

# Restore Louisiana Homeowner Assistance Program Recapture Policy

## Purpose

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The Restore Louisiana Homeowner Assistance Program (RLHAP) provides several program solutions to assist homeowners with recovery from the March and August 2016 flooding events. Eligible applicants can receive assistance through an award for program managed construction (Solution 1), homeowner managed construction (Solution 2), and reimbursement (Solution 3). Eligibility and grant calculations for these solutions are determined based on information provided by the Applicant, the results of field inspections, and available Third Party datasets. Should Applicants experience a change in circumstances after grant determination or if additional information may become available after closing, Applicants' grant calculation or program eligibility may change. In the event the change reduces their amount of eligible funding, RLHAP may require that an Applicant return all or a portion of their award. Should the applicant not repay the funds due upon notice, RLHAP may pursue a collection action against the Applicant to recapture all or a portion of his/her award. This is referred to herein as "recapture."

## Roles & Responsibilities

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Recapture of funds within the RLHAP will primarily be a function of Louisiana Office of Community Development – Disaster Recovery Unit staff. The role of the program contractor relative to recapture will be limited to the identification of Applicant files that appear to meet the criteria for repayment and transmitting those files to OCD-DRU as detailed in the OCD-DRU Grant Recapture Procedures and other responsibilities as assigned. OCD-DRU may name a designee to perform collections on its behalf.

## Regulatory Framework

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CDBG regulations [24 CFR 570.502] governing grant administration and OMB cost principles [2 CFR 200.403 (a)] require that payment of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to beneficiaries be necessary and reasonable; and prohibit beneficiaries from retaining excess funds not used for eligible, approved costs. The provision of CDBG-DR funds in excess of what is needed for immediate use is also prohibited [2 CFR 200.305 (b) (1)].

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121–5207), as amended, (Stafford Act), and Federal Register Notice, Vol. 76, No. 221, Wednesday, November 16, 2011 provides that CDBG-DR funding may only be provided to the extent that it does not duplicate funding provided to a beneficiary for the same purpose.

## Causes for Repayment

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An Applicant may be required to repay all or a portion of his/her award under the following circumstances:

- **Duplication of Benefits (DOB):** If an Applicant received other duplicative benefits (FEMA, NFIP, SBA, ICC, private insurance, assistance from nonprofit or other disaster assistance provider) that were not calculated in the grant award, the Applicant will receive a negative award adjustment to reflect the correct level of duplication in benefits. If the sum of the duplication of benefits and the RLHAP funds received exceed the applicant's total eligible RLHAP award, the applicant must repay the difference.

- **Ineligibility:** Federal law, program policies, and program procedures set forth mandatory eligibility requirements to receive RLHAP funds. If at any point in time it is determined that the Applicant does not meet the eligibility requirements for that program, the Applicant will be required to repay any assistance received from the program.
- **Failure to Complete Construction:** An applicant who fails to complete construction per program requirements may be required to repay his/her award to the Program since the funding provided to a homeowner is required to meet a national objective and an eligible activity. Without a completed home, the funds provided to the homeowner are ineligible and must be repaid.
- **Substantial Program Non-Compliance:** RLHAP has rules set forth in its homeowner policy manual and in rules set forth in the grant agreements signed by Applicants. If any Applicant fails to substantially comply with these rules, the Applicant may be required to repay the funds. For example, failure to submit mandatory documentation (such as proof of flood insurance), failure to comply with a post-award audit, perform the required project, conform to green building standards, perform mandatory elevation, or to allow for mandatory inspections, may result in the requirement to repay the full award.
- **Voluntary Withdrawals:** Applicants may decide to withdraw from the RLHAP. Any Applicant who withdraws after receiving RLHAP funds is required to repay any funds received prior to Program withdrawal.
- **Fraud:** Applicants who are determined to have provided false or misleading information to the Program or who receive awards based upon fraudulent information must repay the award to the Program. These cases will also be referred to the appropriate criminal agencies for investigation.
- **Subrogation Resolutions:** If an Applicant received other duplicative benefits through a lawsuit settlement that were not calculated in the grant award, the Applicant will receive a negative award adjustment to reflect the correct level of duplication in benefits. If the sum of the duplication of benefits and the RLHAP funds received exceed the applicant's total eligible RLHAP award, the applicant must repay the difference.

Any of these circumstances, or a combination of these circumstances, may require the Applicant to repay some or all of its RLHAP award to the Program.

## Identification of Potential Grant Recovery

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In the course of implementing and monitoring the RLHAP, applicant files may be identified for potential grant recapture by program staff, state staff, or auditors. Files which appear to meet any of the Repayment Circumstances will be marked as Potential Recapture and will be placed on hold so that no additional disbursements are made until a full review of the file is conducted.

After the identification of potential for grant recovery, all recovery activities including verification of repayment circumstances and attempts to recapture grant funds will be performed by the Louisiana Office of Community Development or its designee.

## File Reconciliation and Notification

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Once an applicant file has been identified for potential grant recovery, the file will be assigned a case manager within the Louisiana Office of Community Development.

Applicant files referred to the Recapture Team will be assigned a recapture case manager and will receive a full and complete file review to ensure the accuracy of the file. The recapture case manager will document the amount and basis of the recapture and prepare a letter to the applicant informing them of the proceedings. The recapture letter shall contain the reason for the grant recapture and an explanation of the

recapture process. The first letter will request a response from the applicant within 30 days. Letters will be mailed to all known addresses listed for an applicant. If no response is received from the applicants' first letter attempt, a second letter will be mailed and they will have 30 days to respond to the second letter. If both contact attempts fail, applicants file will be moved to collections.

## Repayment

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After final determination of recapture, the Applicant file will be referred to the Recapture Team for payment. Full repayment in one lump sum is expected, however, applicants may file a hardship request if full payment cannot be made. RLHAP will analyze any applicant claims of financial hardship, and may make limited accommodations in some cases in order to facilitate repayment. Factors that determine the Applicant's eligibility for a hardship waiver include whether the applicant has the financial resources to repay the award; whether the repair of the property was completed; whether the Applicant was a victim of contractor fraud; and, whether there are other mitigating factors. The Applicant will be notified in writing of the hardship determination, and Applicant shall have thirty 30 days to accept the terms of the hardship determination, which may include a repayment agreement and/or a modified repayment amount. If the Applicant does not accept this determination, the Applicant will be required to repay the full lump sum amount.

RLHAP shall monitor repayments to ensure that Applicants are performing in accordance with the terms of repayment. Should applicants submit a late payment or if a payment is dishonored by the applicant's financial institution, the Program may apply an appropriate fee to the Applicant's balance due. RLHAP shall take additional, cost reasonable measures as necessary to collect the repayment amount, including instituting collection proceedings. RLHAP, in its sole discretion, shall institute measures necessary to effectuate repayment from individual program applicants to the extent that amounts are collectable.

## Collections

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In the event that an Applicant is unresponsive or fails to repay the award after reasonable efforts to contact the Applicant, the Program will evaluate the feasibility of collection efforts and/or litigation. The Program will evaluate the amount of potential recovery as compared to the potential cost of attorney's fees to pursue collection efforts and/or litigation. In the event that the Program determines that the costs of collection/litigation may not justify the potential recovery, the Program will evaluate charge off pursuant to a separate policy. In the event that the cost of collection/litigation are justified by the amount of potential recovery, the matter will be referred to an attorney for the State to initiate collection or litigation proceedings.

# Recapture Standard Operating Procedure

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## Recapture Roles

- 1) Recapture Manager
- 2) Recapture Case Manager

## Process Outline

- 1) Identification of Potential Grant Recovery
  - a) Contractor identification of Applicant file as potential recapture
  - b) Transmittal of case to OCD-DRU recapture process
- 2) File review and validation of recapture status, amount
- 3) Applicant notification of recapture status by mail with first recapture letter
- 4) Applicant notification of recapture status by phone
- 5) Applicant notification of recapture status by mail with second recapture letter
- 6) Referral to Attorney's Office
- 7) Evaluation of hardship case
  - a) If approved, establishment of repayment terms
- 8) If no payment made, send demand letters
- 9) Pre-default letter
- 10) Referral to collections and/or litigation

## Communications

- 1) First Recapture Letter
- 2) Recapture Phone Script
- 3) Second Recapture Letter
- 4) Hardship Determination Letter
- 5) Hardship Phone Script
- 6) Payment in full

## Attorney's\Executive Council

- 7) Repayment Agreement (installments)
- 8) Repayment Agreement (balance reduction)

## Attorney

- 9) Repayment Demand Letter
- 10) Repayment Default Letter