



Office of Community Planning and Development, Washington, DC

Compliance With Departmental Clearance Procedures



To: Stan A. Gimont,
Acting Deputy Assistant Secretary for Grant Programs, DGB

Helen Foster
Chief Administrative Officer, Office of Administration, A1

From: //signed//
Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

Subject: CPD Did Not Follow the Departmental Clearance Process When It Issued the July 25, 2013, Guidance for Duplication of Benefits Requirements

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of HUD's disaster recovery delivery sequence and duplication of benefits policies.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 913-551-5870.



Audit Report Number: 2017-KC-0004

Date: June 2, 2017

CPD Did Not Follow the Departmental Clearance Process When It Issued the July 25, 2013, Guidance for Duplication of Benefits Requirements

Highlights

What We Audited and Why

We audited the U.S. Department of Housing and Urban Development (HUD), Office of Community Planning and Development's (CPD) process for making changes to its programs, policies, and operations. We initiated the audit because of concerns we had with HUD's disaster recovery delivery sequence and duplication of benefits policies during a previous external audit (Audit Report 2016-DE-1003). Our objective was to determine whether CPD complied with the departmental clearance process and associated Federal requirements when issuing its July 25, 2013, guidance on the duplication of benefits.

What We Found

CPD did not follow the departmental clearance process when it issued the July 25, 2013, guidance for duplication of benefits requirements. It did not review public communications to determine whether the guidance was a directive and did not ensure that key officials reviewed the directive before issuance. This condition occurred because CPD lacked procedures to ensure that program staff identified all directives and submitted them to the directives management officer for departmental clearance before issuance. As a result, CPD's guidance for coordinating Community Development Block Grant Disaster Recovery (CDBG-DR) assistance with the Small Business Administration (SBA) was contradictory and unclear.

What We Recommend

We recommend that HUD (1) pursue departmental clearance for the July 25, 2013, guidance or take appropriate action to recall the document or policy; (2) develop guidance that helps the public understand its options for assistance between CDBG-DR and SBA and how to comply with Federal requirements; and (3) develop improved procedures and provide training to appropriate staff regarding the departmental clearance process requirements, including determining which guidance is considered to be a directive, and ensuring that HUD constituents have clear, instructive, and helpful information to comply with the applicable requirements and procedures for HUD programs.

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Background and Objective

HUD Directives

Directives relay important information or guidance about U.S. Department of Housing and Urban Development (HUD) programs, policies, or operations. Directives provide new guidance to the public for the first time and go beyond explaining established regulatory and statutory requirements. They include handbooks, mortgagee letters, notices, and other forms of communication that provide information or guidance.

HUD's Directives System Handbook (Handbook 000.2, REV-3) describes how to comply with Federal statutory requirements for maintaining adequate records and ensuring information quality when issuing a directive. All directives must go through departmental clearance, which involves HUD offices with related policy or legal expertise reviewing the document and providing input to ensure that the information is accurate and does not conflict with other HUD policy. Each HUD program office must designate a directives management officer, who ensures that directives originated by its office are cleared in accordance with the Handbook. HUD's Office of Administration is responsible for monitoring HUD directives and holds lead responsibility for ensuring compliance with the Handbook.

Disaster Assistance

The Robert T. Stafford Disaster Relief and Emergency Assistance Act provides the framework for declaring presidential disasters and constitutes the statutory authority for most Federal disaster response activities. Under the Stafford Act, Congress instituted a goal to achieve greater coordination and responsiveness of disaster preparedness and relief programs. 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 the Community Development Block Grant Disaster Recovery (CDBG-DR) program. Section 312(a) of the Stafford Act requires the Federal Government to ensure that no person receiving Federal financial assistance receives funds for any part of a loss already paid for by insurance or any other source. This section does not prohibit providing assistance if a victim is entitled to receive assistance from another source, so long as the other assistance has not been received.

Federal Emergency Management Agency (FEMA) regulations at 44 CFR (Code of Federal Regulations) 206.191 establish the policies for implementing Section 312 of the Stafford Act, entitled Duplication of Benefits. Under FEMA's guidance, Federal agencies must cooperate to prevent and rectify duplications of benefits. Duplications can occur when an agency has provided assistance that was the primary responsibility of another agency and the agency with primary responsibility later provides assistance. FEMA regulations include a delivery sequence, which is the order in which disaster relief agencies and organizations provide assistance and is used to resolve duplications. The following sequence, in accordance with the mandates of the assistance programs, is to be generally followed in the delivery of assistance:

- (1) Volunteer agencies' emergency assistance programs (American Red Cross, Salvation Army, etc.) and insurance (including flood insurance);

- (2) FEMA Home Repair and Replacement;
- (3) Small Business Administration (SBA) and Farmers Home Administration disaster loans;
- (4) FEMA Other Needs Assistance;
- (5) Volunteer agencies' "additional assistance" programs; and
- (6) The Cora Brown Fund.

SBA Policy Standard Operating Procedures, sec. 50, no. 30, rev. 8 further clarifies that "Other Federal, State, and local government agencies, such as Community Development Block Grants," follow (4) FEMA Other Needs Assistance and precede (5) Volunteer agencies in the delivery sequence.

HUD published Federal Register notice 76 FR 71060 (November 16, 2011), which clarifies duplication of benefits requirements for all active and future CDBG-DR grants. According to this notice, SBA loans are among the Federal Government's primary and standard forms of disaster assistance. Since CDBG-DR provides long-term recovery assistance via supplemental congressional appropriations and falls lower in the hierarchy of delivery than FEMA or SBA assistance, it is intended to supplement rather than supplant these sources of assistance.

On July 2, 2013, a bipartisan group of New York City's congressional delegation called for HUD to lift unnecessary barriers to the CDBG-DR program. Specifically, the group wanted disaster victims to be eligible for CDBG-DR grants even if they were approved for but did not accept SBA loans. In response, HUD published additional guidance on July 25, 2013, entitled HUD Guidance on Duplication of Benefits Requirements and Provision of CDBG-DR Assistance. This guidance encouraged but did not require disaster victims to apply for SBA assistance as a prerequisite to receiving CDBG-DR assistance. Further, HUD does not require applicants who have applied for and been offered SBA assistance to accept it as a prerequisite to receiving CDBG-DR assistance. Grantees may assist households and businesses that have declined SBA loans but must analyze the circumstances under which the assistance was declined and show why providing CDBG-DR funds is necessary and reasonable.

Our objective was to determine whether HUD's Office of Community Planning and Development (CPD) complied with the departmental clearance process and associated Federal requirements when issuing its July 25, 2013, guidance on duplication of benefits.

Results of Audit

Finding: CPD Did Not Follow the Departmental Clearance Process When It Issued the July 25, 2013, Guidance for Duplication of Benefits Requirements

CPD did not follow the departmental clearance process when it issued the July 25, 2013, guidance for duplication of benefits requirements. It did not review public communications to determine whether the guidance was a directive and did not ensure that key officials reviewed the directive before issuance. This condition occurred because CPD lacked procedures to ensure that program staff identified all directives and submitted them to the directives management officer for departmental clearance before issuance. As a result, CPD's guidance for coordinating CDBG-DR assistance with SBA was contradictory and unclear.

Guidance Was Not Identified as a Directive

CPD did not identify the July 25, 2013, guidance as a directive. According to HUD's Directives Handbook 000.2, REV-3, a public communication is considered a HUD directive if it relays guidance to program participants or regulated parties for the first time and goes beyond simply explaining existing HUD policy or requirements. The July 25, 2013, guidance was the first public communication to address a grantee's ability to assist households and businesses that declined or did not apply for SBA loans. CPD published it in response to a request received by the HUD Secretary from members of New York State's U.S. Senate and House delegations. The public could access this document on the CDBG-DR Web page, but CPD did not consider it a directive.

Key Officials Did Not Review Guidance Before Issuance

CPD did not ensure that key officials reviewed the July 25, 2013, guidance before issuance. Section D-2.4 of the Directives Handbook requires HUD to obtain clearance from at least the following six offices before issuing any directive:

- Office of the Chief Information Officer,
- Office of the Chief Financial Officer,
- Office of Inspector General,
- Office of General Counsel,
- Office of Policy Development and Research, and
- Office of Administration (designee of the Chief Human Capital Officer).

As part of this required departmental clearance process, the reviewing offices document their response to the directive by signing form HUD-22 and indicating concurrence, nonconcurrence, or no position. If any required reviewing office nonconcur, the matter must be resolved or elevated to the Assistant Secretary or Deputy Secretary level if necessary before the directive is

issued. However, CPD issued the July 25, 2013, guidance without giving the required offices an opportunity to review, approve, and document their positions on it as a directive. CPD had the Office of General Counsel review the July 25, 2013, guidance for legality but not for compliance with the departmental clearance requirements.

CPD Lacked Adequate Controls

CPD lacked procedures and training to ensure that program staff identified all directives and submitted them to the directives management officer for departmental clearance before issuance. Specifically, CPD had no procedures for reviewing public communications to determine whether the content represented a directive.

Guidance Was Contradictory

The July 25, 2013, guidance contradicted CPD's earlier Federal Register guidance. The July 25, 2013, guidance allowed households that declined or did not apply for SBA loans to use CDBG-DR grants rather than SBA loans. However, this guidance supplemented Federal Register 76 FR 71060 (November 16, 2011), which states that CDBG-DR funds are intended to supplement rather than supplant FEMA or SBA assistance. The text of the Federal Register guidance is shown in appendix B. By not submitting the July 25, 2013, guidance for clearance, CPD failed to offer the required HUD offices the opportunity to identify and adequately resolve any contradictions in the guidance before issuance.

Disaster Victims Were Unaware of Their Options

The lack of clear guidance resulted in disaster victims not always being aware of their option to receive grants instead of loans. Immediately after Hurricane Sandy and before CDBG-DR grants were available, FEMA officials directed victims to SBA loans, which are typically the source of immediate disaster assistance. Some of these victims told the media that they did not understand that the loans blocked them from later obtaining grants and left them with loan payments that their neighbors did not have.

More Than \$1.2 Billion in Disaster Funding Went to Victims Who Otherwise Might Have Qualified for SBA Loans

CPD grantees awarded more than \$1.2 billion in CDBG-DR grants to victims who otherwise might have qualified for SBA loans. Based on our review of CDBG-DR applications in New York City, New York State, and New Jersey, we identified these victims as those who were not low or moderate income and did not obtain a secured SBA disaster loan. If these grantees were eligible for SBA loans and had borrowed the recovery assistance instead of taking grant funds, the local jurisdictions could have used those CDBG-DR grant funds to assist other families who had no other source of assistance.

Recommendations

We recommend that the Director of the Office of Block Grant Assistance

- 1A. Pursue departmental clearance for the July 25, 2013, guidance that did not go through required departmental clearance. For any items that cannot be appropriately cleared, HUD should take appropriate action to recall the document or policy.

- 1B. Develop guidance that helps the public understand its options for assistance between CDBG-DR and SBA and how to comply with Federal requirements.

In addition, we recommend that the Chief Administrative Officer for the Office of Administration

- 1C. Develop improved procedures and provide training to appropriate staff regarding the departmental clearance process requirements, including
 - Determining which guidance is considered to be a directive, including public communications, and
 - Ensuring that HUD program participants have clear, instructive, and helpful information to comply with the applicable requirements and procedures for HUD programs.

Scope and Methodology

We performed our audit fieldwork from May to December 2016 at HUD headquarters and at grantees in New York City, New York State, and New Jersey. Our audit was limited to the review of HUD Guidance on Duplication of Benefits Requirements and Provision of CDBG-DR Assistance, issued July 25, 2013.

To accomplish our objective, we

- Reviewed applicable HUD requirements and guidelines.
- Interviewed appropriate HUD personnel from CPD and the Office of Administration.
- Interviewed grantees in New York City, New York State, and New Jersey.
- Reviewed how HUD processed and issued the guidance.
- Reviewed additional directives related to duplication of benefits.
- Reviewed the Office of Management and Budget's Good Guidance Practices and Executive Order 12866 as amended.
- Observed official and public reports of Hurricane Sandy disaster assistance implementation.

Our scope was limited to the July 25, 2013, guidance. Additional documents posted on HUD Web pages or distributed internally at HUD or letters and emails sent to third parties were not tested. Therefore, HUD may have distributed additional directives that were not identified by our audit testing. Since we reviewed how a specific source of guidance was processed and issued, no sampling was necessary.

We relied on computer-processed data from New York City, New York State, and New Jersey to estimate the amount of CDBG-DR funding that went to disaster victims who otherwise might have qualified for SBA loans. We did not rely on these data to support our audit conclusions but, rather, to provide context for the finding. We evaluated the data by analyzing the data for obvious accuracy problems and reviewing the grantees' independent audit reports for findings related to their databases. We found the data to be reliable for our purposes.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Internal Controls

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Policies and procedures to ensure that HUD identified, reviewed, approved, and documented CPD directives as required when implementing changes to its programs, policies, and operations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiency

Based on our review, we believe that the following item is a significant deficiency:

- CPD lacked procedures and training to ensure that program staff reviewed its public communications and submitted all directives to the directives management officer for departmental clearance before issuance (finding).



Appendixes

Appendix A

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

 OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT	U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-7000 MAY - 9 2017
MEMORANDUM FOR:	Ronald Hosking, Regional Inspector General for Audit, 7AGA
FROM:	 Stanley Gimont Deputy Assistant Secretary for Grant Programs (Acting), DGB
SUBJECT:	Draft Office of Inspector General Audit Report 2017-KC-XXXX: Community Planning and Development Did Not Follow the Departmental Clearance Process When It Issued the July 25, 2013 Guidance for Duplication of Benefits Requirements Community Development Block Grant Disaster Recovery
<p>The Office of Community Planning and Development (CPD) has reviewed the draft audit report regarding the review of CPD's compliance with the Departmental clearance process when issuing the July 25, 2013, guidance on the duplication of benefits. CPD's issuance of the guidance addressed media, grantee, and Congressional inquiries concerning whether and how Community Development Block Grant disaster recovery (CDBG-DR) grantees could assist households who had applied and been approved for Small Business Administration (SBA) loans, but declined to receive the SBA assistance. CPD offers the following comments regarding the Office of Inspector General (OIG) draft report.</p> <p>OIG Finding: CPD did not follow the Departmental Clearance Process when it issued the July 25, 2013, Guidance for Duplication of Benefits Requirements</p> <p>The OIG indicates that CPD did not identify the guidance as a directive. OIG asserts that the guidance is a directive because it relays guidance to program participants for the first time and goes beyond simply explaining existing HUD policy or requirements. The OIG also indicates that key officials did not review the guidance prior to publication because the document was not part of a clearance process; that CPD lacked procedures and internal controls to ensure program staff identify directives; that the guidance was contradictory to CPD's previous Notice in the Federal Register concerning the duplication of benefits; that disaster victims were unaware of their options; and that more than \$1.2 Billion of CDBG-DR funding went to households who otherwise might have qualified for SBA loans. The OIG recommends that CPD place the guidance in Departmental Clearance, develop guidance that helps the public understand its options for assistance between CDBG-DR and SBA, and develop improved procedures and provide training to appropriate staff regarding the departmental clearance process, including public communications.</p>	
<p>www.hud.gov espanol.hud.gov</p>	

HUD Comment:

Comment 1

In general, CPD agrees that additional training regarding the Departmental clearance process is helpful and strengthens internal controls. CPD recently provided training to staff regarding the Departmental Clearance process. The Office of Block Grant Assistance is also reviewing the July 25, 2013, guidance because of new inquiries and lessons learned and will consider whether and how the guidance will be used going forward.

Comment 2

The OIG is correct that CPD did not publish the guidance concerning households that declined SBA loans and the award of CDBG-DR assistance as part of the Departmental clearance process. CPD notes that HUD's Directives Handbook 000.2, REV-3 provides that the Assistant Secretaries must ensure compliance with the Handbook, but it also states that the Secretary or Deputy Secretary may exempt an individual HUD Principal from compliance with the Handbook. The guidance was issued to address pressing questions about the eligibility of recovering homeowners and businesses to receive CDBG-DR assistance. While it is unclear whether the Secretary at the time provided a written exemption from the Departmental clearance process for this purpose, the Secretary was briefed on the guidance when it was being developed and was supportive of its publication.

Comment 2

Although the document did not go through the Departmental Clearance process, the guidance was developed in consultation with HUD's Office of General Counsel and the Hurricane Sandy Task Force, established pursuant to Executive Order. CPD also coordinated with the SBA prior to publishing the guidance.

Comment 3

CPD disagrees that the July 25th guidance contradicts its previous guidance included in a Notice published in the *Federal Register* on November 16, 2011, (76 FR 71040). The *Federal Register* Notice provided instruction to CDBG-DR grantees on how to prevent the duplication of benefits. In describing the federal government's disaster recovery programs and delivery sequence, the Notice states that SBA loans are among the government's primary and standard forms of disaster assistance, and that CDBG-DR funds should not be used to pay down SBA loans. Because CDBG-DR funds are provided through supplemental Congressional appropriations, the funds are intended to supplement rather than supplant SBA assistance. The July 25th guidance clarified the *Federal Register* Notice by addressing the circumstances under which CDBG-DR grantees could assist households who applied for, but declined, SBA assistance, and the manner in which this can be done.

Comment 4

The November 16, 2011, *Federal Register* Notice and the July 25th guidance are entirely consistent. A homeowner's decision to decline SBA assistance and a grantee's subsequent award of CDBG-DR funds to that household does not result in CDBG-DR funds supplanting SBA funds. All CDBG-DR grantees must identify the amount and purpose of any disaster recovery funds that a household has received or is expected to receive and determine whether those funds are available. Once a homeowner formally declines an SBA loan, the SBA funds are not available to the homeowner, and the duplication of benefits prohibition in section 312 of the Stafford Act (42 U.S.C. 5155) is not implicated. Therefore, CPD determined at the time that CDBG-DR assistance that is subsequently provided to the homeowner would not supplant the SBA loan that was declined.

**Ref to OIG
Evaluation**

Auditee Comments

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Comment 5

The OIG is correct that households affected by the disaster are not always aware of the options to receive grants, loans, or any other form of federal disaster assistance. There is no uniform catalog of Federal disaster recovery assistance that is currently available to individuals. The OIG indicates that Federal Emergency Management Agency (FEMA) officials directed households affected by the disaster to SBA for loans. Some of these households told the media that they did not understand that the SBA loans prevented them from later obtaining CDBG-DR grants and left them with loan payments that their neighbors did not have. OIG believes CPD's July 25th guidance created the lack of clarity and recommends that HUD develop guidance that helps the public understand its options for assistance between CDBG-DR and SBA and how to comply with Federal requirements.

Comment 5

CPD disagrees that the July 25th guidance created confusion and resulted in households affected by the disaster was not aware of the option to receive grants instead of loans. FEMA directed homeowners to consider applying for SBA loans because the loans were immediately available at the time of the disaster. Unlike FEMA and SBA disaster recovery programs, the CDBG-DR program is funded by Congress through supplemental appropriations. Immediately after the disaster, homeowners did not have the option to seek CDBG-DR assistance in lieu of SBA loans because Congress had not yet appropriated emergency supplemental funding for the program to address the disaster. More importantly, at the time of the disaster, there was no guarantee that Congress would in fact appropriate supplemental CDBG-DR funding, no guarantee that the CDBG-DR appropriation will be allocated to a State or local government entity, no guarantee that a homeowner would be eligible or selected for a housing recovery program if it is offered, and no guarantee that a homeowner would be eligible to receive enough assistance to address the homeowner's unmet needs. Moreover, even after HUD allocated the CDBG-DR funds made available by Public Law 113-2, several months passed before the grantees had developed their programs (which could have included a mix of grant and loan programs) and set guidelines for program eligibility. During this period of program development, it would have been impossible to accurately advise the public regarding available CDBG-DR assistance options.

Comment 6
Comment 7

Finally, the OIG's statement that \$1.2 billion in CDBG-DR grants to households who otherwise might have qualified for SBA loans is not supported. The OIG did not conduct an analysis of whether any households were denied CDBG-DR assistance because the grantee did not have sufficient CDBG-DR funds. When CPD asked for clarification regarding the OIG's conclusion, the OIG indicated that because there were households who were above moderate-income that received CDBG-DR assistance, that indicates funds were not available to low- and moderate-income households. As described in the *Federal Register* Notice on duplication of benefits, households who do not receive a CDBG-DR award equal to 100 percent of their unmet need may already receive assistance from other resources and the grantee is prohibited from exceeding the household's remaining unmet need to avoid a duplication of benefits. Some grantees also establish a maximum CDBG-DR award for their program and households who have unmet needs greater than the maximum award amount would not be fully funded. The OIG also did not consult with SBA concerning the potential eligibility for any of these households to receive SBA funds. Finally, there are households who are above moderate-income who are not eligible for SBA loans; CDBG-DR funds are available to assist those households too.

Comment 8
Comment 7

**Ref to OIG
Evaluation**

Auditee Comments

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If you would like to discuss these matters, please do not hesitate to contact Tennille Parker,
Director, Disaster Recovery and Special Issues Division, at (202) 402-4649

OIG Evaluation of Auditee Comments

- Comment 1 CPD agreed that additional training regarding the departmental clearance process is helpful and strengthens internal controls. However, although CPD committed to considering improvements to the guidance, it did not commit to circulating the guidance to other offices for comment. Submitting directives through departmental clearance is necessary because the public and other branches of government see directives as reflecting HUD's views and positions, not just those of the program office issuing them. Further, the departmental clearance process helps ensure that the information presented is approved by HUD leadership and does not conflict with existing HUD policies. Circulating the July 25, 2013, guidance will provide the appropriate HUD offices the opportunity to review it and document their positions on it. We will work with HUD during the audit resolution process to reach a management decision that adequately addresses our finding and recommendations.
- Comment 2 CPD circulated the July 25, 2013, guidance to the Office of General Counsel, which is only one of the six offices required by section D-2.4 of the Directives Handbook discussed in our finding. An office must clear its directives in accordance with the Handbook unless it receives a waiver from the Office of Administration.
- Comment 3 We disagree with CPD's opinion and believe the July 25, 2013, guidance contradicts the earlier Federal Register notice. As CPD points out, the Federal Register notice states that CDBG-DR funds are intended to supplement rather than supplant SBA assistance. The July 25, 2013, guidance, however, lets disaster victims decline SBA assistance and opt for CDBG-DR grants instead if those grants pass a subjective test of "reasonable and necessary." The guidance also states that victims are not required to apply for SBA loans to receive CDBG-DR grants. CPD views this guidance as clarification of the earlier Federal Register notice, but the public could see the victims in this example as effectively using CDBG-DR funds to supplant the SBA assistance that was available, which would contradict the notice.
- Comment 4 The July 25, 2013, guidance suggests that households may choose CDBG-DR grants instead of SBA loans by either declining any SBA assistance offered to them or not applying for SBA assistance altogether. The earlier Federal Register notice states that CDBG-DR funds are "intended to supplement rather than supplant SBA assistance." The public could interpret giving households this choice to mean that CPD lets households supplant SBA loans with CDBG-DR grants. Our report does not conclude that this practice violates program rules but, simply, that it conflicts with the earlier Federal Register notice.
- Comment 5 We understand that a certain amount of uncertainty is inherent in disaster recovery efforts, considering how CDBG-DR funds are appropriated and allocated. The conflicting guidance, however, provides households with even

more uncertainty regarding exactly what recovery options are available to them should any CDBG-DR funding become available. We agree with CPD that nobody can guarantee disaster victims that they will receive sufficient CDBG-DR funds to cover their unmet needs, but issuing guidance that contradicts itself makes the victims' options even more confusing.

Comment 6 We did not determine whether any CPD grantees were unable to fund additional households due to a lack of CDBG-DR funds. However, if more CDBG-DR applicants had instead opted for SBA loans, additional CDBG-DR funds would have been available for other unmet needs. If there were no additional, qualified disaster victims to assist with these funds, these taxpayer resources could have been returned to the Treasury.

Comment 7 The \$1.2 billion shows how much of the grant funds was potentially affected by the contradictory guidance. It is an estimate of the CDBG-DR funding that went to households who might have qualified for SBA loans as well but followed the July 25, 2013, guidance and chose to instead take CDBG-DR funds.

We estimated this figure by adding up the CDBG-DR grant awards made to applicants above the moderate-income level who did not have secured SBA loans. Not all moderate-income households qualify for SBA loans, and, likewise, some households at lower income levels may have qualified for SBA loans. However, we focused on the households above the moderate-income level since they are most likely to qualify for SBA financing.

Comment 8 We did not evaluate whether specific households applied for or would have qualified for SBA assistance. We did not have access to all of the information necessary to determine whether households would have qualified for SBA loans. Therefore, we did not present this figure as funds wasted. Instead, this figure estimates how much of the grant funds was potentially affected by the contradictory guidance.

Appendix B

Criteria

HUD Handbook 000.2, REV-3, HUD Directives System, defines HUD's process for issuing directives. The Handbook states that it is necessary to clear directives within HUD to ensure coordination with existing policy, compliance with other HUD or Federal actions, and consistency with Administration positions. The directives handbook states:

- Minimum required reviewing offices for departmental clearance include Office of General Counsel (OGC), Office of Chief Financial Officer (OCFO), Office of Chief Information Officer (OCIO), Office of Inspector General (OIG), Policy Development & Research (PD&R), Office of Chief Human Capital Officer (OCHCO), and additional HUD offices based on the subject matter of the directive.
- OCHCO (or Office of Administration as a designee) holds lead responsibility for oversight of the HUD directives management system, including compliance with the handbook and exceptions thereto.
- Provisions of the handbook (including departmental clearance) must be addressed unless a prior waiver is granted by OCHCO (or Office of Administration as a designee).
- An originating office does not assume an official response by a reviewing office lacking an executed [form] HUD-22.
- Departmental clearance must be undertaken for directives that are intended to be issued or posted in draft for public comment before issuance in final form.
- What constitutes a directive is not necessarily the title of a specific type of communication, but the content.
- Clearance is required for documents that must be approved under the Paperwork Reduction Act.
- Directives can include:
 - Public communications (including announcements, restatements or interpretations) that, for the first time, relay guidance to program participants or regulated parties beyond merely explaining provisions of existing HUD policy or requirements in statutes and regulations.
 - Frequently asked questions (FAQs) and their corresponding answers that convey legal or policy interpretations for the first time.
 - Notices that give instructions or guidance about aspects of HUD programs that generally supplement statutes or regulations (without imposing new, binding requirements, unless authorized by statute or regulation).
 - Internal communications that impact another HUD office or its programs.
 - Internal guidance that impacts outside interests.
 - Internal directions or instructions to HUD employees (protocols) regarding how to implement certain activities.

- When forms are being substantially revised, but not necessarily relate to a directive, the program office should use the directive process to announce substantive changes to forms.
- Federal agencies are required to adequately document, in appropriate directives, their policies and procedures, and for such directives to be maintained by the appropriate agency directives management officers.
- The HUD Directives Handbook is designed to ensure that:
 - Officials and employees administering HUD programs have accurate, complete, and concise instructions on procedures for communicating program policies, whether communicated to the public or internally;
 - HUD constituents have clear, instructive, and helpful information to comply with the applicable requirements and procedures for HUD programs;
 - The content, organization, and format of directives allows for information to be easily located, understood, and used;
 - Directives are kept current, include accurate information essential to program delivery, and are canceled when no longer useful;
 - Directives do not contradict other HUD policies or serve cross-purposes that could confuse the user's ability to comply with federal requirements;
 - HUD directives are developed, cleared, and issued in accordance with all applicable legal authorities and in accordance with this handbook; and
 - HUD directives meet the requirements of the Plain Writing Act of 2010.

HUD's July 25, 2013, Guidance on Duplication of Benefits on Declined SBA Loans

Grantees have recently asked whether they may 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.

HUD encourages but does not require applicants (such as 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. Grantees may assist households and businesses that have declined SBA loans but must analyze the circumstances under which the assistance was declined and show why providing CDBG-DR funds is necessary and reasonable.

Federal Register 76 FR 71060, November 16, 2011, Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees

Grantees have requested clarification from HUD regarding the duplication of benefits. This notice provides information to ensure that all active CDBG-DR grantees comply with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. (United States Code)

5121-5207), as amended, and all future CDBG-DR grantees address duplication of benefits issues consistently. This notice was also developed in consultation with SBA and FEMA.

CDBG-DR funds should not be used to pay down an SBA home or business loan. SBA loans are among the Federal Government's primary and standard forms of disaster assistance. As disaster recovery CDBG funds are provided by Congress through supplemental appropriations only in extraordinary circumstances, these funds are intended to supplement rather than supplant SBA assistance. Grantees may, on rare occasion and in extraordinary circumstances, contend that the payment of SBA loans with CDBG-DR funds for a beneficiary is justified in keeping with all associate laws and regulations.

Since CDBG-DR provides long-term recovery assistance via supplemental congressional appropriations and falls lower in the hierarchy of delivery than FEMA or SBA assistance, it is intended to supplement rather than supplant these sources of assistance. If CDBG-DR funds or non-Federal funds were provided last and unknowingly create a duplication, the method of recapturing the CDBG funds and the timeframe are the responsibility of the grantee. HUD has no set guidelines or regulations for this process.