

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6169-N-02]

**Applicability of Updates to Duplication of Benefits Requirements Under the Stafford Act
for Community Development Block Grant (CDBG) Disaster Recovery Grantees**

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: Elsewhere in the Federal Register, the Department published the notice “ Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees,” which reflects the requirements of recent CDBG disaster recovery (CDBG-DR) supplemental appropriations acts and amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This notice makes conforming amendments to notices governing CDBG-DR grants received in response to a disaster declared between January 1, 2015 and December 31, 2017. It advises existing grantees of the applicability of the revised duplication of benefits notice to their existing CDBG-DR activities.

DATES: Applicability Date: **[Insert date five days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Claudette Fernandez, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 10166, Washington, DC 20410, telephone number 202-708-5287. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Ms. Fernandez at 202-708-0033. (Except for

the "800" number, these telephone numbers are not toll-free). Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction**
- II. Applicability**
- III. Conforming Amendments to Federal Register Notices and CPD Notices**
- IV. Catalog of Federal Domestic Assistance**
- V. Finding of No Significant Impact**

I. Introduction

Federal Register notices governing Community Development Block Grant disaster recovery (CDBG-DR) grants received in response to major disasters occurring in 2015, 2016, and 2017 require grantees to comply with the notice “ *Clarification to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees*” (November 16, 2011, 76 FR 71060) (2011 DOB Notice).

Elsewhere in the Federal Register, the Department has published the notice “ *Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees*” (2019 DOB Notice). The 2019 DOB Notice updates the 2011 DOB Notice in part to reflect the requirements of recent CDBG-DR supplemental appropriations acts and amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5207) (the Stafford Act).

This notice amends notices governing CDBG-DR grants in response to major disasters occurring in 2015, 2016, and 2017 to impose the requirements of the 2019 DOB Notice in lieu of

the 2011 DOB notice for: a) new programs and activities added to the action plan after the date of this notice; and b) existing programs and activities, to the extent that the grantee amends its action plan to change its treatment of loans in accordance with the 2019 DOB Notice.

II. Applicability and Waiver Authority

This notice only applies to CDBG-DR grants made in response to major disasters occurring in 2015, 2016, and 2017. Authority for the grants was provided under the “Community Development Fund” heading in the following appropriations acts: Public Laws 114-113; 114-223; 114-254; 115-31; 115-56; and 115-123.

These appropriations acts provide that the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). As required by the appropriations acts, waivers and alternative requirements provided in this notice are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974.

III. Conforming Amendments to Federal Register Notices and CPD Notices

This notice amends the following notices that apply to the grants (Prior Federal Register Notices).

- 2015 Disasters: 81 FR 39687 (as amended by 82 FR 36812);
- 2016 Disasters: 81 FR 83254 (as amended by 82 FR 5591 and 82 FR 36812); and
- 2017 Disasters: 82 FR 61320 (as amended by 83 FR 5844 and 83 FR 40314).

This notice also amends the following notice published by the Office of Community Planning and Development (CPD):

- CPD Notice 2015–07, “Guidance for Charging Pre-Application Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants.”

This notice makes the following changes to the Prior Notices:

- The 2019 DOB Notice shall supersede the 2011 DOB Notice for any new activities submitted to HUD in an action plan or action plan amendment on or after the effective date of this notice, and for existing activities, to the extent that the grantee amends its action plan to change its treatment of loans in accordance with the 2019 DOB Notice. If a grantee opts to revise its policies and procedures for one or more existing programs that were included in an action plan for disaster recovery before the effective date of this notice, the grantee must amend its action plan to reflect any resulting changes in benefits to program participants or to correct any resulting inconsistencies with duplication of benefits policies described in the action plan.
- The 2011 DOB Notice shall continue to apply to activities that were included in an action plan for disaster recovery before the effective date of this notice and were not amended to change treatment of loans in accordance with the 2019 DOB Notice.
- Grants are subject to the requirement under the tenth proviso following the Community Development Fund heading of Public Law 115-123 (Declined Loans Provision) and the requirements for its implementation in the 2019 DOB Notice.

The Declined Loans Provision states: “Provided further, That with respect to any such duplication of benefits, the Secretary and any grantee under this section shall not take into consideration or reduce the amount provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major declared disasters that occurred in 2014, 2015, 2016, and 2017 from the Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b)).”

- For grants in response to disasters occurring in 2016 and 2017 *only*, grantees are subject to the duplication of benefits provision in section 312 of the Stafford Act, as amended by section 1210 of the Disaster Recovery Reform Act of 2018 (DRRA) (division D of Public Law 115-254), and the related provisions of the 2019 DOB Notice.
- Before making a grant, the Secretary must issue a certification that the grantee has adequate procedures to prevent the duplication of benefits. This notice amends the Prior Notices to make conforming amendments to the standard for determining which policies and procedures are adequate to prevent the duplication of benefits. Specifically, a grantee’s policies and procedures are adequate if they reflect treatment of loans that is consistent with the requirements of the Declined Loans Provision and the DRRA. Grantees must use the most recent data available from FEMA and SBA to make a duplication of benefits determination, including a determination of whether a loan is a duplication. Grantees that revise their duplication of benefits policies and procedures to conform to the requirements of this notice and the 2019 DOB Notice must resubmit their policies and procedures

to HUD for review. The grantee must amend or update policies and procedures that HUD determines are inadequate.

- The Prior Notices are amended to remove the prohibition on use of CDBG-DR funds to repay an SBA home or business loan. CDBG-DR funds may be used to reimburse CDBG-DR eligible costs that were paid with subsidized loan proceeds in accordance with the 2019 DOB Notice. However, grantees are not required to reimburse the costs paid with subsidized loan proceeds and may design their eligibility criteria to appropriately meet the needs within their most impacted and distressed areas.
- The Prior Notices are amended to add the following waivers and alternative requirements:

Waiver to require additional information in the grantee's Action Plan for

Disaster Recovery. For the Prior Notices, HUD is amending the waivers of requirements for CDBG actions plans, located at 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 5306(a)(1), 42 U.S.C. 12705(a)(2), and 24 CFR 91.320, are waived for these disaster recovery grants.

In addition to the waivers and alternative requirements in the Prior Notices, HUD is adding the following additional alternative requirement: Grantees action plans must include the information required by this notice and the 2019 DOB notice.

Waiver to permit payment of limited interest costs. Section 105(a) is waived to the extent it limits activities to only those activities listed in section 105(a)(1) – (26), and HUD is imposing the following alternative requirement to create a new eligible activity to allow the use of CDBG-DR to pay interest due on subsidized

loans in limited circumstances described in this paragraph. Homeowners, businesses, and other entities that received subsidized loans to pay the costs of eligible rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings (including commercial properties) are eligible for reimbursement, subject to the requirements of the 2019 DOB Notice, the Prior Notices, and CPD Notice 2015-07 (as may be amended or replaced from time to time). When the grantee reimburses homeowners, businesses, or other entities for these costs, the grantee may also pay any outstanding interest due on the portion of the principal of subsidized loans used to pay the costs eligible for reimbursement. CDBG-DR funds cannot be used to pay fees or the portion of interest attributable to activities that are ineligible for reimbursement.

Waiver and alternative reporting requirement. In addition to other reports required pursuant to the Prior Notices, one year from the approval of the substantial action plan amendment required for the use of CDBG-DR funds to reimburse subsidized loan costs as provided in Federal Register notice entitled “Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees,” the grantee shall submit to HUD an assessment and supporting data that provides: (i) The total amount of CDBG-DR funds used for the reimbursement of SBA and other subsidized loans; (ii) the total number of households and the number of low-to moderate-income households that have been reimbursed; and (iii) data on each individual household that was reimbursed for its SBA loan costs, including the household’s FEMA Registrant ID, the SBA loan number, the

amount of the initial SBA real property loan; the amount of the initial SBA personal property loan; the amount of the loan costs paid by CDBG-DR; and the household's income.

This notice makes the following amendment to CPD Notice 2015–07:

- The requirement that “Grantees may only charge the costs for rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities, incurred before the owner applies to a CDBG-DR grantee, recipient, or subrecipient for CDBG-DR assistance” is revised. This requirement was imposed when loans were considered a duplication. Grantees and applicants did not contemplate the availability of CDBG-DR assistance for costs paid with subsidized loans. For grantees that have accepted applications for the reimbursement of costs paid with a subsidized loan prior to the implementation date of this notice, the date of application for reimbursement shall be the effective date of the action plan amendment that authorizes such reimbursement, or if a new application is received after the action plan amendment, the date of application shall be the date that the new application is submitted. For grantees in receipt of CDBG-DR funds for 2016 or 2017 disasters, the provision of CPD-Notice 2015-07 that limits reimbursement to those costs incurred within one year of the disaster shall not apply to reimbursement of costs paid by a subsidized loan.

IV. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.218 for units of local government; 14.228 for States.

V. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

Dated: 6/14/19



Brian D. Montgomery
Acting Deputy Secretary

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