

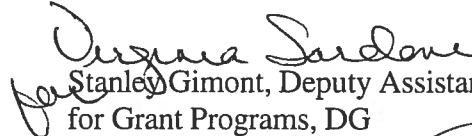


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

MEMORANDUM FOR: David C. Woll, Jr., Acting Assistant Secretary, D

THRU:


Stanley Gimont, Deputy Assistant Secretary
for Grant Programs, DG

FROM:


Claudette Fernandez, Director
Office of Block Grant Assistance, DGB

SUBJECT:

Environmental Assessment and Finding of No Significant Impact Under the National Environmental Policy Act for the Issuance of Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees (DOB Notice) FR-6169-N-01 and the Issuance of Applicability of Updates to Duplication of Benefits Requirements Under the Stafford Act for CDBG Disaster Recovery Grantees (Implementing Notice) FR-6169-N-02

It is the finding of this Office that issuance of the attached Notices does not constitute a major Federal action having an individually or cumulatively significant effect on the human environment and, therefore, does not require the preparation of an environmental impact statement.

Section 1210 of the Disaster Recovery Reform Act of 2018 (DRRA) (division D of Public Law 115-254), approved on October 5, 2018, amended the duplication of benefits (DOB) provision in section 312 of the Stafford Act. Section 312 of the Stafford Act requires that Community Development Block Grant Disaster Recovery (CDBG-DR) grantees prevent a duplication of benefits when administering grants. Additionally, the CDBG-DR appropriations acts require grantees to prevent DOB and the “necessary and reasonable” cost principles in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in subpart E of 2 CFR part 200 (the Cost Principles) similarly prohibit grantees from charging to the grant a cost paid by another source.

In response to the DRRA, HUD is publishing two notices. The first notice, the DOB Notice, describes the DOB requirements applicable to CDBG-DR grants received in response to a disaster declared between 2015 through 2021. The second notice, the Implementing Notice, makes conforming amendments to the grant requirements for grants in response to 2015, 2016, or 2017 disasters. It advises existing grantees of the applicability of the DOB Notice to activities under their existing CDBG-DR grants.

The DOB Notice sets forth the following requirements for grantees receiving funds in

response to a disaster declared between 2015 through 2021:

1. *Basic Duplication of Benefits Calculation Framework.* The DOB notice identifies relevant statutory and regulatory requirements. It imposes a basic duplication of benefits framework and provides sample DOB calculations.

2. *Special Considerations.* The DOB notice clarifies and modifies requirements related to whether a loan is treated as a duplication. The requirements apply to all grantees in receipt of an allocation in response to a disaster declared between 2015 through 2021:

- a. *Subsidized Loans.* The notice describes requirements related to declined subsidized loans and cancelled subsidized loans. The notice describes what documentation is needed to demonstrate a loan is cancelled. The notice maintains HUD's determination that private loans are never a duplication, but describes how subsidized loans, such as SBA loans, are not a duplication if an exception applies.
- b. *Exceptions When Subsidized Loans are Not a Duplication.* This notice identifies three exceptions when a subsidized loan is not a duplication:
 - a. Short-term subsidized loans for costs later reimbursed with CDBG-DR. If the grantee or subrecipient obtained a subsidized short-term loan to pay for eligible costs before CDBG-DR funds became available (for example, a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan does not create a duplication.
 - b. Declined or cancelled subsidized loans. The amount of a subsidized loan that is declined or cancelled is not a DOB.
 - c. The subsidized loan meets the requirements for a statutory exception under the DRRA's amendments to the Stafford Act. The notice discusses the requirements that apply to reimbursement of costs paid with a subsidized loan that is not a DOB because it qualifies under the DRRA exception. The notice makes reimbursements subject to the requirements of the CPD notice that addresses reimbursements, which addresses environmental review requirements (CPD Notice 2015-07, "Guidance for Charging Pre-Application Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants.")
- c. *Order of Assistance.* This notice clarifies the statutory order of assistance for Federal agencies. The statutory order of assistance typically provides that CDBG-DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or the Army Corps.
- d. *Multiple Disasters.* This notice also provides guidance to grantees when multiple disasters occur in the same location, and a CDBG-DR applicant has not recovered from the first disaster at the time of a second disaster. The assistance provided in response to the second disaster may duplicate assistance for the same purpose and need as assistance provided after the first disaster.

- e. *Recordkeeping.* The notice provides guidance on adequately documenting compliance with DOB requirements.

3. *Agreement to Repay.* This notice requires grantees to ensure that applicants agree to repay all duplicative assistance to the agency providing the Federal assistance. To address any potential DOB, each applicant must also enter into an agreement with the CDBG-DR grantee to repay any assistance later received for the same purpose for which the CDBG-DR funds were provided.

4. *Collecting a Duplication.* If a DOB is discovered after CDBG-DR assistance has been provided, this notice requires the grantee to reassess the applicant's need at that time. If additional need is not demonstrated, CDBG-DR funds must be recaptured.

The Implementing Notice amends other notices governing CDBG-DR grants in response to major disasters occurring in 2015, 2016, and 2017 to impose the requirements of the DOB Notice in lieu of an earlier notice published in 2011 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 DOB Notice.

The Implementing 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).

It 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."


The Implementing Notice also amends the Prior Notices to add the following waivers and alternative requirements:

- 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 an 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.
- 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 the DOB notice the grantee shall submit to HUD an assessment and supporting data that allows HUD to evaluate the impact of policies provided in the DOB Notice.


Assistance under the CDBG program is subject to the environmental review requirements of 24 CFR Part 58. Grantees are responsible for completing environmental reviews on specific projects in accordance with Part 58 or determining to adopt another agency's environmental review where CDBG-DR funds supplement Federal assistance under certain sections of the Stafford Act. If the grantee determines that the environmental review is satisfactory, the grantee must request and receive a release of funds from HUD before it can commit funds or take any choice limiting action with respect to a project. Issuance of these notices does not constitute approval of any proposed projects. Any impacts arising from program activities would be localized and addressed in the appropriate environmental reviews prior to any choice-limiting actions.

Accordingly, the issuance of these notices is deemed not to be a major Federal action having a significant impact on the human environment.


Concurrences:


 Lauren McNamara
 Program Environmental Clearance Officer
 Office of Community Planning and Development

6/14/19
 Date



 Danielle Schopp
 Departmental Environmental Clearance Officer
 Office of Environment and Energy

6/14/19
 Date


 Christopher H. Hartenau
 Program Environmental Clearance Officer
 Office of General Counsel

6/14/19
 Date

Approve:


 David Woll
 Assistant Secretary
 Community Planning and Development

6/14/2019
 Date

Attachment

Internal HUD Distribution:						
DGBD Policy Team		DGB Kome 7286		OGC Schopp 7212		
DGBD Parker 7272		DG Gimont 7204		OGC Hartenau 9232		
<i>Kevin G. Kelly 7272</i>						
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Correspondence Code	Originator DGBD <i>KS</i>	Concurrence DGB <i>KS</i>	Concurrence OGC <i>KS</i>	Concurrence OGC <i>KS</i>	Concurrence DG	Concurrence
Name	McNally/Carpenter	Fernandez <i>KS</i>	Schopp <i>KS</i>	Hartenau <i>KS</i>	Gimont	
Date	<i>6-14-15</i>	<i>06/14/19</i>	<i>6-14-19</i>	<i>6/14/19</i>	<i>6/14/19</i>	

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U.S. Department of Housing and Urban Development
Previous edition is obsolete.

form HUD-713.1 (02/03)