

SBA Loan Declined by not signing and returning your SBA Loan Closing Documents households debt issues

**TRUCK AND
TOOLS .COM**

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Public Information Request DECLINED SBA Loan by not signing and returning Loan Application via US Postal Mail to the SBA. If you did this please contact us with your completed Income to Expense spreadsheet we offer linked in the resources section.

Public Information Data Request.

I would like for any disaster victim since the year 2005 that was offered an SBA Loan to share with us during our data collection open collection period the following three (3) items.

From the SBA Form 2158 (5-00) titled U.S. Small Business Administration Truth in Lending Act Disclosure For Disaster Assistance Home Loans.

1. Amount Financed
2. Number of Payments
3. Payment Amounts

Even if you did not take the full amount I only need the numbers from this page which would be your full SBA loan amount.

Supporting data clips and reason public data request has been made.

Corporation XYZ instructing State Grantee on how to handle Duplication of Benefits. Lessons learned by Corporate XYZ during Katrina era.

"

HUD does review your program for your methodology and applying this analysis. So we're going to go over this in pretty good detail. So when you leave, hopefully you'll be able to design one for your program that will accomplish the objective of the duplication of benefit analysis, which, at the end of the day, is ensuring that no beneficiary receives more funding than is necessary for them to meet their unmet needs. So we'll go over that.

The primary framework for all of this information is the Federal Register notice of **November 16th, 2011**, which is **FR5582-N-01**. If you've not seen it, you should go to HUD Exchange and pull it down. ***Because it really just kind of will -- we're following the guidance from that Federal Register notice in this webinar.*** The other thing that we'll talk a little bit about is, well, are some of these OMB principles.

(Editor Note: Web poll showed 38% of all grantees attending the training did not know about the above guidance.)

.... if you receive federal funds, you need to follow the OMB guidance ... expend it and track it. ...

... what HUD looks for when they monitor for the DOB calculations and analysis.

... you can expect to get monitored because they're going to follow the money and this is about the money and how you determine someone's award.

You may just not be doing it in **compliance** with the **guidance** in the **Federal Register notice**.

... Stafford Act. Section 312 says that no entity will receive duplicative assistance from **another source**.

And when we say **another source**, that's a broad category.
It includes

- federal dollars
- state and local dollars
- insurance, both national flood insurance and property insurance
- and it could mean nonprofit sources.

It could be the

- Red Cross
- United Way
- Church group
- Volunteers that removed the dry wall
- Cleaned out the structure
- Hauled debris to the street

All of those are duplicative benefits that someone could receive after a disaster.

... all costs associated with the grant will be necessary and reasonable.

The rules for these and these principles can be found at 2 CFR 200.

But the **Federal Register notice** that we mentioned earlier from **November of 2011** really does give **specific guidance** to the **CDBG disaster recovery grants**.

sometimes we think that governments who might be doing public facilities or some infrastructure projects don't have to be analyzed to ensure that there's no duplicative assistance provided to them.

(Editors Note: Unrelated but note, the project titled ... Government Services ... was created with Grants assigned to the planning of the homeowners assistance program. The new program will most likely be paying the 10% federal cost share to local parish and city governments. This in part is similar to using HUD grants to pay off SBA loans as if a business used the HUD Grant to pay off the 60% requirement.)

Remember, the **CDBG-DR** funds are sort of the **funds of last resort**. You've exhausted all of the other opportunities to receive funding to pay for this disaster-related need and the CDBG funds come in to meet

that unmet *need*.

In general you need to think through how the beneficiary, when you're looking at the funding that they've received, is to make sure that you understand the purpose of the money that was awarded to them. So for instance, after the disaster, FEMA came in and they made an individual award to a homeowner. The homeowner has applied to your program for homeowner repairs. You are looking at the calculation and you determine that the FEMA award was -- they received \$50,000 from FEMA to repair their home.

When you look at it, those \$50,000 would be duplicative of the award that you are making with CDBG funds to do the same thing. And it **doesn't matter if the homeowner used the money to pay** for their temporary **housing**, to pay their **mortgage** when they were having to pay **rent** as well. So you need to understand that the homeowner may have used some of the money for the same purpose as CDBG-DR award and they've used it for something else. So this is just part of that verification to ensure that you understand what they should have available to do the repairs for their home or to restore their business.

And in general, there is a requirement that **CDBG disaster recovery funds should not be used to pay down an SBA loan**. Again, SBA is one of the first providers in there after a disaster and people will apply for an SBA loan and they get it, they take it out, they start doing the repairs, and then they come to CDBG-DR and they'll ask for funds to pay down that loan. *That is not* something that can be done. Occasionally, if there is some extenuating circumstances, you may be able to work with your HUD representative to evaluate this on a specific case basis. But you really do need to talk to HUD before you do that.

The biggest in-kind services usually are when organizations come in and actually do physical rebuilding. And yes, they do -- you can determine the amount of the materials and HUD does have a standard for volunteer labor. They do calculate that as well. But it is a duplicative benefit. It is one of those nonprofit benefits that can come in. Because the repair's already done. I mean, they're coming in and they're doing a repair instead of needing dollars to do them. So you just need to ensure that you can apply that correctly to what's been done.

(Editors Note: The state of Louisiana does not allow an individual to do any volunteer work for homeowners. That individual would have to hold a license and / or be registered. Registered Not for Profits doing work to repair or cleanup your property are a Duplication of Benefits but very difficult for program grantees to determine who received not for profit volunteers and who received low cost labor workers. In the state of Louisiana a homeowner can and should pay what they could afford to any and all labor offered by anyone other than family or business partners. Wages do not have to follow federal or state laws according to LAWorks. As a homeowner you are the workers employer, negotiate the independent contractors hourly wage or salary, put it in writing, complete the I9 form and offer a G-1099 if wages are over \$600. Your wages we suggest should be no lower than \$0.01 per hour and no less than \$5.75 per day. To be able to recruit good labor workers willing to work for you.)

Now, there is some cases where if your program calls for a reconstruct at a certain level of damage, you might have to tear down what someone else has already built up on in-kind services, in which case, that would not be considered part of the need because now your need has changed.

So as a grantee, you should certainly be looking into sort of why an insurance claim wasn't file if if a person has insurance and just simply didn't file one.

And I think related to that, there's another question about the burden of proof that the beneficiary has to provide for contractor fraud or that that's vandalism or forced mortgage payoff is mentioned, I think, like,, two slides previous. What burden of proof is required of a beneficiary?

Fraud as UNMET Needs....

For the vandalism, I would think that the police report or some ability for the grantor to be able to prove that there is reason to agree that someone has vandalized the property, that if there was a fire, that somebody didn't just -- but it wasn't arson or some of those things. And the second -- there was another. Besides the vandalism, there was a second piece.

I think in that one you need to -- the party needs to actually initiate the activity around reporting it, that it's being looked into, that it's determined to be fraud. Yes. And I would say that the states do have requirements to protect against fraud, waste, and abuse. Most states that I've worked with have fraud hotlines. They encourage beneficiaries to report this if it occurs if it happens to them.

So there are ways that you can document that that, in fact, has been the case. Usually, it's turned over to their state attorney generals, who go after them. And again, that's something you can document. I would imagine it would -- the key is going to be that the beneficiary should have receipts for what they may have paid them, they should have copies of the contract. You know, I think it gets to the documentation. It's not just word of mouth. "Well, that contractor defrauded me." There needs to be some evidence that there was an agreement between the beneficiary and a contractor and that the contractor failed to perform under that agreement.

Steve Higginbotham: Just to add to that, one just great rule of thumb for you to think of, and certainly what we look at when we come out, is what level of documentation would you require if this were your municipal funds, if this were your state government revenue? And you just need to treat ours like we would treat your own money, and when I say ours, of course, I mean the American taxpayer.

Brandy Bones: Yeah. Let me just ask one more and then we'll [inaudible]. I think some of them will relate more to what you're going to be doing. Actually, there is a follow-up question related to that. And I think whatever documentation would be required. But there's a question if HUD has ever allowed an affidavit by the beneficiary for the related -- for contractor fraud or do we require documentation to back it up?

Are you saying -- it would seem to me there would have to be some documentation to back it up. You know, copy of the contract that was executed, copy of checks that were cashed. I think Steve's point about what would you do if that was your municipality or your state's money? How would your folks be able to pursue fraud in this case? What do they need? How can they enforce that?

A cost is necessary [in a program] if it is for an eligible CDBG-DR activity and meets the standards of the program. Again, we're going to mention that funds should not be used to pay down or pay off an SBA home or business loan without HUD approval.

A reasonable cost. 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. You're going to apply these to your programs, you're going to apply them to the request for funding that you get in, and these are the things that you need to ensure are in place in your program and they're discussed. This gets to there are other factors related to the reasonableness of the cost and they're described in 2 CFR part 200. So these will apply to your programs.

I want to talk a little bit about the treatment of **declined SBA loans**. We've talked about if they've got an SBA loan, you can't use CDBG-DR funds to pay down an SBA loan. But now, I want to talk a minute about declined loans. So after a disaster, one of the federal government's primary forms of disaster assistance is the small business administration loans, both for homes and for businesses.

That is the expectation. They're there first. They're the first line of defense. People who suffered a disaster should seek them out to see what they have. Now, you need to have policies and procedures in place to guide you in how you would handle it if a beneficiary declined an SBA loan, and that does happen. So you will get -- when you're verifying the assistance needed, you might find that one of your applicants had applied for an SBA loan, but it was never closed. So at least at that point in time, you might assume that they've declined

that assistance.

So you need to determine why they declined it. It's reasonable to think that SBA sort of did underwriting to see if the beneficiary met certain requirements, if they could afford to repay the loan, all of those things. Because sometimes, SBA will turn someone down for a loan if they think that it is not in that person's best interest to have one.

So if you see that someone has been approved for an SBA loan and they've not taken it, you need to have policies and procedures in place to establish what the CDBG-DR benefits and assistance would be appropriate for that beneficiary to receive. Normally, it's through your underwriting criteria. And it could be that the amount of the assistance is greater than the SBA loan or the need identified right after the storm and so, the beneficiary hasn't done anything. It could be that the beneficiary was also a small business owner and the income he used to have has been falling off because his business activity is not as robust as it was before.

There are a number of reasons that it could be perfectly legitimate for a beneficiary to decline taking SBA's assistance. But you need to determine what those are. You need to figure out a way to support it and then write it up in your policies and procedures as part of your program design. So the worst thing to have happen is not to have it in place and then for it to come up. And meanwhile there are other applicants who didn't get that same sort of look at things. So it's always easier to face these issues in advance than have to look at them after the fact.

Brandy Bones: Yeah. We do have a question about SBA loans and he says if the beneficiary actually gets the proof for a loan, but then **decides not to accept the SBA proceeds** for any number of reasons, because they maybe can't pay the loan or they're maybe going to get more on CDBG disaster recovery, how does this get factored into the duplication of benefit analysis as well?

Okay. That's why we mentioned that you need to have policies in place about the acceptable reasons for declining SBA assistance. So if they were approved for an SBA loan and they voluntarily declined to accept that loan, you need to determine if the reason they used for declining the loan was in keeping with the policies that you established around this. Again, the expectation is that SBA is a primary responder to a disaster.

So if you've **applied** for a loan and SBA has **qualified** you for the **loan, the assumption is that the underwriting that SBA did would indicate that that is not a burden for you to have.** Yeah. We'd all like free money, but that's not the purpose of CDBG-DR. The purpose is to meet the unmet needs of your disaster event. And so the SBA loan issue becomes pretty important and you need to determine how you're going to decide what are those valid reasons? And that is up to you, but you need to have policies in place for that.

We have a member in our Facebook.Com group Restore LA Program Info Exchange that has done everything possible to make their household recovery complete.

Our member invested over \$60,000 of their own personal savings into their recovery.

Our member applied to the SBA was offered \$124,000 in SBA Loans at \$439 per month for 30 years.

Our member is listed as Extremely Low Income for the AMI of their area.

Without a dime in the bank to spare our member asked if there was anything they could do.

I've sent them idea after idea while I researched deeper into why SBA feels a household with extremely low income can be considered for a \$124,000 loan with payments of \$439 per month.

Our member asked for \$25,000 from the SBA thinking the payments would be low enough and over 30 years they could afford to pay them.

The SBA sent back new terms, \$25,000 with \$436 monthly payments for 5 years.

The SBA dropped the monthly payments by \$3.00.

Now, to say I wasn't red-reared and roaring mad at the logic behind the SBA offer would be a lie.

I started my researching and found the training session explaining to private investment firms and companies what the SBA does to secure the loans.

In the public comments from one investment firm they asked, "How do you screen the applicants for the ability to repay the loan."

The SBA replied, "We secure each loan with 100% of the applicants collateral."

That line got me thinking and I got my hands on a complete SBA loan package.

Sure enough, everything was about collateral and nothing was about your credit score or ability to repay a loan.

That issue lead me to research 2 other households.

One Low income and one Moderate income with near similar sized homes.

You might not believe me but here's the results.

From 3 group members:

1. 124,000 SBA Loan at \$439 per month for 30 years. Secured on Property. (Low Income Household)
2. 121,600 SBA Loan at \$430 per month for 30 years. Secured on NFIP Insurance and property. (Moderate Income Household)
3. 124,000 SBA Loan at \$439 per month for 30 years. Secured by Property. (Low Income Household)

1 and 3 are retirees on a fixed income.

2 is a working household.

All 3 households average 95% of their monthly income to pay home expenses which seem to be very typical. 2 had their homes paid off.

1 with the mortgage would have been looking at 44% of their income paying house notes only.

Governor Edwards argued with HUD to make it know that any household over 30% of their total pre-tax income was a household with a financial burden the state and the US census calls "Cost Burdened".

Over 50% was declared to be severely cost burdened.

While the SBA and it's private lenders (no taxpayers money) enjoy specific financial securities such as US Taxpayers money to guarantee principle and interest be paid no matter if the household has the ability to repay.

HUD lead training staff which directly trained our states OCD-DRU group claimed and I'll quote: "if you've applied for a loan and SBA has qualified you for the loan, the assumption is that the underwriting that SBA did would indicate that that is not a burden for you to have."

SBA document: 2018

To qualify for an SBA 7(a) loan, applicants must be creditworthy and able to reasonably assure repayment. SBA requires lenders to consider the strength of the business and the applicant's

- character, reputation, and credit history;
- experience and depth of management;
- past earnings, projected cash flow, and future prospects;
- ability to repay the loan with earnings from the business;
- sufficient invested equity to operate on a sound financial basis;
- potential for long-term success;
- nature and value of collateral (although inadequate collateral will not be the sole reason for denial of a loan request); and
- affiliates effect on the applicant's repayment ability.²⁷

Resources:

- [Living On Percentages spreadsheet version 18.7.5](#) (3 months pre-disaster , 3 months post disaster, 1 year post disaster or time of CDBG-DR grant funding)
- [Living On Percentages spreadsheet version 1.2](#) (Old version: living_on_percentage_1.2_7-26-2010.xlsx 2010)

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