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# United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

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July 5, 2011

The Honorable Karen G. Mills  
Administrator  
U.S. Small Business Administration  
409 Third Street, SW  
Washington, D.C. 20416

Dear Administrator Mills:

Thank you for your testimony during the recent Committee hearing on June 16, 2011. As indicated during the hearing, in light of recent disasters in Missouri and Alabama, I remain concerned about the Small Business Administration (SBA) interpretation of duplication of benefits following declared disasters. My particular concern is that the SBA may be unnecessarily placing further burdens on disaster victims by not taking into account unmet needs, as is done by other Federal agencies. For example, I have enclosed an August 26, 2009 letter from HUD to the State of Louisiana. In this letter, HUD agrees with my stated position on duplication of benefits. While HUD recognizes that it reviews duplication of benefits on a case-by-case basis for each applicant, the agency does state that "...a person who has received benefits and still has unmet needs may receive additional assistance."

According to a September 2, 2010 SBA Office of Inspector General (OIG) audit, following the 2005 hurricanes and 2008 Midwest flooding, the SBA received over \$634 million of U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) funds. CDBG funds from three states (Louisiana, Mississippi, and Iowa) were used to reduce balances on 19,449 fully disbursed SBA disaster loans. An additional \$281 million of CDBG funds went towards paying down 5,675 undisbursed SBA disaster loans. In total, \$915 million in CDBG grants intended to assist homeowners recovering from natural disasters was **immediately** redirected from homeowners to the SBA to pay down 30-year SBA disaster loans. According to the OIG audit, this action by the SBA also shifted additional costs to the taxpayer. This is because disaster loans are required to be repaid while CDBG-funded grants are not repaid.

As indicated above, the Stafford Act specifically provides at 42 USC Section 5155 that "Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided." The Stafford Act includes a provision, similar to Section 18(a) of the Small Business Act relating to Federal duplication of benefits. I recognize that, as its authorizing statute, the SBA's primary responsibility is to the Small Business Act. However, in providing disaster assistance, the SBA must follow not just the Small Business Act. Your agency also follows requirements from the Stafford Act, Office of Management and Budget Circulars, Federal Emergency Management Agency regulations, SBA regulations, and SBA standard operating procedures.

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In order to get clarification on the SBA's procedures and its interpretation of provisions under both the Small Business and Stafford Acts, I respectfully request responses to the following questions:

- How does the SBA interpret 42 USC Section 5155 of the Stafford Act, as it relates to "unmet needs" of disaster victims?
- Does the SBA agree with the HUD position on duplication of benefits/unmet needs outlined in the August 26, 2009 letter to the State of Louisiana? (Yes/No)
  - If yes, please explain. If no, please explain why not.
- Which specific provisions of the Small Business Act guide the SBA's duplication of benefits policies?
- Would the SBA support including legislative language similar to 42 USC Section 155 in the Small Business Act? (Yes/No)
  - If no, please provide a legislative drafting service of a provision on unmet needs to be included in the Small Business Act.
- The OIG audit notes that Alabama, Texas, and Florida CDBG grants were treated differently than CDBG grants in Louisiana, Mississippi, and Iowa. Please explain why this occurred and if the SBA has undertaken similar actions in other disaster-impacted states since 2005.
- Outline the SBA's progress in implementing the five (5) OIG recommendations from the 2010 audit.

In closing, I thank you for your consideration of these questions regarding the SBA's disaster assistance programs. For my part, I remain committed to ensuring that the SBA has the sufficient resources and authority necessary to effectively respond following future disasters.

Sincerely,



Mary L. Landrieu  
Chair

MLL:brv  
Enclosure



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

ASSISTANT SECRETARY FOR  
COMMUNITY PLANNING AND DEVELOPMENT

AUG 26 2009

The Honorable Bobby Jindal  
Governor of Louisiana  
1201 N. Third Street  
Baton Rouge, LA 70804-9004

Dear Governor Jindal:

The Department has been notified of several issues regarding the State of Louisiana's long-term recovery from the devastation of Hurricane Katrina. After careful review, there is no prohibition on providing additional assistance in cases in which the initial assistance was insufficient to meet a household's disaster recovery housing needs.

There may be instances where a person or family has received benefits from the Federal Emergency Management Agency (FEMA) or another source (including Community Development Block Grant (CDBG) disaster recovery assistance) but the assistance was not enough and consequently, there are still unmet disaster recovery needs. For example, if a person received the maximum award under the Road Home program, but the true cost of repairing or replacing the damaged home is greater than the assistance already provided (figuring in insurance and any other sources), the person is eligible to receive additional CDBG assistance. The Stafford Act (the Act) specifically provides at 42 USC section 5155 that "Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided." The crux of this inquiry is whether the person has additional unmet needs; answering this question will require examination of the specific facts of each case, so that the State can determine whether additional funds would duplicate payments already made for the same loss.

For reasons outlined below, even if a program is designed to avoid all conflicts with the Act, it is still possible that an individual recipient under one of its programs could receive a duplicate benefit. As a result, a blanket determination cannot be made in advance and the potential ramifications of the Stafford Act cannot be negated preemptively. However, as discussed above, a person who has received benefits and still has unmet needs may receive additional assistance.

The Act forbids a recipient of federal disaster relief benefits from receiving "any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source." 42 U.S.C. § 5155(a). Further, a recipient of assistance will be liable to the United States "to the extent that such assistance duplicates benefits available to the person for the same purpose from another source." 42 U.S.C. § 5155(c). As can be seen, the reference to "the person" in § 5155(c) indicates that the application of the act is a fact-specific inquiry to be applied on an individual basis. Recipients cannot be deemed categorically exempt based upon prospective information about state or local government programs. Until it is shown

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that the recipient did not receive duplicate funds for the same purpose, the Act will still apply and the recipient will be subject to liability.

The reach of the Act is not limited to government benefits. FEMA guidance indicates that grants or donations from private sources can lead to duplication of benefits under the Stafford Act if the funds are made available to a recipient for the same purpose as a federal program. FEMA Disaster Assistance Policy 9525.3 Duplication of Benefits – Non-Government Funds, link: [http://www.fema.gov/government/grant/pa/9525\\_3.shtm](http://www.fema.gov/government/grant/pa/9525_3.shtm).

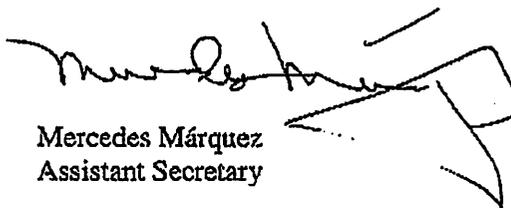
In addition to the Act, OMB Circular A-87 establishes principles and standards to use when determining appropriate costs for Federal awards carried out through state and local governments. In its language, the Circular states that a cost must be “necessary and reasonable for proper and efficient performance and administration of Federal awards.” OMB Circular A-87 Attachment A(C)(1)(a). This “necessary and reasonable” requirement applies to both the state’s costs in administering the program and the ultimate purpose for the award itself. The “necessary and reasonable” language requires the State to exercise due diligence in the implementation of its programs. Such due diligence requires the state to conduct an individualized review of the recipient and its intended use of the funds.

Because of the many ways in which a grant recipient can violate the terms of the Act, OMB Circular A-87, or other government requirements, neither HUD nor the grant recipient may grant a blanket determination that preemptively negates the effects of these provisions. The grant recipient must first review the particular facts of the case involved. Even if a state program is designed to circumvent the possibility of liability under the Act, when CDBG funds are used, the State must perform a duplication of benefits analysis.

The guidance provided above is consistent with that which HUD has recently given to the State of Mississippi. However, for the State of Louisiana, if Disaster Recovery CDBG funds are re-programmed for additional unmet housing needs, those funds must come from the first and second disaster appropriations for Hurricanes Katrina and Rita (P.L. 109-148 and P.L. 109-234), not the third appropriation (P.L. 110-116) which was made exclusively to meet the outstanding needs of the Road Home Program. Funding provided under P.L. 110-116 must be used to meet the needs of the Road Home Program as identified in Action Plans and Amendments that were accepted by HUD as of the date of publication of Federal Notice 5183 on December 11, 2007.

The Department will continue to work with you to ensure that your CDBG funds reach those most in need.

Sincerely,



Mercedes Márquez  
Assistant Secretary