

## **Duplication of Benefits, 6/26/19**

### **Duplication of Benefits Webinar - 2019**

Jen Carpenter: So we're going to do a deep dive into those notices, go over some basics on duplication of benefits and then we're going to try really hard to get through all our slides so we can open it up to questions at the end.

So just some introductions. My name is Jen Carpenter. I'm the head of the Disaster Recovery and Special Issues division's policy team. So I work with that team and was part of, I helped writing this notice. I wanted to thank the -- I'm coming to you from the West Virginia Community Advancement and Development Office, so thanks to generous staff for letting me use an empty office while I'm here to help give this webinar.

I also want to introduce Carey Whitehead. She is in D.C. at our headquarters. She is in the HUD's Office of the General Counsel. She's our general adviser and helped with this notice, so her and I will be tackling this webinar together today.

Before I move on to the slides, I want to just remind folks on this webinar if you are a current CDBG-DR grantee or if you are one of our recently announced CDBG-DR grantees, then we want to encourage you to attend our problem solving clinic in Kansas City on July 29th and you can register for that on the HUD exchange.

And we'll be talking about duplication of benefits at the clinic and I just want to encourage all our grantees. It's just for grantees, but I want to encourage them to register if you haven't already because we'll have a lot more time at the clinic to answer any questions that we didn't get to today.

All right. So today we are, our session objectives. We're hoping to learn tools to spot and resolve duplication of benefits, in particular duplication of benefits related to loan assistance. We're hoping folks will gain a familiarity with the structure and contents of the two revised notices we published. And then provide you with an opportunity to submit questions about the notice if we have time (to fly ?).

So here's just kind of a layout of what we're going to hit today. We're going to do some basic what is a duplication of benefits. We're going to review legislation that has been passed which prompted our publishing of the new notices. We'll do a deep dive into each one and then we're going to go through at least one example if not more if we have time just because we think that's always the best way to learn, to talk about real world experiences and then we'll take questions.

So let's start at the beginning. I know most of you probably, this isn't the first time you've heard of a DOB, but we just want to make sure that we're all starting at the same place and just start at the beginning.

So what is a duplication? A duplication occurs when a person or entity receives facts or assistance from multiple sources for the same recovery purpose and that total assistance received for that purpose is more than the total need. That's basically what a duplication is. As I said, recovery assistance can come from many sources, so it's about tracking all those sources and what the purpose of those funds are for. And it's really just at the end of the day making sure we're all being responsible with taxpayer funds and applicants aren't given a windfall of federal funds.

This is to keep us going. You know, who are we talking about? We're not just talking about individuals, right? We're talking about businesses. We're talking about governments. We're talking about any entities that could be a direct recipient of federal dollars.

And we did just like a small little basic math, just to show you what we're talking about when we're saying duplication. So in this example, you all can read it and this is about as basic as you can get. We'll do more complicated examples later, but in this case Mr. Brown's damage, Mr. Brown's home was damaged by a tornado.

His estimated cost of rehabilitation is \$100,000. He actually receives \$150,000 because initially Mr. Brown received \$25,000 from insurance, \$25,000 from FEMA and then an additional \$100,000 from CDBG-DR. So in this very basic example, the duplication of benefits is the last \$50,000 he got from DR funds.

And bonus points if you know why the last \$50,000. If you know the answer to this, you can give yourself a pat on the back and it is just based on order of assistance, right? The requirement that we have and that Carey will hit later in the presentation, that CDBG-DR funds may not be used for activities that are otherwise reimbursable by funds that are made available from FEMA or the Army Corps. All right. So that is a very basic idea of what duplication of benefits is.

Now we're going to walk through the statutory changes since we're adding these new notices and we want to explain. So this is a slide that just explains before these laws came out, what were grantees using? And it's Section 312 of a Stafford Act. And then our CDBG-DR Appropriations Acts, they all require that DR grantees present the DOB when they're administering grants.

We had thorough register notices governing the use of the awards and they also imposed DOB requirements on grantees. It also has the necessary cost principles and the uniform administrative requirements, cost principles and audit requirements for federal awards and subpart E of 2 CFR part 200. We call these cost principles.

They've been really -- prohibit grantees from charging to a grant a cost paid by another source. Of course, some of that reimbursement is permitted. So this is what previously our grantees were using to give them the rules and requirements to run DOB and this is changing for some grantees because of the laws that have passed.

So this is one of the laws that were passed. So on February 9, 2019, Public Law 155-123. Basically, I'll let you read the slide. This is directly from the law, but it basically says a declined loan is no longer a duplication of benefits and grantees should not be reducing assistance,

reducing the assistance available to an applicant because of a declined loan amount. So what does this mean for you guys?

Let's talk about the definitions because I think that's important and in our previous guidance we laid some of this out, but maybe it wasn't always clear to everyone so we want to make sure we're all starting again from the same place.

So what's a declined loan? A declined loan means that an applicant was applied for the loan, was approved for the loan but never signed the loan documents. So they could have gotten the loan. They were approved. The lender told them they were approved, but they turned it down, did not sign the loan documents.

So in this case we're not talking about folks who did sign a loan agreement but then just didn't draw on the money. Once you sign the loan agreements, it's no longer a declined loan. It's going to need a different definition. So in our case, declined loan means an applicant never signed the loan agreement.

Okay. So this law as you saw from the previous slide is really specific to specific disasters, right? So in that case, it was for the law specifically said 2014 to 2017 disasters, so that means the disasters between 2011 and 2013 are not covered by that new law and also not covered by our new notice. So if you have grants from those years, you want to just keep going with status quo. Use the guidance that has the 2011 notice and the guidance that already exists.

All right. Disasters after 2014. What does this mean for you? Well, it means that again, what have we said? Declined loans are no longer a duplication of benefits. If you have coming from a disaster in 2014, '15, '16 and '17, we noted here we don't actually have any CDBG-DR awards for 2014 disasters which is why a lot of times you'll see it's just referring to 2015 and on and that's just because we didn't have 2014 awarding.

The 2019 DOB notice, the one we're going to deep dive in today, poses this requirement for declined loans on all disasters occurring between 2015 and 2021. So Carey's going to talk about the, she's going to do the deep dive for the DOB notice and you'll see that when we're talking about that, it's this sort of restricted timeframe for disasters 2015 to 2021. That's what our DOB notice covers. And so, even though the law on declined loans only references 2014 to 2017, we do impose that same requirement in our notice on future grantees up to 2021.

Again, it says that grantees shall not treat declined loans as a DOB or consider declined loans in its DOB analysis. We do just want to note it doesn't prohibit you from considering declined loans for other reasons such as underwriting state senior policies to do that, but it cannot be a DOB. And on this one, I want to make clear based on the wording of the law this is not optional, right, so grantees can't choose whether or not they want to include declined loans are not. Declined loans are not a DOB and so that's what the law says and so our grantees should follow that.

And that means that you will probably, in most cases grantees will need to update their policies and procedures accordingly. If you were following the previous guidance, there was an essay on legal determination you needed to do first. So that might just be something where when you

update your policies and procedures you no longer have to do that extra analysis that the guidance walks you through because this law has said nope, it's not a DOB and we're going to just leave it at that.

Also, just a note here. That also means that for the 2015 to 2021 disasters that HUD guidance on declined loans no longer applies to you. Just to make that crystal clear, declined loans are not a DOB and you don't need to use the HUD guidance anymore because that has been replaced. If you had a grant before 2014, as I mentioned that is still in place, so hopefully that's a clear distinction for everyone.

All right. This is language from -- I'm going to say DRRA. We can talk about internally that that's the way to say this acronym, but I just say DRRA. So this is the language from the law. Everyone can read it. I won't read it to you, but I think probably the most important thing we want to know is what does this mean?

Our lawyers reviewed and they basically just determined it wasn't really clear whether the president's waiver authority applied to loans because there's if you read this it talks, and I'll cover it on the next page. It talks about that the president has the ability to waive duplication of benefits and HUD also determined that it wasn't delegated authority to grant this waiver, right, because it's saying the president has the authority. So basically, HUD decided let's wait and see what FEMA says, what their interpretation guidance says on this law.

The next page is a very brief summary of FEMA's guidance. There's a link at the bottom of these slides. You can also just google it if you want to read FEMA's guidance entirely. I would recommend you do that. So we looked to FEMA on their legal interpretation since they administer the Stafford Act and basically they said all right. The law allows the president to waive duplication of benefits at the request of a governor and it's that factor the president can consider when doing that. It has some exclusions.

Basically, this is we see a very, very rare case. Carey and I earlier were trying to think of examples, like what could we possibly think of that would go all the way up to the president to ask the president to waive a duplication of benefits? So we see this as being really, really, really rare.

I think if folks have scenarios in their mind that they want to talk through, we could certainly do that, but you know, we just see this as being a rare thing to bring the president. Obviously, the governor calling the president to ask for this would be something pretty significant. However, they did say that whatever process doesn't apply to loans and that based on the law, the loans are not a duplication of benefits for the years covered.

So again, that's one thing that can get a little confusing. The DRRA law specifically calls out 2016 to '21 disasters, so it's all a little bit of a challenge for HUD and for our grantees to really work this out. But in this case, what we're talking about, you'll hear us say a lot about DRRA exceptions. We are talking about 2016 to '21 disasters.

So there are parts of the DOB notice that apply to 2015 disasters and there are parts of the DOB notice that apply to only 2016 to 2021. We'll try to make that really clear as we walk through this, but in this case, loans not being a duplication if they're used for a disaster-related purpose is really for 2016 to 2021 disasters.

Also, our lawyers determined the FEMA guidance said that the law doesn't automatically require use of federal grant funds to repay loans. It really depends on grant program requirements and that was all in FEMA's summary.

So moving into the deep dive, we're doing good on time. We just kind of wanted to talk about the structure of the notice. Let's just give you an idea of the way we set up the notice to make it pretty clear. Hopefully it's clear. And so, we just wanted to go over this. This is kind of how we set up our presentation today as well. So that's the structure of the 2019 notice.

And then the applicability notice or the implementing notice, however you want to refer to it. And that notice I think folks are probably really focused on that, the DOB notice because that's really where the meat of this is.

But I want to encourage grantees make sure you're reading the implementing notice as well, the shorter document. You really want to read them together because that applicability notice, implementation notice makes sure that you know which rules apply to you and makes conforming amendments to our reimbursement notice and that will come in later in the presentation and includes waivers that'll turn into requirements that are important to grantees.

And they've got a registered notice governing future grants will include this similar kind of language making sure that their grantees are using the 2019 DOB on this. So we really wanted the DOB notice to be the meat of it and then all this stuff sort of from a bureaucratic perspective that we have to do, that's really in the implementation of this.

All right. Well, we do want to talk about it, your grants. We have to. So what's in that notice? We're going to break it down a little bit further. So it adds some waivers and alternative requirements that's including contents of an action plan, a waiver for payments of outstanding interest for eligible activities. So this is a big one and Carey will talk about this when we're talking about reimbursing cost paid by SBA loans.

But in order to pay any outstanding interest on an SBA loan, we needed to provide a waiver because that is not an eligible activity in CDBG-DR. So we're not talking about paying interest that applicants have paid in the past on SBA loans. We're talking about if you have interest due at the time that the grantee reimburses cost paid by an SBA loan, then you can include that payment. That is spelled out in the implementation notice, that waiver, so I would take a look at it.

And then also, there's some reporting requirements in the new DOB notice that we included for this since it's an alternate requirement. We're going to need some information from our grantees so that we can report to our federal partners basically what's happened, you know. We have

allowed reimbursing costs that were paid by SBA loans and what does that mean for our programs and so we have to report in additional reporting requirements there.

Again, key provisions, things we just wanted to talk about. Again, this notice supersedes the declined loans memorandum that we had before. We discussed that. We're talking about disasters that for DRRA, we're just talking about those 2016 and 2017 disasters. That does not include 2015, so if we're talking about DRRA, if you hear that term then we're not talking about 2015 grantees.

So just really if you hear, if you have a 2015 grantee, if you have a 2015 grant, you really just want to make sure you're listening and hearing the difference that we're making. For 2015, we're not included in that law, in the DRRA law.

Also, the implementation notice amends standards for the secretary certification of your DOB policies and procedures. So when you're prior to receiving your grant agreement, HUD certified about your DOB procedures and policies. Well now you're to have, most likely you're going to have to change those policies and procedures and so HUD wants to update that certification and make sure you're including any required provisions or if you've decided to use some optimal, some of the optional provisions, your policies and procedures match that.

And then for this, we've also made some changes to our reimbursement notice. If you are deciding, if you are a DRRA disaster and you are deciding to reimburse costs paid by SBA loans, we made some changes to our reimbursement notice to make sure that it made sense for grantees. And I'm going to try to get this right and Carey, feel free to chime in if I get something wrong.

But basically, if you have not done an environmental, if you decide to use the optional reimbursing cost paid by SBA loans and you have not done an environmental review on that property and the person has already applied to your program, then instead of having stop work application, you will now have stop work on what date you submit your action plan amendment with those changes in it.

So before, we've already said stop work occurs the date of application. Well, in this case, you might have folks who already applied and they didn't know. None of us knew what the time you could reimburse costs paid by SBA loans. So now their coming and wanting that opportunity. You've decided to give it to them based on their requirements in the notice. And so now, when you submit your action plan, your substantial action plan amendment to include that, that's when the stop work order needs to happen. So feel free to ask questions on that for the end of the webinar.

We only have so much time, so I'm going to kind of run through this and then hand it over to Carey. But again, this is us just trying to sort these dates out, just so grantees feel clear. Declined loans, that policy applies to 2015 to '21 grantees. That is not optional. Declined loans are not a duplication of benefits. But there are terms from the DOB notice that apply to 2015 to '21 grantees and there are also other provisions that apply to 2016 to '21 grantees. So just Carey's going to do the deep dive in that section and we'll let you know as she goes over it which ones apply to which.

These are some things to note on the, we're not talking about declined loan now. We're talking about the new policies in the 2019 notice. Those are really for grantees can choose. They can choose to just apply those to new activities or it's up to them. If you have activities in an approved action plan, we don't expect you to switch course right away on these new policies if you choose not to.

But if you add new activities to your action plan through a substantial action plan amendment, then those activities need to apply these new policies if you choose to accept them.

All right. I'm going to turn it over to Carey now and she's going to do a deeper dive into the DOB notice.

Carey Whitehead: Great. Thank you, Jen. I really appreciate it. Can everybody hear me okay? I think so.

All right. So I am going to just deep dive into the 2019 duplication of benefits main notice. So this is the one that will apply as Jen said to all grantees who have grants for disasters declared between January 1st, 2015 and December 31st, 2021. It just is an introductory matter.

The notice goes over they why of duplication of benefits and I think it's just a couple of things to call out. When HUD was developing the policies that are reflected in this notice, I consulted with FEMA and the SBA and we did that because we have a federal partnership with these other agencies.

And FEMA in particular plays a really important role in helping to ensure uniformity across the federal government when it comes to implementing DOB policies. HUD also considered a lot of fiscal and policy considerations that were new to us and they were presented by the requests that came in from grantees to reimburse costs paid with SBA loans after the DRRA passed.

And so this, in thinking through these policy considerations, try to keep in mind that CDBG-DR funds are really for long-term disaster recovery under Title I of the Housing and Community Development Act of 1974. And the primary development object, primary objective of Title I is the development of viable communities through housing and economic development, principally for persons of low and moderate income.

And so, the policies that are in this notice were developed primarily so that when it comes to reimbursement of costs paid with SBA loans or other subsidized loans. Those activities are not going to detract from the primary objective of Title I and the importance of preserving benefits for persons of low and moderate income.

So those individuals, persons often don't qualify for SBA loan assistance and we really want to make sure that there is sufficient funding available to help those folks because when HUD is calculating the amount of grant funds it's going to allocate to each grantee, HUD is heavily relying on a calculation of severe end housing needs that basically is calculated after taking into account assistance provided after SBA.

So you know, if now funds are going to be diverted to reimburse costs paid by SBA, there is a real question without precautions that there could be a harm to (inaudible) persons. So you will see those policies reflected in the notice.

All right. With that out of the way, I'm going to start with just a complicated thing right off the bat. There are a lot of dates going on here and you'll notice in the provisions that Jen read, the declined loans provisions talks about declared disasters. The DRRA talks about disasters occurring in certain years. So you know, there's just a lot of dates to keep track of.

The big thing that we want you to take away from this discussion that you can't read in the notice is that the 2023 date is the sunset date for the DRRA and that sunset date is statutory. It basically says after five years from enactment of the DRRA, the carriage turns into a pumpkin and the exception no longer applies. Loans are a DOB again. So if you -- I just threw in an example here.

If you have a business that received an SBA loan in May 2021 following a March 2021 tornado, the loan is not a DOB for a while. But then if you haven't taken care of all reimbursements and all assistance before October 5th, 2023, which is five years from the date the DRRA was enacted, after that date the DRRA sunsets and the loan is a DOB. So just want to flag that for you right up front because we have already gotten some questions about the significance of 2023.

Moving on, we are just going to cover a summary of what's in the notice. We'll dig in from time to time, but the big thing to remember is that this notice doesn't rely on really any new authority. So Jen pointed out the authorities that have been in place for a long time. We did have in 2013 after the publication of the 2011 duplication of benefits notice a trend towards including a certification requirement for the secretary in appropriation facts.

And the secretary shall certify before it makes grants that grantees have adequate procedures to prevent DOB. So that's the only new thing here. We also do a better job of calling out the order of assistance provisions that come into play in CDBG-DR appropriations and we can talk a little bit about those later on.

For OMB cost principles, the big thing to remember here is just that since the 2011 notice, we've moved to part 200 from 2 CFR part 225. What is necessary? I mean, you're really just looking at is it a permissible recovery purpose? Is it eligible? And reasonable is not a bright line test but part 200 does lay out some pretty clear factors. These factors apply to all grantees. They're found in the cost principles at 2 CFR 200.404. They apply to state grantees through 24 CFR 570.489 and to local governments through 24 CFR 570.502, so every grantee has to follow these.

Now moving to just a basic duplication of benefits framework, the notice walks through that the same way that it did in the 2011 notice, but there are some changes and the changes are really highlighted by the box in green here. So those B and C items are going to look a little bit different than they did in the 2011 notice.

We did this change really to stay true to the definition of total assistance. It makes sense to eliminate or dismiss resources that are not assistance and that are not available before total



assistance is even calculated. And that way, total assistance is a true reflection of potential DOB and it's reduced by the amount of assistance that is not a DOB. So that's pretty straightforward, but we will dig into the changes as we move through each one.

So slide, this slide is about assessing applicant needs, step one, right? So this is about assessing total need and total need is the current need. We're going to come back to this several times during this presentation. Current need really has two components. One, the cost to complete the activity and two, the cost to reimburse if the grantee's program permits reimbursement.

So if you're talking about construction activities like rehab, that's the concurrent construction cost estimate. It's pretty easy to identify and it can include the cost to replace work that was previously completed but is not up to code or the grantee determines it has to be replaced for a variety of reasons like mold, lead remediation, inadequate workmanship. But the grantee's construction cost estimate at its base needs to include all the work that the grantee determines has to be done at that point in time based on what the grantee determines is eligible, meets the disaster recovery need and that is necessary and reasonable.

Now let's contrast activities that don't involve physical rebuilding like economic development activity for example to provide working capital. The grantee has to come up with a little bit of a different means of calculating total need in these scenarios and that calculation of total need is going to be based on the parameters of the activities that the grantee is undertaking. So just remember in this case, in some cases CDBG-DR grants require grantees to comply with underwriting guidelines and that can come into play when calculating total need.

The other thing that comes into play when calculating total need are in-kind donations. When a grantee gets materials or services that the grantee is aware of at the time it's calculating need, these non-cash contributions, like for example donated construction equipment or donated building materials are, they're not financial assistance but they do reduce the total need available.

So for this notice, total assistance includes all reasonably identifiable financial assistance available to an applicant and we really look at two considerations. One, in the notice we talk about the types of resources that are included in total assistance.

So for types of resources that are included, we're talking about cash awards, insurance proceeds, your typical FEMA grants, subsidized loans that are available to each DR applicant. And then at a minimum, we want grantees -- or at least direct grantees -- to determine whether the applicant receives FEMA, SBA insurance and any other major form of assistance like a state disaster assistance program that the grantee is aware of.

But total assistance does not include personal assets like a checking or savings account and it does not include private loans and the notice does make clear that forgivable loans are not private loans. They are treated as subsidized loans and we'll get to that a little bit later. By contrast, subsidized loans are assistance and they are included in the DOB calculation unless an exception applies and the notice does get into exceptions.

The notice also talks about the availability of resources that are included in total assistance. So assistance, when is assistance available? It is available if the applicant would have received it by acting in a reasonable manner and it is available if the applicant has received the assistance and has legal control over it.

Available assistance hasn't changed much in that regard from the 2011 notice. It includes reasonably anticipated assistance that's been awarded and accepted but has not yet been received. This is really common for example in FEMA's hazard mitigation program or other grant programs that similarly provide money in increments and they only fund increments as each project's milestones are met. So in those scenarios, you should be including all of the full total amount of the award. It's all available even though it's not received.

The other thing to note here is that it's the assistance is awarded to the applicant, but it's administered by the other party like a subrecipient or a contractor. It's still considered available, but it's not available if the applicant does not have legal control of the funds when they are received, so the forced mortgage payoff policy hasn't changed. We have tried to address some grantee questions related to legal control. So for example, funds awarded to an individual who has passed away since or funds awarded to someone other than the applicant and the notice goes into those details.

So the next step is a little bit shorter because we've already taken care of two items that used to be under non-duplicative exclusions and now we've moved those considerations to total assistance. So now, the exclusions from non-duplicative amounts are really just two scenarios, funds for a different purpose and funds for the same purpose but a different allowable use.

So funds for a different allowable use is, that's slightly different terminology. We'll dig into it. Funds for a different purpose, it's pretty much the same. If we're talking about a completely different purpose, for example, you're providing assistance to a business for working capital for economic recovery, but the business also received insurance proceeds for rebuilding the building, the insurance proceeds for rebuilding the building are not going to be part of working capitals.

So you can exclude them as funds for a different purpose. And on the other hand, you really have to look at -- when you're talking about insurance, if you're talking about insurance that is provided for loss of the structure, that is going to duplicate and is considered for the same purpose as funds provided for construction or rehab.

The funds for the same purpose, different allowable use, we're really just breaking it down and talking about cost in this scenario. So it's a different allowable cost. That's what we mean by different allowable use. So if the grantee is considering what might be a different allowable use and has some questions, this is where we really think call your CPD rep if you have some questions. But we've tried to provide some examples in the notice to help you along the way.

So one of the things that we're limited to is that HUD cannot change allowable uses that are for other grant sources. So for example, if FEMA allows use of funds for rehab and interim housing and a grantee uses those funds to replace a car, HUD cannot adopt a policy that says, oh yeah, replacing a car is an allowable use of FEMA funds. The grantor that makes that assistance

available will set and determine the allowable use of that assistance. And so, grantees have to look to the source of the funds to determine the allowable use.

And, but that said, if the grantee determines that work needs to be, the total need has expanded, funds for the same purpose are not going to cause a duplication if they were used for their allowable purpose. So to give you an example, let's talk about rapid repairs or STEP program funds.

When grantees are working in a, before they get their CDBG-DR assistance, oftentimes they're receiving funds from FEMA or other sources to get programs off the ground to provide temporary stabilization of housing or rapid repairs to housing. And they are allowing funds to be used for very minor repairs or in some cases temporary repairs that are may need to be cleaned up in the future or replaced in the future. But they might allow someone to live in and shelter in place for a period until the home can be permanently rehabilitated.

So the grantee's examination should be were all the funds provided for that purpose by FEMA for a STEP program or Rapid Re-Housing, were they used for the purpose that they were provided? And if they were, then they were used for a different allowable use and the grantee's job at that point is to decide is there need beyond the work that was already completed? And so, the grantee has to make a decision when it's calculating total need about what work needs to be replaced. And that is a bit of a change from the 2011 notice and if grantees have questions about that, I can certainly try to answer them going forward.

So the rest of the DOB calculation pretty much looks the same. So for example, identifying the duplication of benefit amount and calculating the total CDBG award. Once you know your total assistance and you know what your exclusions are, you calculate total DOB by subtracting exclusions from total assistance. And then your maximum amount of the CDBG-DR award is total need minus your duplicative amount.

And the other thing that really hasn't changed much from the last notice is this concept of reassessing need as necessary. So if halfway through the project or even after the activity is completed or is near completion, a grantee gets additional assistance that might be a duplication of benefit or has some intervening disaster that might occur, the grantee can reassess unmet need to decide whether total need has increased before determining whether the new assistance that's received requires recapture because it's a duplication. And that is pretty much the same as the previous notice.

So the new notice also calls out some special considerations. The notice talks a lot about housing examples because it is the example where duplication of benefits comes up most commonly.

But there are some pretty clear examples of other situations that we've called out in the notice just to make clear that the principles apply for every activity and for every user of CDBG-DR assistance. So there's an example related to infrastructure, an example related to the Uniform Relocation Assistance and Real Property Acquisition Act or URA and an example related to economic revitalization programs.

And quickly, we'll spend a lot of time talking about subsidized loans and we'll quickly just give over the order of assistance and multiple disasters, which are other special considerations. So where special considerations are related to subsidized loans. Subsidized loans of course are assistance.

They are included in total assistance and their duplication and lesson exception applies. Subsidized loans are basically loans other than private loans. They include forgivable loans and they may be available from a variety of sources but most commonly, grantees are asking about SBA loans when they're talking about subsidized loans. But there are other sources, for example, state loan programs that make funds available.

So let's talk about the exceptions where subsidized loans are not a duplication. There are three. First one is pretty straightforward. For a long time, CDBG-DR grantees have been able to carry out activities going back to the date of the disaster and so long as they're complying with all of the CDBG-DR requirements, they can reimburse themselves once they get their CDBG-DR grant.

But some grantees might have to take out a subsidized loan in order to carry out an activity if they don't have cash available. So for example, a low-interest loan from a local tax increment financing fund. When CDBG-DR funds are used to reimburse the cost paid by the short-term loan, the loan does not create a duplication and that's been an exception that we've talked about with grantees previously. Nothing new here.

Declined or canceled loans is new and this section is intended to normalize or sort of standardize as much as possible between 2015 disasters and 2016 through 2021 disasters that are subject to the DRRRA. You know, the intent with the declined loans provision was really that declined loans should not be considered in a duplication of benefits analysis.

So HUD developed a policy that applies to all grantees, but I think in most cases, if you are a grantee that has a grant for a 2016 through 2021 disaster, you're going to rely on that third exception for DRRRA. You're not going to rely on the declined or canceled subsidized loans, but the declined or canceled subsidized loan section is there to give as much consistency for 2015 disasters as we can.

So for declined loans, it's very clear it applies to all grantees from 2014, 2015, 2016 and 2017 the provision that was in public law 115-123 that Jen read to you earlier. But we think that even without that language, the declined loan policy that's in this notice can apply even going forward to 2021. And so at its heart, declined loan amounts are not a duplication. The notice is very clear about that.

And a grantee is only required to document declined loans if there's information, if all of the information available to the grantee, for example the data streams the grantee is receiving from FEMA and SBA or any other source, is unclear and the grantee is unable to determine from the available information that the applicant declined the loan. And if the grantee can't determine from that information, those data feeds, that the applicant declined the loan, then the grantee

must obtain a written certification from the applicant that the applicant did not accept the subsidized loan. So that one's pretty straightforward.

Canceled loans is a bit more complicated because canceled loans are limited. They are the loans or portions of loans that were initially accepted, but for a variety of reasons were not disbursed and the key is they are no longer available to the applicant. So they, there may be a variety of reasons, but they're no longer available to the applicant. For example, the expiration of the term for which the loan was available for disbursement and SBA for example has a period after which it will no longer disburse loans and that may be a reason that a loan is cancelled.

So the notice talks through some documentation that a grantee can use to show that a loan amount is cancelled. It was not disbursed and it's therefore no longer available and not a duplication.

So the notice is pretty straightforward but the documentation is a written, either a written communication from the lender that the loan is cancelled or a legally binding agreement between the grantee and the applicant that indicates that the period of availability is past and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts.

So the big thing to note is that for cancelled SBA loans, the grantee must notify the SBA that the applicant has agreed not to take any actions to reinstate that cancelled loan or to draw any additional undisbursed loan amounts.

So moving from declined or canceled loans into the DRRA exception, now we're about to get complicated and I know that there are three exceptions that were already complicated. Not that it's that complicated. It's just that there are a lot of steps. So let's break down the DRRA exception into two parts, disbursed loan amounts and undisbursed loan amounts.

So disbursed loan amounts are only accepted and not a duplication if we're within that period, so before 2023 and all of the funds, all of the assistance, all federal assistance is used towards a loss suffered as a result of a major disaster or emergency. So there's a test that you have to meet and the notice walks through how to get there.

The other thing to note is that it's not it's not automatic that there's going to be reimbursement just because a loan is not a duplication. And so, step three gets to the reimbursement question, but for this portion we're just considering is it a duplication or not? And so, you meet those two tests that all funds are used for a loss and that you're before 2023 and you're a DRRA-qualifying disaster.

And for treatment of undisbursed loans, it's a little bit more straightforward. If you are, if you haven't drawn down the funds and you agree not to draw down the funds and you're responding to a DRRA-qualifying disaster before 2023, undisbursed subsidized loan amounts are no longer a duplication.

But the applicant needs to agree that it's not going to make future draws from those funds or if they do, the grantee has to review and approve any subsequent draws to determine that all federal

assistance is used towards a loss as a result of the major disaster. And if the grantee, if he is providing additional assistance if you're talking about undisbursed loans is inconsistent with the grantee's action plan, the grantee has to amend his action plan.

So let's get to reimbursement. So you know, as a general rule, grants are only available to fund new activities and when HUD issued its reimbursement notice after Sandy, that was a big exception that was a first time thing.

And this notice establishes a new policy for grantees that are receiving grants made in response to qualifying DRRA disasters and it sets out conditions, eight conditions that the grantee has to follow if it wants to reimburse costs paid with subsidized loans.

The important thing here is that the funds are not being used to repay the loan. The funds are being used to reimburse the costs that are CDBG-eligible that were paid with the loan proceeds. And that is because CDBG-DR funds can only be used for eligible activities and loan repayment is not an eligible activity.

So again, the reimbursement is not automatic. The grantee has to look in the applicant's file and document that all the federal assistance, including CDBG-DR and subsidized loan assistance is used towards a loss suffered as a result of the major disaster.

So if that SBA loan was used for rehabbing the house, great. If that SBA loan was used to pay for someone's child to go to college, that's not a disaster loss and the grantee is going to have to actually look at the costs that were paid with the SBA loan to determine that they were in response to immediate disaster loss.

And then the grantee has to meet all of the grant requirements for reimbursement in the federal register notices that govern CDBG-DR funds and those incorporate the reimbursement notice CPD, the CPD notice that details how you reimburse costs. The grantee has to complete a revised DOB analysis.

The fourth condition is that the grantee has to document that the reimbursed cost was for an activity that was CDBG-DR eligible on the effective date of this notice. So what things are CDBG-DR eligible? Housing rehab costs or cost of new construction, but not compensation for personal property loss and not late fees. Payment of interest is permitted, but by waiver in the applicability notice.

And I think it's really important to point out here that the reimbursement notice doesn't allow reimbursement to homeowners and businesses for everything. Grantees may only charge a cost for rehabilitation, demolition and reconstruction of single-family, multi-family and non-residential buildings including commercial properties that are owned by private individuals and entities. So it's HUD doesn't allow reimbursement for every cost and you need to make sure that it's not only CDBG eligible, but it's eligible under the reimbursement notice.

The fifth condition is that the statutes or loan documents that govern the subsidized loans, so for example the SBA loan documents may require the lender to receive payments that, for when costs are reimbursed.

So for example, SBA has determined that when a grantee reimburses costs paid by SBA loans, SBA is required to receive the payment. And so, HUD's notice requires that the grantee must notify the SBA of the reimbursement and issue a joint payment for the SBA and the applicant. And that is mostly because we don't want applicants to, we don't want to cause non-compliance as a, for the applicants with these subsidized lenders, subsidized loan lenders just because we're providing reimbursement.

So you want to require the applicant to comply with whatever requirement's attached to the use of those subsidized loans, including any requirements on funds that it receives to reimburse costs paid with the loans.

This sixth condition is that grantees have to advise applicants, either collectively or individually, that submitting an application for CDBG-DR does not relieve the applicant of a duty to make payments on a subsidized loan. So if it takes several months to process an application for reimbursement, that applicant needs to be told that they need to continue to make payments on their loan.

Seventh condition is that the grantee has to document compliance with environmental requirements and Jen talked a little bit about how the implementation notice makes that possible.

The eighth condition is that just a reiteration of the importance of CDBG-DR funds being available principally to benefit low- and moderate-income persons. So the grantee has to submit a substantial action plan amendment to HUD that describes the activity and meets the following, meets certain requirements that protect the availability of CDBG-DR funds principally to benefit low- and moderate-income persons.

So there's an update to the needs analysis and an identification in the action plan of the number of eligible households that are yet to be served and how the grantee shall address all remaining unmet needs, so applicants for housing assistance.

The grantee has to reimburse costs paid with subsidized loans for all low- and moderate-income individuals and they basically, there's a priority, a waterfall. So the grantee is reimbursing costs paid with subsidized loans for all LMI applicants before reimbursing applicants with incomes greater than 80 percent AMI. And then after the grantee serves applicants that are 80 AMI and under, the grantee can then reimburse costs paid with subsidized loans for applicants with incomes that exceed 120, or excuse me, that are up to 120 percent AMI.

And then finally, the grantee is prohibited from assisting applicants with incomes that exceed 120 percent of AMI unless the grantee requests and HUD approves a hardship exception. And so, hardship exceptions for those applicants that exceed 120 percent of AMI are going to be based on specific hardship criteria that the grantee develops and the grantee has to set out these

criteria in the action plan. And I want to spend a little time talking about the hardship exception because at its heart the test is about financial necessity.

And it calls on the grantee to demonstrate or distinguish grantees -- I mean, applicants that have a hardship exception because they have financial necessity; and on the other hand, applicants who are not eligible for a hardship exception because they want reimbursement for reasons other than financial necessity.

And so it's going to be really important for grantees to take a hard look at developing a test for financial necessity, but the notice does give some guidance. Basically saying that financial necessity would enable the applicant to pay for basic household expenses or business expenses.

And the other thing that the notice does is distinguish between a need for full reimbursement or for partial reimbursement. So if there, it gives the grantee the ability to say yeah, you might not have a full financial necessity. You might have partial financial necessity and therefore, we're going to allow for partial reimbursement of costs paid with subsidized loans. And there's some flexibility there for grantees to develop that policy, but the grantee is going to have to update its policies and procedures to really dig in on the information that the grantee is going to use to make the determination of financial necessity.

And then HUD not only will review the action plan amendment, the substantial action plan amendment to make sure that includes those mandatory elements that we just covered, but after the action plan is approved, the grantee is going to have to submit in batches its hardship exception request to HUD.

And then HUD will evaluate the grantee's hardship request against the criteria that the grantee has developed. And hardship exceptions are only going to be authorized until October 5th, 2023, which is when the DRRA sunsets.

And then finally, there is a last condition on doing reimbursements and that is just a reporting requirement. HUD really needs to be able to assess the assistance that it's providing and the effectiveness of allowing for reimbursement of SBA loans.

And so, the notice does actually require grantees to submit within one year of the approval of the substantial action plan amendment to allow for reimbursement of costs. It will allow for supporting data -- basically total about of CDBG-DR funds used for this reimbursement and then a breakdown of who was assisted and how it was used. And then HUD is going to evaluate that and may also include some of it in a report back to Congress or to OMB about this information.

So what if a grantee has already reimbursed some costs? So we understand that all of the grantees' programs are in various stages at this point. Some grantees may open up for applications again and accept new applications. Some grantees may just update the applications they have, and some grantees may have enough information in their current applications to be able to do everything that they need.



My guess is that the one thing that you're not going to have in your current applications is how the SBA funds or subsidized loan funds are used. And in order to actually make an assessment that they were all used to cover or address a loss suffered as a result of a major disaster, you're going to have to actually update the application with a little bit of supplemental information.

And so, if a grantee has already reimbursed some costs, the grantee has to make a decision about whether it's going to undertake reimbursement. It's certainly not required. This is grantee discretion just like doing reimbursement at all is at grantee discretion. And so, the grantee can open up a new application, but the grantee needs to make sure that it looks at its definition of substantial amendment.

And the definition of substantial amendment in its action plan needs to really if it's doing reimbursement it's going to have to do a substantial amendment and it's going to really need to describe how assistance, where it's moving assistance from in order to bump up and reimburse the costs as part of that substantial amendment. So that's reimbursement.

I think we can quickly move through these other items before we get to some examples and then we're going to open it up for questions. So order of assistance, that is just that statutory order of assistance for CDBG-DR is that CDBG-DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or the Army Corps.

So grantees have to verify if FEMA or the Army Corps funds are available for an activity and if that application period is open, then applicants have to apply to FEMA or Army Corps before the grantee can award CDBG-DR assistance. And the grantee can't front assistance that will later be reimbursed by FEMA or the Army Corps.

And then, there is also a delivery sequence that FEMA has in its regulations. HUD is not in that delivery sequence, and so the notice talks a little bit about as a practical matter, CDBG-DR is really just kind of a first in time analysis relative to other sources that are not FEMA and Army Corps.

So if CDBG-DR comes after another assistance, it would be considered to duplicate that other assistance. The only exception is that insurance is also statutory in the Stafford Act, though that is first and if insurance is provided or is available, that is the source of repayment and CDBG-DR would duplicate the same costs if they could be paid with insurance proceeds.

On multiple disasters, we really had a request from a lot of grantees because you all have experienced multiple disasters at this point and some of you have experienced disasters in really close proximity to one another. We could not solve all of the concerns raised by multiple disasters that grantees raised and that's because again we talked about this earlier.

HUD can't authorize applicants to use other sources of funds for unauthorized purposes. But what we can do is recognize that HUD will not require grantees to, and applicants to maintain documentation of how funds were used beyond the period that the other grantor for the other source of funds requires those recipients to maintain documentation.

So for example if documentation can't be provided and it's beyond the period required by the agency that provided the assistance, the grantee may accept a self-certification regarding how the applicant used the other agency's assistance, provided that the applicant is advised of basically civil and criminal penalties that are going to apply in cases of fraud.

The other three things that really have not changed from the 2011 notice are the record-keeping requirements, the agreement to repay any duplicative assistance received after CDBG-DR assistance goes out the door, and the means that grantees use to collect the duplication.

You know, the one thing that has changed on collecting a duplication is that if a grantee has failed to recapture funds that are duplicative from an applicant, the notice clarifies that HUD can impose corrective action. And that was always the case, but it wasn't stated as clearly in the 2011 notice so we just put that front and center here.

So the notice gives a couple of examples. We're going to walk through just the basic one really quickly and then we're going to kind of open it up for questions. So applicant's need calculated at a point in time. In this case it's \$100,000 but we can look at that as being now at the time the grantee is doing the calculation and not for example going back to the date of the disaster. It should be the need for the work that's left to be completed.

In this case, the total assistance available is \$35,000. That might be from a combination of insurance for example, FEMA or other sources. The total assistance would not include private loans or cash. It's we're really just talking about the things that fit within the definition of financial assistance.

And then the grantee is going to exclude non-duplicative amounts, the amounts used for a different purpose or the same purpose, different allowable use. In this case, the math shows \$30,000 were able to be excluded and when you look at total assistance minus the exclusions, you get \$5,000 in this case.

So the DOB amount, amount that is in-hand or under the legal control of the applicant but was not either designated for a different purpose or used for a different allowable use is \$5,000. So the total need minus the total DOB amount, the max award is \$95,000 but in this case, the grantee has a program cap of \$50,000 and the final award is \$50,000.

And there's we just threw up the notice includes three different examples. Just want to call out a couple of things about these examples. Here and in all of the examples, the estimate is representing remaining rehabilitation costs after a homeowner uses \$40,000 of non CDBG-DR assistance for partial rehab and tree removal. So again, it's a current point in time.

The notice does include several examples and they all deal with homeowners. And someone asked the question well what about these other types of assistance like infrastructure or economic revitalization?

There's the basic framework is going to be applied the same way, but the important thing that we were trying to show in this sample DOB calculations two, three and one, two and three are

basically consistency. If you change one element, how does the calculation change? And so table one shows the basic framework in the notice. Table two in the notice and this example that's posted here are showing an example if you modified the basic example to address a situation when subsidized loans are a duplication of benefits.

And then the third example is it's again the exact same example, but it's modified to have a subsidized loan that is not a duplication of benefits because the DRRA exception applies. And so you can walk through in each case, well how does this change?

Then the last example that the notice gives is an example related to multiple disasters and again we chose that one because it was, it's new. But we tried to at least not change too much of the earlier samples so again you could see that iteration when you're just changing a single element.

So I think with that, I'm going to turn it over to open up for questions. And Jen, do you want to lead the question and answer session?

Jen Carpenter: Oh. Hi guys. Yeah. I can do that. Chantel, is that the best way to do it? I'll just read questions. All right. I think I'll just proceed this way.

So we have a question about substantial action plan amendments. "So to begin excluding canceled or declined subsidized loans from a grantee's DOB analysis, should we submit a substantial action plan amendment?"

So we are pretty clear in the DOB notice if you want to reimburse costs paid by an SBA alone, that will require a substantial action plan amendment but we are not that specific on the other sections of the notice. And really, my answer is going to be it depends. It depends what you have in your action plan currently and how you're revising your policies and procedures and how that affects what's in your action plan, so there's not a blanket answer for all grantees.

What I can say is we want to encourage grantees to contact their grant manager and what I would do if I was a grantee. I would take the sections of my action plan that I currently have and include that in the e-mail, the sections that are specific to the DOB policies and make the case to your grant manager whether or not you think you need a substantial action plan amendment.

Most of our notices have some basic definitions and so keep that in mind. But we do say in our notices and it's based on CDBG-DR regulations that a substantial amendment is required if, for example, the change to a grantee's action plan will result in a change in program benefits or in the allocation or reallocation of funds above a designated monetary threshold. So if it causes you to move funds between your budget categories or if it's a change in program benefits, it will turn into a substantial amendment. But again, work with your grant manager to figure that out for your specific action plan.

Another question. "If a grantee has determined that it's met the requirements in the notice and can move forward, would like to move forward to reimburse costs paid by subsidized loans for persons with incomes over 120 percent of AMI, should we submit hardship cases to HUD on an individual basis?"

We are recommending that grantees bash these requests for hardship approvals and we're working on and we will put out some guidance on the best way to do that so that grantees have something to work from.

And we just want to make -- depending on what grantees have decided, we're going to make that process as no one can say easy. But we want to make it think about the time that it's going to take for you guys to do hardship reviews because it's hard to review those hardship reviews. So we think bashing those requests is the best way to do it, so we'll be putting out some guidance.

Once a grantee has developed its hardship criteria, should the description of the criteria be included in its action plan or its policies and procedures? And the answer to this is both. It is a good question because we just want to make clear I think some grantees probably think, well, hey, we don't get that specific in our action plan, so we'll just update our policies and procedures.

But we do require in the DOB notice if you're going to reimburse costs paid by SBA alone and you are going to offer a hardship criteria for folks over 120 percent of AMI, you do have to put that hardship criteria in you action plan and submit a substantial action plan to HUD for approval.

So I would work with your grant rep on that. You can submit some language, have them review it. You can you can work on it together as a team so that when you actually submit your action plan and even though that HUD has already reviewed it and given you feedback, and you'll be updating your policies and procedures as appropriate.

See more questions? I'm not sure if it was --

Carey Whitehead: Jen, I am seeing --

Jen Carpenter: Yep.

Carey Whitehead: -- a lot of questions about documentation and --

Jen Carpenter: Okay. Yeah.

Carey Whitehead: So some of those questions for example related to how to show that all funds were used for an eligible cost when you're talking about the DRRA exception and you're going to reimburse costs paid with SBA loans. I think there are some questions about receipts versus estimators.

We have a lot of other questions related to documentation that is not related to the DRRA exception. I think maybe we may have to lump some of these together into frequently asked questions and address them collectively, just so that we can because I'm seeing that pop up a lot. But I think we can provide some specific guidance related to cost estimation as a tool to show disaster loss.

Jen Carpenter: Okay. That makes sense. Do you want to take the question, Carey, about when grantees are seeing repairs that maybe are called permanent from other sources, but the grantees are viewing those as incomplete or maybe not up to code and how that would work from a duplication of benefits perspective?

Carey Whitehead: Sure. I think the big test is whether the assistance was used for the purpose it was provided and then whether the grantee is determining that the need to do additional work, including potentially replacing some of that work that was already done, is necessary and reasonable.

If you can imagine a scenario where an applicant says they gave me quartz counters and I wanted granite top granite countertops -- maybe that's not really a clear case of necessary and reasonable, right, but if there's a problem. If for example the initial work was done but mold remediation didn't occur and there's mold that's occurring behind the walls.

If permanent work happened and now the drywall has to be ripped out, mold remediation has to happen and the drywall then be replaced, I think the grantee can just demonstrate that the work in its cost estimate when it's estimating the total need is based on what the grantee determines what is necessary and reasonable at the current time that it's estimating need.

And if that means it has to replace a brick or a piece of drywall that was put in previously, then I think that that is okay as long as all of the initial assistance was spent for the purpose for which it was provided and the grantee doesn't have, I mean the applicant doesn't have funds that are unspent. And then separate and apart from that, the grantee has made a necessary and reasonable determination about the work that it wants to do now.

And so, I would say that that question is really a necessary and reasonable question about the work that the grantee can do and whether there is a need for additional work. And the grantee is going to have to be the one to make the case for the need for additional work if the permanent repairs have been completed, but it won't be considered a duplication if there is a true need.

Jen Carpenter: Okay. I think we're at time. I'm not sure. Chantel, are we allowed to go a little bit over time to get another question or two or should we wrap it up?

Chantel Key: Yes. We have some more time.

Jen Carpenter: Okay. I just was going to take a couple more questions. I saw someone asked our disaster was 2018 so SBA loans are DRRRA except on allowable cost. So that's correct. So if your disaster was in 2018 it would be covered by the DOB notice and the SBA loans would not be a DOB if they were used for disaster-related loss.

Someone's asking what is the best practice for documenting a lack of other benefits? I'm going to try to, and Carey feel free to jump in. I mean I think it is hard to document that someone doesn't have other assistance. Documenting a negative is always difficult, but I think I want to just make sure you're able to send your get your data feeds from the federal partners. If you need help getting that set up, you should talk to your grant manager.

We can help if we need to with that so you can show there was no federal assistance. You do want to make sure that there, you have an inspector going out and showing that there's tieback to the disaster, so you want to make sure that home was actually impacted by the disaster. Most of our grantees do that with inspections. Carey, did you have anything else on advice on how to --

Carey Whitehead: Yeah. We've gotten similar questions previously and I think proving a negative is tough admittedly, but you should have some best practices in place that are going to be a policy for how you're going to look for insurance proceeds that aren't NFIP because if it's NFIP you should be getting an insurance feed.

If applicants have a mortgage, they're going to have insurance and so that's one check. You can just find out if they have a mortgage or not and if they do and they're telling you they have no insurance, then there's probably something wrong. And then, if you can partner with your state agency that oversees insurers you might be able to get data feeds from insurers and I think that a lot of grantees have been able to negotiate that.

So I would start with the policy for how you're going to find out about insurance assistance or proceeds that have been provided and move on from there. And then finally, you need to be warning all of your applicants about the implications of fraud so that they know they really do need to be disclosing this stuff to you.

And Jen, I don't know how many more of these questions you want to take of. Are there any others that you want to try to get here?

Jen Carpenter: I think we'll go ahead and wrap up and not keep everyone. We are going to follow up, so our plan after this is to put out some frequently asked questions to go along with the notices. We wanted to have this first and kind of see what questions the grantees had and I'll send out that you listened to the webinar. Feel free to send your, if you have questions, send them to your grant manager and they can forward it up to us at the policy team and we can add those to our frequently asked questions.

We also again have our clinic in July so we can, we're going to do a presentation there so we can use your questions to help us fill in additional information we should provide at the clinic. And then also, if you have really specific, case-specific questions, I think he's going to send those to us. We have your contact information since you registered for the webinar and we can follow up with you on those specific cases.

So I think that's it for today, so I really appreciate everyone being on the webinar and we hope we've gone to some of the main stuff and main issues you've had and we will definitely follow up with frequently asked questions. And I encourage everyone again if you're a grantee, please come to the clinic in July in Kansas City. So thanks, everyone.

Carey Whitehead: Thanks, guys.

(END)