing through its commitment to creating jobs and economic opportunity for LMI persons and communities.

### **3.3. REASONABLE ACCOMMODATION AND ACCESSIBILITY POLICIES**

Program will provide convenient outreach and accessibility to ERP information.

Bilingual (English and Spanish) outreach materials and interpreters are available to potential applicants who have limited English proficiency, to facilitate meaningful access to information about the ERP. Translations in other appropriate languages for the geographic area will be made available on an as-needed basis.

Program will provide and document reasonable accommodations and make reasonable modifications to its policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. Support will be provided for those with special needs. This will ensure meaningful access to the ERP and its benefits and facilities, except where the provision of an accommodation/modification would fundamentally alter the nature of the ERP service or activity.

## **4. APPLICATION PROCESS**

ERP is designed to proceed in six (6) stages as the application progresses to completion.

- **Stage 1: Application Intake**

Applicant businesses submit Program applications during a three (3) month initial application intake period.

- **Stage 2: Ordering of Applications**

Screened applications are assigned by the Program to one of two pools representing businesses in HUD-identified MID areas and other impacted areas. Applicant businesses in each pool are organized in random order by the GLO for processing.

- **Stage 3: Eligibility Determination and Underwriting**

Program confirms eligibility of each applicant and requests additional documentation from

applicants necessary to support the applications and complete the underwriting reviews.

- **Stage 4: GLO Review, Approval, and Award**

Program submits application documentation to the GLO for review and award approval. Grant awards will be made to approved applications.

- **Stage 5: Grant Award Monitoring**

Program will monitor grant award recipients as required to verify funds are expended on eligible ERP activities and one or more National Objectives are met, including job creation and/or retention requirement.

- **Stage 6: Grant Award Closeout**

Following completion of all grant award requirements, Program will release grant recipients from further obligations under ERP other than those stipulated in the grant agreement.

#### **4.1 STAGE 1: APPLICATION INTAKE**

To be considered for ERP assistance, the applicant must complete an application and submit it to the Program online, by mail, FAX or in person at identified locations.

##### **4.1.1 Application forms and submission processes**

- Online applications may be completed and submitted through the Program ERP website ([www.texasbackinbusiness.com](http://www.texasbackinbusiness.com)).
- Paper applications may be obtained upon request from the Program or at specified advertised locations during the initial application intake period identified on the ERP website. Paper applications may be submitted by mail, by fax, by email, in person at the Program's offices, or at scheduled application intake events. Paper applications will be dated and timestamped by the Program upon receipt and entered into its system of record.
- Submitted applications will be screened automatically by intake system for initial eligibility criteria.

##### **4.1.2 Application per business**

One application must be submitted for each applicant business. Each application must be signed by an authorized representative of the business.

##### **4.1.3 Range of grant award amount**

The range of an ERP award available to an applicant business is between \$50,000 and \$250,000. Each applicant business's award amount will be established based primarily on the retention and creation of jobs as further defined in the underwriting process.

#### 4.1.4 Required application information

An applicant business will be required to provide information in its application relating to its operations, including, but not limited to:

- Legal business name and address;
- Authorized representative name(s) and contact information;
- Federal Employer Identification Number (FEIN);
- Texas Identification Number (TIN), if any;
- North American Industry Classification System (NAICS) code;
- Number of employees (full-time and part-time) as of August 24, 2017;
- Number of employees (full-time and part-time) at present;
- Services or products offered by applicant business;
- Grant funding requested;
- Intended uses for grant funded, if awarded;
- Evidence of registration on [www.sam.gov](http://www.sam.gov);
- Physical and/or economic impact to the applicant business from Hurricane Harvey; and
- Other forms of funding received or requested to cover costs of damage caused by Hurricane Harvey.

##### NAICS information

Each applicant business must furnish its NAICS code to the Program. Developed with the Office of Management and Budget (OMB), NAICS Codes are used by federal statistical agencies to classify business establishments for analysis of statistical data to describe the U.S. economy. Applicant businesses may obtain more information regarding its NAICS classification at <https://www.naics.com/search/>.

##### Proof of impact from Hurricane Harvey

An applicant business shall be required to provide information to demonstrate that business losses resulted from Hurricane Harvey and were not the result of business-related practices or business-related conditions pre-Harvey that would have resulted in the losses regardless of Harvey impact. An applicant business is required to provide a sworn or certified document attesting to Hurricane Harvey impact under penalty of perjury as part of the application, regardless of whether such business is selected or determined to be eligible for a grant under ERP. Additional proof of damage or impact from Hurricane Harvey to the applicant business is required and may be evidenced by:

- a proof of loss statement from an insurer, the SBA, or FEMA;
- financial statements for the applicant business, preferably certified by a licensed third party;
- photographs of damaged inventory or equipment;
- utility bills indicating power outage from the storm; and

- documentation from a third-party indicating business was located in a damaged area such as city data on inundation or power outages.

#### **4.1.5 Initial application intake period**

The Program will announce the beginning of the initial application intake period for the ERP. The intake period will run for three (3) months. All ERP applications must be submitted during the intake period to be considered for award.

#### **4.1.6 Authorized representatives**

Each application shall identify one or more persons, each of whom shall serve as an authorized representative for the applicant business. An authorized representative shall have the authority to alter or execute documents on behalf of, or make decisions for, the applicant business.

#### **4.1.7 Point(s) of contact (POC)**

Each application may identify one or more persons, distinct from persons named as authorized signatories, who shall have the authority to discuss Program requirements and application status with the Program or the GLO. These POCs will be recorded in the ERP system of record. A POC may not alter or execute documents on behalf of, or make decisions for, the applicant business. An applicant business may revoke the rights of a POC at any time, in writing.

#### **4.1.8 Voluntary Withdrawal**

An application may be voluntarily withdrawn at any time prior to the receipt by the applicant business of grant funds under the Program. To withdraw an application, an authorized representative of the applicant business must submit a written notice of withdrawal (in the form of a letter or the standard form provided by the Program upon request) signed by an authorized representative of the applicant business to the Program by first class mail to Texas Back in Business, PO Box 12873 Austin, TX 78711-2873 or by email to [info@texasbackinbusiness.com](mailto:info@texasbackinbusiness.com). An application will be immediately withdrawn from the ERP upon receipt by the Program of a notice of withdrawal. The applicant business will be required to submit a new application in the future if the applicant business decides to reapply under the ERP, but only during the active application intake period.

## **4.2 STAGE 2: ORDERING OF APPLICATIONS**

ERP funding must be allocated to applicant businesses as follows:

- At least eighty percent (80%) of funds must be allocated to businesses in HUD-identified MID areas; and
- The remaining funds (no more than 20% of total ERP funds available) may be allocated to businesses outside the HUD-identified MID areas.

Based on these allocation requirements, screened applications shall be entered automatically by the intake system into one of two groups. The GLO will create a randomized list of applicant businesses, one for each group, to determine the order in which the applications will progress further in the Program.

### 4.3 STAGE 3: ELIGIBILITY DETERMINATION AND UNDERWRITING

The Program will collect from each screened applicant business additional application documentation necessary to confirm eligibility, conduct an underwriting and financial analysis and a duplication of benefits analysis, determine national objective(s), and establish a proposed award amount. The Program will maintain this documentation for each applicant business whether selected for an award or not.

#### 4.3.1 Completion of eligibility determination

The Program will verify that employment and annual receipts for an applicant business are below the SBA size limits by reviewing tax returns or other financial documents, payroll records, quarterly wage reports, etc.

##### Applicant business identification numbers

An applicant business must provide a Data Universal Number System (DUNS) number associated with the business's tax identification number before any award can be finalized. A DUNS number is a unique nine-digit identification number for each physical location of your business. It is provided without cost to all businesses required to register with the U.S. federal government for contracts or grants.

- An applicant business can obtain a DUNS number within one (1) business day by applying online at <http://fedgov.dnb.com/webform/pages/CCRSearch.jsp>.

The applicant business must be actively registered in the System for Award Management (SAM) and have an assigned CAGE Code in order to receive an award. Neither the applicant business nor any principal owner (20% or more) may be debarred on the SAM electronic roster of debarred entities (active exclusion).

- Applicant businesses can register for SAM at <https://www.sam.gov/SAM/>.
- During the SAM registration process, an applicant business will be assigned a new Commercial and Government Entity Code (CAGE Code) if one does not already exist for the business. If there is an existing CAGE code, the applicant business's information will be updated. For more information on this process, applicant businesses may visit <https://cage.dla.mil>. **ALERT: Due to increased volume and additional security requirements, a high number of entity registrations are pending CAGE review. Processing time currently exceeds the normal window of ten business days. Some users may experience processing delays of up to four weeks. Apply immediately if you are not yet registered.**

As specified in section 1.1.4, applicant businesses are also required to provide their NAICS code.

### National Objective(s) verification

HUD requires each award recipient under ERP to meet one or more National Objectives, as defined in Section 2.2, above. Program shall review each application to determine whether a National Objective can be achieved by the applicant business following receipt of grant funds.

- **LMJ National Objective:** The LMJ National Objective may be met by an applicant business if the Program can verify one or both of the following:

Job creation: An applicant business must demonstrate an ability and need to create jobs that will be made available to or held by LMI persons.

Job retention: An applicant business must demonstrate that, without ERP assistance, current jobs would be lost by presenting evidence of an anticipated, significant decline in revenue, issuance of layoff notices or announcements, or similar corroborating documentation. In addition, each applicant business must provide a signed affidavit stating that, without funding through the ERP, the position(s) would be eliminated.

- **LMJP National Objective:** The LMJP National Objective may be met by an applicant business if the Program verifies the applicant business is located in area pervasive poverty Census Tract of 20% poverty (30% if in a central business district) or there is a likelihood that an employee filling a created or retained job resides in pervasive poverty Census Tract or a Census Tract of 70% low- and moderate-income. Pervasive poverty Census Tracts are defined at 24 C.F.R. 570.208(a)(4).
- **LMA National Objective:** The LMA National Objective may be met by applicant businesses that provide goods and services in primarily low- and moderate-income areas in which at least 51 percent of residents are low- and moderate-income. The applicant business must demonstrate to the Program that, without assistance, the area risks losing access to the services or products made available by the applicant business. Examples include laundromats, grocery stores, or pharmacies. Use of LMA requires documentation supporting the claim of lost access to services or products with adverse impact that would result with the closure of the business.
- **LMCMC National Objective:** The LMC National Objective may be met by applicant businesses if the income for the owner(s) of the microenterprise is verified by the Program as low- to moderate-income, as categorized according to the HUD Income limits for the county in which the applicant business is located.
- **Urgent Need National Objective:** The Urgent Need National Objective, intended to be rarely used, the applicant business was impacted by the storm, has a verifiable Urgent Need and demonstrates how a grant award under ERP will allow for job creation and/or retention.

### Floodplain and floodway determination

The Program will determine if the location of applicant business is located in a floodplain or floodway using the effective or preliminary FEMA Flood Insurance Rate Maps (FIRMs), whichever is more restrictive.

The Program will request information relating to any federal flood disaster assistance received by an owner of the applicant business in the past for the repair, replacement, or restoration of the applicant business's commercial property due to flood damage, as required under Section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a. ERP assistance that is made available in a special flood hazard area may not be used to make a payment if:

- The applicant business owner had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance at the same location; and
- The applicant business owner failed to obtain and maintain flood insurance.

### **4.3.2 Underwriting and financial analysis**

The Program will perform an underwriting review and financial analysis on each application, generally in accordance with the underwriting regulations in Appendix A of 24 C.F.R. Part 570. The underwriting process includes either an office visit at the Program's offices or an on-site visit by the Program's representative to the applicant business; however, in the event of a declared emergency or disaster event, the Program may utilize alternative means of obtaining information from applicant businesses, including teleconferencing, videoconferencing, or other methods approved by the Program and the GLO. The underwriting review will allow the Program to determine the economic impact experienced by the applicant business due to Hurricane Harvey and justify the amount of grant funds to be awarded. The Program may decrease the amount of ERP assistance requested by the applicant business in its application based on the Program's underwriting review and financial analysis, as well as the Program's assessment of the applicant business's financial viability and ability to meet a National Objective.

The ERP award amount will be a working capital grant based upon primarily the creation and retention of jobs and direct economic impacts the business received from Hurricane Harvey and will be available to fund eligible and documented post-award working capital expenditures. Any funding received post-hurricane will be reviewed for impact to working capital, and non-DOB sources of funding can be considered in setting the Grant amount and use of funds.

Unmet need calculations for direct losses of inventory and moveable equipment shall be made based on collected documentation certifying the total estimated cost to replace inventory and movable equipment that was damaged during Hurricane Harvey,

in addition to documentation certifying ownership of the movable equipment and/or inventory prior to Harvey, and proof that it was damaged or destroyed as a result of the hurricane.

#### Documentation required

The Program will document the Applicant Business's economic impacts using 2016 (if applicable), 2017, 2018, and 2019 federal tax returns, cash flow statements, profit and loss statements, balance sheets, qualitative business historical assessments, and other financial records provided by the applicant business and principal owners (20% or more) necessary to complete the underwriting review. In addition, Program will assess the need for inventory and moveable equipment resulting from losses due to Hurricane Harvey by documenting the following:

- (1) a list of items to be replaced or repaired and the estimated costs;
- (2) evidence of pre-storm ownership of the items using invoices, receipts, prior year tax returns or depreciation schedules, insurance claims, detailed photographs, or detailed inventory, or, if this information is unavailable, an affidavit verifying equipment and inventory loss;
- (3) proof of loss such as insurance claims, detailed photographs of damage, detailed inventory replaced because of damage;
- (4) a schedule of items the business proposes to purchase including vendor and cost. Items should be like-kind replacements but do not need to be identical, or from the same year or in the same condition; and/or
- (5) documented proof of pre- and post-Hurricane Harvey equipment values or, if no records are available, an affidavit attesting to its existence and loss due to the disaster.

#### **4.3.3 Duplication of benefits analysis**

Federal law prohibits any applicant business from receiving federal funds for any part of a disaster-related loss if the business has already received financial assistance to address the loss under any other Program, from insurance proceeds, or from any other source. This is referred to as a "Duplication of Benefits" ("DOB") under federal law. In order for an applicant business to be eligible for assistance from the ERP, all assistance previously received by the applicant business must be considered when calculating the applicant business's grant award, and it is the responsibility of the applicant business to disclose all such assistance.

DOB verification for an applicant business will include the following steps:

- The Program will collect information on potentially duplicative funding sources.
- Applicant businesses will be required to provide insurance provider contact

information, policy number and coverage information, claims information, and amounts received and approved for all potentially duplicative sources.

- Applicant businesses will be required to authorize the Program and the GLO to contact all potentially duplicative funding sources on their behalf to verify all sources received or approved.
- Program will perform a verification of benefits received and/or approved for each applicant business. If the applicant business received potentially duplicative assistance, the Program must determine if such assistance was spent allowable activities.
- Program will work with the GLO to verify benefit information that may only be available to the GLO such as SBA loan data.
- Program must verify that the submitted data is accurate and current at the time of the award, to the best of their abilities.

Duplication of benefits review could consider insurance proceeds, SBA loans, federal grants, FEMA assistance, loans, and any other federal, state, local or private assistance, as well as philanthropic assistance received from non-profits, religious institutions or charitable organizations. The Program will use multiple sources to verify duplication of benefits, including verification with third parties and applicant self-certification (where no other source of information is readily available).

Funds received from another source for the same purpose as this grant Program that can be demonstrated to have been used for a different eligible activity may be excluded when calculating the award. The applicant business's award will be reduced by the amount of the duplicative assistance. Assistance provided for "general recovery" will be counted against the category in which the applicant business spent the assistance on if receipts are not provided. If no receipts are available, the general recovery assistance will be considered against the categories in which the applicant business has unmet needs.

#### Small Business Administration Loans

Awarded SBA loans to the business listed on the application are potentially duplicative. The amount of an SBA loan that is considered potentially duplicative is determined by the status of the loan. The portion of an SBA loan that is declined or cancelled is not a DOB if documentation exists showing that all or a portion of the loan was cancelled or declined.

Program shall determine if the applicant business utilized the SBA loan funds for unmet needs for which the applicant business is seeking ERP funds.

#### Insurance Benefits

Insurance payments or settlements paid to the applicant business and intended for use for the same purposes as the Program are potentially duplicative. ERP applicant

business must declare whether the applicant business was covered by any insurance policies, including, but not limited to, property, flood, windstorm, or business interruption insurance, and all amounts that were paid under insurance policies as compensation for costs that are related to Hurricane Harvey. The applicant business must provide a declaration sheet or denial letter for each insurance policy.

The Program then verifies that the declared amounts are correct by contacting the insurers. If the Program is unable to verify the private insurance proceeds paid for a duplicative loss through an insurer within thirty (30) days of making a request, the Program uses the payment amount provided by the applicant business in its application, certified by an affidavit.

If an applicant business is able to provide documentation demonstrating that the insurance proceeds received include amounts not paid for the intended uses of ERP funding specified in its application, Program will use the applicant business's documentation to properly classify the insurance payout. The documentation provided by the applicant business must come from the insurance company that issued the payments.

If an applicant business obtained insurance proceeds through legal action, amounts incurred for legal fees are credited to the applicant business and are not considered duplicative benefits. Amounts recovered for punitive damages are not considered duplicative benefits.

#### Philanthropic Assistance

Payments received from non-profits, religious institutions, charitable organizations or other philanthropic organizations that are intended for use for the same purposes as the ERP are considered potentially duplicative. Program will attempt to verify these payments, including the amount and limitation on the use of funds with the source for consideration in the DOB determination. Payments for other losses or expenses are not considered when calculating the applicant's eligible award amount.

#### **4.3.4 Environmental Review**

The ERP will fund only those activities listed at 24 C.F.R. § 59.35(b)(4), "including but not limited to, equipment purchases, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations." A full environmental review under federal law will not be required.

As the Program is CDBG-DR funded, compliance with environmental laws and regulations must be documented in an Environmental Review Record (ERR) before an applicant business may be awarded an ERP grant. Program shall verify the "Categorically Excluded, No Subject To" (CENST) status of each proposed activity and ensure an "Environmental Review for Activity/Project that is Exempt or CENST Section 58.5" form (Exhibit P) and supporting material is prepared for each project.

#### **4.3.5 Unresponsive applicants**

If the Program requests additional information from an applicant business and does not receive a response within ten (10) business days, the Program will call or e-mail an authorized representative or POC on or before the eleventh business day in an attempt to collect the information. The attempt at contact will be logged in the Program's system of record. If the applicant business does not provide the requested information within five (5) business days after the reminder call or e-mail, the applicant business's Program application will be canceled and notice provided to the business of the same.

If an applicant business appeals the cancellation of its application for unresponsiveness based on unforeseen circumstances, then Program shall follow appeal procedures.

#### **4.3.6 Request for reduction in grant amount**

During the application review, applicant business may request, by written communication to the Program, that the amount of grant funding requested in its application be reduced. A request to reduce the grant amount must be submitted to the Program prior to the completion of the application review.

If during or after the application processing and award eligibility determination is made by the Program (but prior to the execution of the Grant Agreement), the applicant business wishes to reduce their eligible grant amount, they need to submit a written request to the Program prior to execution of Grant Agreement.

As further described herein, If the Program offers a reduced amount to the applicant (less than the request by the applicant), the acceptance by the applicant is solely documented by the Grant Agreement. The applicant may appeal any decision by the Program to reduce the grant amount at any time before signing the Grant Agreement.

#### **4.3.7 Noncompliance during application process**

Noncompliance by an applicant business during the application process may be grounds for the Program to recommend the GLO to disqualify the applicant business from the ERP.

#### **4.3.8 Fair Housing and Equal Opportunity data collection**

The GLO is required to collect and publish information relating to the use of ERP funds, including the racial, ethnic, and gender characteristic of the Program's beneficiaries. An applicant business shall be asked by the Program to provide demographic data relating to its employees. No personally identifiable information for any employee shall be requested or collected.

#### **4.4 STAGE 4: GLO REVIEW AND DETERMINATION OF AWARD**

##### **4.4.1 GLO determination of award**

The Program will submit to the GLO documentation for each applicant business it recommends to receive a grant award. The GLO will review all submitted documentation for content, completeness, and accuracy and confirm or deny Program's recommendation to award grant funds to the applicant business. The GLO shall notify the Program of the agency's decision regarding the application.

##### **4.4.2 Letter of award determination**

Following receipt of the GLO's decision, the Program will provide the applicant business with a letter of award determination, either awarding or denying grant funding. A letter granting an award will include the amount awarded to the applicant business and an explanation of how the award amount was calculated. The letter will also include the Grant Agreement documentation as described below.

If an applicant business receives a letter denying grant funding or awarding an amount less than requested by the applicant business in its application, the applicant business may appeal the decision by following the steps in Section 6, below.

##### **4.4.3 Grant Agreement documentation**

The Program will send an applicant business approved for a grant award the following documents for execution prior to distributing grant funds:

- Grant Agreement to be executed by and between the applicant business and the Program, on behalf of the GLO;
- a certification regarding the applicant business's acceptance of the award amount (if not already received);
- Child Support Affidavit for each business owner with 20% ownership or more (if not already received);
- a job creation/retention commitment form (if not already received), and
- Automated Clearing House (ACH)/Wiring Instructions and Authorization form, if applicable.

##### **4.4.4 Grant award payment to grant recipient**

The Program will distribute grant awards to recipients by ACH or via paper check sent via certified mail where direct deposit consent is not provided.

If a check is not cashed by a grant recipient within fifteen (15) business days of receipt, Program will send a written communication by mail to the applicant business address

stating that the check must be cashed within thirty (30) days of the date of the notification letter or the check will be canceled. The grant recipient may contact the Program within the 30-day period to request reissuance of the check.

Failure to deposit the check or request reissuance as instructed shall result in the cancellation of the check.

#### **4.5 STAGE 5: GRANT AWARD MONITORING**

The Program will implement a method or system to ensure that grant recipients comply with all applicable requirements under the Grant Agreement. The compliance period for each grant award will typically be 12 months or until satisfaction of applicable National Objective(s), whichever occurs first. The minimum period is two (2) months. No grant is expected to continue for longer than two (2) years.

##### **4.5.1 Reporting requirements**

Each grant recipient shall prepare and provide to the Program monthly reports throughout the term of the Grant Agreement that include the following information:

- Total jobs created and/or retained;
- Employees filling positions retained and/or created with grant funds (job title, name of the employee, their address and salary);
- Number of jobs per salary range; and
- Types of jobs created and/or retained.

Under each National Objective job creation and/or retention commitments shall be documented by payrolls covering at least two consecutive months following the date of the grant recipient's execution of the Grant Agreement. Confirmation of ERP compliance will only occur after all created and/or retained jobs are accounted for and appear on at least two consecutive months of payrolls. In addition, the grant recipient must provide documentation demonstrating the use of the award proceeds for Program-eligible expenditures during the grant term.

Under a waiver provided by HUD in 83 Fed. Reg 5844, 5866, the grant recipient may identify the LMI jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job.

##### **4.5.2 Ownership**

Ownership of the recipient business shall not change during the term of the Grant Agreement. The Program will verify ownership during the eligibility review and once during the grant term or closeout.

The Program determines ownership interest in the applicant business by viewing online records of ownership or by reviewing submitted ownership documentation. Current ownership may be verified through one of the following sources of documentation:

- online business tax records demonstrating that the applicant owned the business at application;
- deeds;
- certificates of shares;
- death certificates, wills, or other supporting documentation;
- an affidavit attesting to ownership with sufficient supporting documentation; or
- other documentation that will be reviewed and approved on an individual basis.

#### **4.5.3 Flood insurance requirements**

Businesses receiving ERP grant awards are subject to applicable HUD floodplain regulations and requirements.

Program will verify that grant recipients that receive assistance for moveable equipment or inventory expenses, or working capital expenses with more than \$10,000 of grant award is spent on mortgage payments for businesses located within a special flood hazard area maintain contents/personal property flood insurance coverage for the term of the Grant Agreement. Any business required to maintain flood insurance but that does not may be ineligible for future federal assistance. If a business is located within the special flood hazard area on a preliminary flood insurance rate map and that map is adopted during the Grant Agreement term, the applicant business must purchase flood insurance for the duration of the grant term.

#### **4.5.4 Subrogation**

All recipient businesses will be monitored for the receipt of potential duplicative funds from other disaster recovery sources after an ERP grant award is approved. If potentially duplicative funds are received, a new DOB analysis will be performed by the Program and repayment of grant funds may be required if a duplication is found.

#### **4.5.5 Documentation of eligible expenses**

Each recipient business shall be required to provide documentation demonstrating the use of the award proceeds for ERP eligible expenditures during the grant term.

#### **4.5.6 Noncompliance and recapture**

The Program will notify the GLO of any instances of noncompliance with ERP or Grant Agreement requirements that it discovers. With support of the Program, the GLO will

initiate any recapture activities against grant recipients that are required due to violation of the Grant Agreement requirements.

#### **4.6 STAGE 6: GRANT AWARD CLOSEOUT**

Upon satisfaction by a grant recipient of all requirements under the Grant Agreement, the Program shall inform the GLO of its recommendation to close out the grant award for the business. Upon receipt of written approval from the GLO, the Program shall issue a letter of completion to the grant recipient that states that all requirements have been met under the Program and the Grant Agreement and the Grant Agreement is terminated as of a specified date.

### **5. APPLICANT FILE CLOSEOUT**

The Program will transfer all ERP records to the GLO in a searchable electronic format agreed to by the GLO. In addition, all records, documentation, and information related to the ERP, in whatever form, will be maintained by the Applicant Business and the Program for a three-year period after the date of closeout of the CDBG-DR grant that funded the Program. Such records, documentation, and information shall be made available to the GLO and state and federal auditors upon request.

### **6. APPEALS**

If an application is deemed ineligible under ERP rules or a grant recipient's Grant Agreement is terminated for any reason, the applicant business or grant recipient may file a first appeal with the Program, stating its reason(s) why the denial was unwarranted. An appeal must be submitted within fifteen (15) business days of receiving the denial notice. Each appeal will be reviewed by the Program a determination will be issued to the applicant business or grant recipient that either supports the denial of the application or approves the application to continue its progress through the ERP process within five (5) business days of receipt of the complaint.

The first appeal may be filed, in writing, by e-mail at [appeals@texasbackinbusiness.com](mailto:appeals@texasbackinbusiness.com) or by first class mail to Texas Back in Business, P.O. Box 12873, Austin, TX 78711-2873.

An applicant business or grant recipient that filed an unsuccessful first appeal may file a final appeal with the GLO to receive a final determination regarding business's participation in the ERP. The final appeal may be filed using one of the following options:

- Complete and submit an appeals form as instructed on the GLO's website at <https://recovery.texas.gov/individuals/contact/index.html>;
- Call the GLO's Community Development and Revitalization division at 844-893-8937;
- E-mail a written appeal to [cdr@recovery.texas.gov](mailto:cdr@recovery.texas.gov); or
- Submit a written appeal to by mail to: ATTN: GLO-CDR  
Texas General Land Office  
P.O. Box 12873  
Austin, TX 78711-2873

Funding for applications under appeal will be reserved until a final determination is issued.

## 7. COMPLAINTS

Complaints concerning the ERP processes and procedures may be submitted using one of the following options:

### To the Program:

- By telephone call to the main ERP Information Line at 844-773-5663;
- By e-mail to [complaint@texasbackinbusiness.com](mailto:complaint@texasbackinbusiness.com); or
- By first class mail to: P.O. Box 12873,  
Austin, TX 78711-2873.

### To the GLO:

- By telephone call to the GLO-CDR front desk line at 844-893-8937;
- By the online complaint form at <https://s3.glo.texas.gov/cdr/index.html>; or
- By first class mail to: ATTN: GLO-CDR  
Texas General Land Office  
P.O. Box 12873  
Austin, TX 78711-2873

### 7.1 COMPLAINTS OF FRAUD, WASTE AND ABUSE

Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the U.S. Department of Housing and Urban Development Office of Inspector General Fraud Hotline (phone: 1-800-347-3735 or email: [hotline@hudoig.gov](mailto:hotline@hudoig.gov)).