



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

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Special Attention of:

Regional Administrators in Regions 1,2
CPD Division Directors in Regions 1,2,3
CDBG-DR Grantees receiving
funds pursuant to Public Law 113-2
in response to Hurricane Sandy

Notice: CPD-16-09

Issued: May 12, 2016

Expires: This Notice remains
in effect until amended, superseded or
rescinded.

Cross References:

SUBJECT: Duplication of Benefits Guidance for Community Development Block Grant Disaster Recovery (CDBG-DR) awards to Homeowners and Businesses that Received Unanticipated Assistance from Small Business Administration Loans after Receiving CDBG-DR Awards

INTRODUCTION

This Notice provides guidance for Community Development Block Grant disaster recovery (CDBG-DR) grants awarded under the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, enacted January 29, 2013) (the “Appropriations Act”). The guidance addresses how grantees must consider Small Business Administration disaster loans pursuant to the Recovery Improvements for Small Entities After Disaster Act of 2015 (RISE Act) awarded after CDBG-DR funds have been provided to beneficiaries (“Unanticipated Assistance”). This Notice advises CDBG-DR grantees of the steps necessary to prevent the duplication of benefits by Unanticipated Assistance. Duplication of benefits is prohibited by the Appropriations Act and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended.

Policy questions related to this guidance should be directed to the Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, U.S. Department of Housing and Urban Development, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339 (this number is toll-free). Alternatively, CDBG-DR grantees covered by this Notice should direct questions to their CPD Representative.

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Purpose and Scope

Applicability

This document outlines guidance for grantees providing CDBG-DR funds to homeowners and businesses to address Unanticipated Assistance later received by those beneficiaries. This guidance applies only to CDBG-DR funds provided under the Appropriations Act and only for grantees impacted by Hurricane Sandy – the States of Connecticut, Rhode Island, Maryland, New York, New Jersey as well as the city of New York.

Background and Authority

The Stafford Act provides the framework for declaring Presidential-disasters and constitutes the statutory authority for most Federal disaster response activities. Under the Stafford Act’s framework, Congress instituted a goal to achieve greater coordination and responsiveness of disaster preparedness and relief programs 42 U.S.C. 5121. Accordingly, the Stafford Act’s duplication of benefits requirements apply to all Federal agencies administering a disaster recovery program providing financial assistance, including HUD and CDBG disaster recovery grants. Section 312(a) of the Stafford Act requires the Federal Government to assure that no person receiving Federal financial assistance receives funds for any part of a loss already paid by insurance or any other source. Section 312(c) makes any person receiving duplicative assistance liable to the Federal Government for the duplicative amount and states that “the agency which provided the duplicative assistance shall collect [it] from the recipient when the head of such agency considers it to be in the best interest of the Federal Government.” 42 U.S.C. 5155(c). Additionally, Section 312(b) of the Act permits the payment of assistance to someone who is or may be entitled to future payments from insurance or another source “if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.” 42 U.S.C. 5155(b).

The Stafford Act requirements are reinforced by other requirements on the use of CDBG-DR funds. Public Law 113-2 required the Secretary to certify in advance of making grant awards that grantees have adequate procedures to prevent any duplication of benefits. To support the Secretary’s certification, grantees must certify that they have “established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act.”

[78 FR 14329, 14348](#). Additionally, the Appropriations Act, regulations and the cost principles within the uniform administrative requirements applicable to all CDBG-DR grantees require that costs are necessary and reasonable: “A cost is reasonable if, in its nature and amount, it 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” (2 CFR 200.404).

HUD published a *Federal Register* Notice (76 FR 71060) on November 16, 2011, (DOB Notice), which clarifies duplication of benefits requirements for all active and future CDBG-DR grants. HUD also published additional guidance on July 25, 2013, entitled “HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG-DR Assistance,” to ensure that CDBG-DR assistance is necessary and reasonable even if it does not duplicate declined SBA loan assistance. Because the DOB Notice and the July 25, 2013, guidance do not address the unique circumstances that arise in the context of Unanticipated Assistance, this CPD Notice sets forth additional guidance for grantees.

SBA Loans Proceeds Received after a CDBG-DR Award

On November 25, 2015, President Obama signed the *Recovery Improvements for Small Entities After Disaster Act of 2015* (RISE Act). The RISE Act gives the Small Business Administration (SBA) Administrator the authority to accept home and business disaster loan applications for Hurricane Sandy for an *additional* one-year period ***beginning on December 2, 2015, and ending on December 1, 2016, (“the reopening period”)***. Those SBA loan proceeds will also occur after CDBG-DR grantees issued recovery awards to homeowners and businesses.

Congress passed the RISE Act, in part, to authorize the SBA to reopen its disaster loan program and provide assistance to homeowners and renters with uncompensated physical losses, and businesses with uncompensated physical losses and/or economic injury that are still recovering from Hurricane Sandy. SBA is responsible for ensuring applicant eligibility for the Sandy reopening under the RISE Act, and grantees are encouraged to support SBA with accurate award information via data-sharing reports.

SBA’s reopening of the disaster loan application period for Hurricane Sandy creates new questions regarding duplication of benefit (DOB) requirements and the impact a new or increased SBA disaster loan will have on CDBG-DR funds previously provided to a beneficiary. This guidance describes how CDBG-DR grantees must address unmet needs verified by SBA and whether CDBG-DR beneficiaries are permitted to receive new SBA loan funds for Hurricane Sandy without negatively impacting their individual CDBG-DR awards.

This guidance is limited to new or increased SBA disaster loans approved during SBA’s reopening period for Hurricane Sandy as a result of the RISE Act.

CDBG-DR grantees are not required to reclaim (recapture) assistance from beneficiaries who receive a new or increased SBA disaster loan during SBA’s reopening for Hurricane Sandy, but grantees may be required to complete new DOB checks before adjusting existing awards or making initial awards after November 25, 2015. SBA verifies home and business disaster losses and conducts a DOB and unmet needs analysis when determining an applicant’s eligibility. SBA is subject to the same statutory requirements that prohibit CDBG-DR grantees from duplicating benefits; as such, SBA disaster loans can only be used for uncompensated physical damage or continuing or unaddressed economic injury. Uncompensated damage is the verified physical loss to a property, as determined by the SBA Loss Verifier, less any insurance or other recoveries (including previously awarded CDBG-DR assistance). SBA’s Economic Injury Disaster Loan

(EIDL) amount is restricted to the working capital needed to return the business to normal operations. Needs are defined as working capital requirements the business could have covered had the disaster not occurred, but cannot meet on its own or through other resources or recoveries (including CDBG-DR assistance) until normal operations resume.

Because SBA home and business disaster loans are limited to the uncompensated losses, as verified by SBA, any new SBA loan funds should not be considered a duplication of CDBG-DR assistance if the beneficiary received an initial award prior to November 25, 2015. The following provides guidance regarding CDBG-DR beneficiaries who seek to receive a new or increased SBA disaster loan for unmet needs and examples of how grantees should address these cases.

1. Q: Who is responsible for conducting the DOB analysis when a CDBG-DR beneficiary is seeking a new or increased SBA disaster loan under the RISE Act?

A: SBA is responsible for conducting the DOB analysis as part of its regular process for determining loan eligibility. When the Grantee has made an initial award to a beneficiary before the beneficiary applies for a new or increased SBA disaster loan under the RISE Act, the CDBG-DR grantee need not complete a new DOB check or adjust the amount of a CDBG-DR award as a result of the new or increased SBA disaster loan.

2. Q: When must a grantee conduct a new DOB analysis for a CDBG-DR beneficiary that has received a SBA disaster loan under the RISE Act?

A: A CDBG-DR grantee must consider SBA loan assistance under the RISE Act in its DOB check if the CDBG-DR grantee increases the amount of its initial CDBG-DR award. Similarly, a CDBG-DR grantee must consider SBA loan assistance under the RISE Act in its DOB check if the CDBG-DR grantee makes an initial award after November 25, 2015. In these cases, grantees are strongly encouraged to work with SBA and the beneficiary when SBA has identified disaster loan eligibility to understand the purpose of the SBA RISE Act award and protect against DOB due to any CDBG-DR awards for the same purpose. If there are any questions regarding SBA's DOB/unmet needs analysis, please contact Thomas Butler at SBA, available by phone at (817) 868-2300 ext. 3021 or by email at thomas.butler2@sba.gov.

3. Q: What steps will SBA take to ensure it can accurately conduct the DOB analysis? Will CDBG-DR grantees need to provide SBA with new or updated data sharing reports?

A: Upon receiving a request for disaster loan assistance, SBA will use the data-sharing reports it currently receives from CDBG-DR grantees to determine if an applicant has been awarded CDBG-DR assistance. To ensure SBA is able to accurately determine if an applicant has remaining unmet needs, grantees must continue providing SBA with the most up-to-date information possible regarding individual awards, including total amount approved, and breakdowns for specific categories of assistance or purpose of the CDBG-DR award. SBA will use the initial CDBG-DR award amount in its DOB analysis, even if the grantee has yet to disburse all of the approved funds to the beneficiary.

4. Q: What if a CDBG-DR beneficiary has already received the maximum amount of assistance established under the grantee's CDBG-DR program? Can the beneficiaries receive a new or increased SBA disaster loan and still retain the assistance received from the grantee's program?

A: Yes, if SBA determines that the beneficiary is eligible for SBA disaster loan assistance. The intent of the RISE Act and the revised disaster deadline is to address the unmet needs of disaster survivors still recovering from Hurricane Sandy. By conducting a new and updated DOB and unmet needs analysis, new or increased SBA disaster loan assistance provided through the Sandy reopening period should be limited to:

- a)* Reimbursement costs for actual loss not covered by the CDBG-DR award. For example, if a homeowner or business owner had granite countertops at the time Sandy occurred but the grantee program was limited to a reimbursement only up to the value of laminate countertops, the homeowner may be eligible for an SBA disaster loan for the difference in cost and it should not be considered a DOB by either program.
- b)* Use of proceeds outside the grantee program's approved categories of assistance. For example, homeowners and businesses can qualify for landscaping assistance with SBA, which should not be considered a DOB if either (i) the CDBG-DR grantee's program does not allow for landscaping assistance or (ii) the SBA disaster loan will be used for uncompensated landscaping losses beyond what the CDBG-DR grantee's program has already provided.
- c)* Uncompensated losses above the CDBG-DR grantee's program cap. For example, if a homeowner or business owner received, or plans to receive, the maximum amount of assistance provided by the CDBG-DR grantee's program but SBA has identified remaining unmet needs, the homeowner may accept the new or increased SBA disaster loan funds for the unmet needs (as verified by SBA) without the loan resulting in a DOB. Furthermore, it does not matter if the CDBG-DR grantee's program cap is based on a fixed amount (e.g. \$150,000 or \$300,000) or an estimated cost of repair that is based on a fixed cost per square foot (e.g. \$160/sq. ft.), the new or increased SBA disaster loan is permitted without incurring a DOB if it addresses the beneficiary's unmet needs, as verified by SBA, which are above the CDBG-DR grantee's program cap.
- d)* SBA's economic injury disaster loan (EIDL) assistance for small businesses, small agricultural cooperatives, small businesses engaged in aquaculture, and most private nonprofit organizations to help meet working capital needs caused by Sandy. EIDL assistance is available regardless of whether the business suffered any physical property damage. SBA's EIDL assistance can be used for current working capital needs or to payoff/pay down debt incurred as a result of working capital needs following Sandy.

5. Q: When a CDBG-DR beneficiary applies for a new or increased SBA disaster loan under the RISE Act, will SBA consider the amount of the initial award of CDBG-DR assistance or the disbursed amount when completing the DOB/unmet needs analysis?

A: SBA will use the initial CDBG-DR award amount in its DOB/unmet needs analysis. Grantees should therefore provide SBA with the initial award amount, not the amount that has been paid to the beneficiary to date.

6. Q: Is there an example of the DOB/unmet needs analysis that SBA will complete to determine if an applicant is eligible for new or increased disaster loan assistance?

A: Yes. Attached is a copy of the DOB/unmet needs analysis worksheet (see attached Grant Worksheet) that SBA will complete as part of its normal loan processing. If an applicant is approved for an SBA disaster loan, SBA will notify the applicant of the approval. CDBG-DR grantees will receive notice of the approval through the standard data sharing reports between the grantee and SBA. SBA will submit a copy of the completed worksheet to the grantee program to be placed in the beneficiary's file. SBA will not disburse loan funds until after the applicant signs and returns their loan closing documents. SBA typically makes an initial disbursement within five (5) days of receiving the executed loan closing documents.

Attachment

GRANT WORKSHEET

SBA Application #

SBA Loan #

First Name

Last Name

Damaged Property Address:

	Real Estate	Contents (Including Auto)	Other UP Codes	Elevation
SBA Verified Total Loss				

LESS:

FEMA Repair Assistance/IHP				
Grant -				
Grant -				
Grant -				
Insurance - Flood				
Insurance - Homeowners				
Insurance - Other				
NFIP Litigation Settlement Amt				
Prior SBA Sandy Loan				

SBA Eligibility		\$0	\$0	\$0	\$0
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DATE Completed	December 17, 2015
LO	
Team Lead	

Comments: