

From: Lori Dupont on behalf of Pat Forbes
Sent: Thursday, August 30, 2018 11:19 AM
To: 'M W'
Cc: Adam Knapp; Commissioner Mike Strain; Darryl Gissel; Don Pierson; Dr. James Richardson; Shawn Wilson; Jacqui Vines Wyatt; Jimmy Durbin; John Gallagher; Johnny Bradberry; Mayor Dave Norris; Mayor Ollie Tyler; Mayor-President Joel Robideaux; Michael Faulk; Michael Olivier; Randy Clouatre; Representative Edward "Ted" James (2); Representative J. Rogers Pope; Representative Robert Shadoin; Roland Dartez; Sean Reilly; Senator Dan "Blade" Morrish; Aimee Richard; Arlene Adger; Barbara Marrable; Becky Perret; Cami Barlow; Enger Kinchen; Jane Lambert; 'Jayne Norton'; Julie Simms (jmullis@C100LA.org); Karen Brown; Karen White; Kimberly LaMotte; Michel Zambo; N Jarreau; Nancy Collie; Paine Gowen; Rhea Victorian; Rhonda Byrd; Sabrina Sentino; Susan Wassan
Subject: Murray Wennerlund, Task Force Public Input: Citizens Proposed SBA Disaster Federal Assistance Declined Solution
Attachments: CDBG-DR-Duplication-of-Benefit-Requirements-and-Provision-of-Assistance-with-SBA-Funds - Copy.pdf

Mr. Wennerlund,

Thank you for reaching out to the Restore Louisiana Task Force with both information and recommendations. As you know, the Governor and the Congressional delegation agree with your interpretation and have been working to correct this consideration of the SBA loans as a duplication of benefits. Unfortunately, we have, as yet, not received what we are looking for. Namely, either guidance from HUD clarifying that funds not drawn by an applicant do not count as DOB, or passage of federal legislation prohibiting federal agencies from counting loans as DOB. Until we get either of those, we are compelled by our obligation to spend the funds in compliance with HUD and other federal guidance. To not do so would put all the funds spent non-compliantly at risk of federal recapture.

The important distinction in this debate between the state and HUD is about the word "declined." HUD has so far insisted that "declined" means the homeowner never closed on the loan. We contend, like you, that "declined" means the funds were never drawn, regardless of whether the loan closed or not. Unfortunately, we must follow HUD's directions until they either change their interpretation, as requested by the Governor in April (<http://gov.louisiana.gov/assets/docs/Letters/JBE-ltr-Carson-DOB-April-2018.pdf>), or Congress passes the necessary legislation and the President signs it into law.

I mentioned above a letter from the Governor to the HUD Secretary about this matter. HUD's response to this letter references HUD's guidance of July 25, 2013 guidance. At this time, this guidance represents the rules we must follow. We are eager to assist those who have been approved for SBA loans and, as you've pointed out, have the funds available to do so. We are in complete agreement about the need to correct this issue, but it is not accurate to say that it is within our authority, under the current guidance, to provide funds to those who have been approved for an SBA loan and closed on that loan, regardless of whether they have drawn the funds or not. In short, changing our policy on SBA DOB requires a definitive change in directions from our funders in Washington, D.C.

We'd be glad to sit down with you and go over all these documents and correspondence if you like. And again, I thank you for your advocacy on this matter and look forward to being able to tell you soon that we've received the guidance we seek and are able to proceed with program policy changes.

Sincerely,

Pat Forbes

From: general@truckandtools.com <general@truckandtools.com>

Sent: Friday, August 24, 2018 9:00 AM

To: Pat Forbes <Patrick.Forbes@LA.GOV>

Subject: Murray Wennerlund, Task Force Public Input: Citizens Proposed SBA Disaster Federal Assistance Declined Solution

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Murray Wennerlund, Task Force Public Input: Citizens Proposed SBA Disaster Federal Assistance Declined Solution

Sent on behalf of: Murray Wennerlund Reply goes to: Murray Wennerlund email address

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In the spirit of rebuilding, we the people of the 2016 floods, a natural disaster in the State of Louisiana, officially submit to the Restore Louisiana Task Force the following guidance and policy modifications to advance our disaster recovery efforts.

Title: Homeowner Declined or Canceled SBA Disaster Assistance

Summary: Allow Public Law 115-123 to be used as guidance when calculating the duplication of benefits during the DOB screening process. Public law 115-123 protects the homeowners against being penalized for declining the SBA loan amount offered and from being denied additional federal assistance because of the SBA loan being counted as a duplication of benefits. This policy amendment will assist nearly 3,800 households that have declined the SBA Disaster loan.

Background: In a press release February 8, 2018: Governor John Bel Edwards acknowledged that Senator Kennedy cosponsored a SBA solution with Senator Marco Rubio adding "...that would relieve only 3,800

Louisianans of the DOB penalty..."

In an email from Gov. Edwards to Senator Kennedy February 8, 2018: "Unfortunately, you lent your support to a bill that only helps approximately one-third of the Louisianans the House language helps."

Governor Edwards is referring once again to the estimated 3,800 Louisiana homeowners that declined to accept assistance from the SBA by canceling their loans and not drawing any funds.

H.R. 1892 Bipartisan Budget Act of 2018 was signed into law February 9, 2018 by the President of the United States of America, Public Law 115-123 was on the books and published in HUD's CDBG-DR Laws, Regulations, and Federal Register Notices page under event notices 2017.

Public Law: Feb. 9, 2018 "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)):"

Policy Change: Remove the reported SBA Disaster loan amount from the OCD-DRU Duplication of Benefits calculation when the homeowner provides proof that they have declined or canceled assistance from the SBA Disaster loan program.

Policy Benefits to Homeowners: It is estimated that 3,800 homeowners would benefit from this adoption of public law 115-123. This policy would save homeowners an estimated total of \$168,970,800 out of pocket savings, pensions, retirement funds, school savings, etc.

Policy Checksum Methodology: The SBA will issue cancellation codes that will confirm the loan was canceled by either the SBA or the Homeowner.

Policy Budget change summary: Currently we have \$682 million available for SBA solutions. At an average cost of \$44,466 per household for 3,800 households we estimate \$168,970,800 to complete this group of SBA households which will leave an estimated 11,200 households with \$498,019,200 of additional federal assistance for unmet needs.

HUD Notice: This is not a substantial change and does not need a public comment period. This policy does not change allocated funds in the Homeowners Program which it will use.

Thank you,
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HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG Disaster Recovery (DR) Assistance

The Department has previously issued guidance related to duplication of benefit requirements in the form of a *Federal Register* notice (November 16, 2011) and has elaborated on that guidance through training materials, direct technical assistance to grantees and responses to questions posed by grantees. Grantees continue to identify questions regarding the combination of various forms of Federal assistance that the guidance and technical assistance do not contemplate. Grantees have recently asked whether they can provide CDBG DR assistance to homeowners and businesses that have declined loan assistance offered by SBA. This response guidance is limited to declined SBA loans. It does not address cases when homeowners or businesses have accepted an SBA loan, which are covered under the general prohibition in the November 2011 *Federal Register* notice.

Grantees may assist households and businesses that have declined SBA loans, but must analyze the circumstances under which the assistance was declined and demonstrate why providing CDBG DR funds is necessary and reasonable. Grantees are also advised that they may assist businesses and homeowners in a variety of forms, including loans. The following provides guidance regarding the use of CDBG DR and SBA funds in these circumstances and examples of how grantees may incorporate this guidance into their recovery programs.

Q: Must an applicant apply for SBA assistance as a prerequisite for receiving CDBG DR assistance?

A: HUD encourages but does not require applicants (i.e., homeowners and businesses) to apply for SBA assistance as a prerequisite to receiving CDBG DR assistance. Further, HUD will not require applicants who have applied for and been offered SBA assistance to accept the SBA assistance as a prerequisite to receiving CDBG DR assistance.

Q: How must a grantee address the situation where an applicant has declined an offer of SBA assistance, and now seeks CDBG DR assistance?

A: Grantees must make the most effective use of their CDBG DR resources and meet the statutory directive that funds be used for “necessary” recovery costs. Grantees must properly size the CDBG DR assistance offered to any applicant in this circumstance, but may use multiple approaches to size the assistance and may vary the approach used for individuals from that used for businesses. Regardless of the applicant or approach, grantees must be able to demonstrate that the amount of CDBG DR assistance is necessary and reasonable consistent with Federal financial standards.

Q: What is HUD’s guidance to grantees on establishing criteria and policies for implementing this guidance?

A: This guidance directs grantees to assess each applicant’s circumstance and prevent the duplication of benefits. Grantees must adopt an approach that adequately establishes the basis for CDBG DR assistance and HUD anticipates that grantees will base their approach upon this guidance. Grantees are

cautioned against providing 100 percent CDBG DR grant assistance where an applicant has declined SBA assistance without fully documenting the basis for that level of subsidy. Failure to institute an appropriate process to address these cases may open the grantee to programmatic sanctions.

The Department's minimum expectation in this situation is that grantees will incorporate policies and procedures that achieve the following:

- Identify the circumstances under which the applicant declined the SBA assistance;
- Establish why CDBG DR assistance is appropriate for the applicant; and
- Determine, most commonly through underwriting, the amount of CDBG DR assistance that is necessary and reasonable to assist the applicant in achieving recovery.

Q: Is there an evaluation process that HUD can recommend to grantees?

A: The Department has reviewed PL 113-2, the Disaster Relief Appropriations Act, 2013, which limits the use of funds to “necessary” expenses. Further, HUD has reviewed materials related to OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (codified, in part, at 2 CFR 225) and has developed the following approach that grantees may opt to use for implementing a duplication of benefit analysis where SBA assistance was declined by a potential CDBG DR beneficiary. The grantee is not required to adopt this approach, but it must have an approach that adequately establishes the basis for any CDBG DR assistance to that beneficiary.

Step 1— Determine whether an applicant declined an SBA loan offer.

An applicant must explain why a SBA loan was declined (e.g., the circumstances that led to his/her decision). This information may be collected through the application process (e.g., on a questionnaire to be completed by the applicant), or as the grantee assesses the applicant's information to prevent a duplication of benefits. See Table 1 for sample questions that may be incorporated into an application for CDBG DR assistance, or into a form used to prevent the duplication of benefits.

Table 1: Sample Questions to Ask Potential CDBG DR Applicants

Question	Applicant's Response
Have you received disaster recovery assistance from the SBA?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, what is the amount of the loan?	\$(X)
If no: did you apply for a SBA loan?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Did you decline a SBA loan?	<input type="checkbox"/> Yes <input type="checkbox"/> No
What was the amount of the loan?	\$(_____)
Why was the loan not accepted?	[provide explanation]

Step 2—Grantee's analysis of a declined SBA loan.

The grantee must demonstrate that providing CDBG DR assistance to an applicant that has declined a SBA loan is necessary and reasonable. To demonstrate this, the grantee must develop policies and

procedures which describe what circumstances and/or facts, such as the reason for the applicant's decision to decline the SBA loan offer that the grantee will use to determine that CDBG DR support is a necessary and reasonable recovery expense. These policies and procedures must take into account the necessary and reasonable cost principles defined at 2 CFR part 225, *Cost Principles for State, Local, and Indian Tribal Governments*. Specifically, Appendix A(C)(1) states, "To be allowable under Federal awards, costs must ...be necessary and reasonable for proper and efficient performance and administration of Federal awards." Appendix A then defines a cost as 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."

Grantees must also make decisions about which types and amount of costs items are necessary and reasonable. This requirement applies to a grantee's costs in administering its disaster recovery program, as well as the ultimate uses of the funds by the grantee. Following the guidance in 2 CFR part 225, grantees should consider the following in determining reasonableness of a given cost:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the disaster recovery program.
- b. The restraints or requirements imposed by such factors as sound business practices; arm's-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the CDBG DR program.
- c. Market prices for comparable goods or services.
- d. Whether the grantee would be acting with prudence by making an offer for CDBG DR assistance in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the cost to the CDBG DR program.

The grantee is encouraged, but is not required, to use the above questions to determine what circumstances and/or facts demonstrate that a CBDG DR award is a necessary and reasonable cost given that the applicant declined a SBA loan offer. Furthermore, these circumstances and/or facts must be described in the grantee's policies and procedures. Applicant files must be reviewed using the grantee's policies and procedures. A determination of why the award of CDBG DR assistance is necessary and reasonable (if the applicant declined a SBA loan offer) must be placed in the applicant's file. Table 2 provides a sample determination form.

Table 2: Sample Determination Form

The [insert grantee name] has determined that the following reasons establish that the CBDG DR award to the applicant is necessary and reasonable given that the applicant declined a SBA loan offer: [insert circumstances or facts].

Based on my review of [insert applicant name]'s file, I have determined that the award is necessary and reasonable as defined above: Yes No

If no, provide an explanation: _____

[insert name/title of grantee staff]

[insert signature]

[insert date]