



TO: Mayor Shaun Sipma
Members of the City Council

FROM: John R. Zakian, DR Grant Program Manager & Chief Resilience Officer

DATE: February 24, 2019

SUBJECT: CONFIRM CDBG RECAPTURE & DUPLICATION OF BENEFITS POLICIES

I. RECOMMENDED ACTION

City Council confirm CDBG-DR/NDR Recapture Plan and Duplication of Benefits Policy administratively established since 2013 but not previously approved by the City Council

II. DEPARTMENT CONTACT PERSONS

John R. Zakian, DR Program Manager & Chief Resilience Officer, 420-4528

III. DESCRIPTION

A. Background

One of the requirements for all federal grants including HUD CDBG-DR and CDBG-NDR grants is that each Grantee establish and adhere to a Recapture Policy and Duplication of Benefits Policy involving recovery of funds which are determined through ongoing internal audit and compliance review to be ineligible or overpayments to beneficiaries, contractors, sub-recipients, anyone or entity receiving grant funds. The HUD statutes, rules, and regulations are silent as to the methodology and form of approval to establish and implement policies governing use of grant funds which means HUD does not take a position on whether policies should be approved administratively or by the local elected body. HUD will look to the Grantee's local practices, rules, regulations, authority, etc. for consistency in how policies are established and administered.

We are doing an ongoing review of all past programs, policies, and activities dating back to 2012 as is expected by HUD as part of a Grantee's due diligence to assure best practices as well as compliance with all statutes, rules, and regulations. The review involves me, Internal Auditor, CDM Smith and Finance Department. During the course of the review, we found these two policies to have no record of City Council approval. While these policies do meet HUD requirements including having been posted on the city website, there is not a clear written record of the reasoning and basis for administratively establishing these policies.

As a best practice among Grantees, it is prudent for local formulated policies with direct and/or potential discretionary fiscal impact to be approved by the local elected body. The Recapture Plan and the Duplication of Benefit Policies are such policies. The Duplication of Benefit policy requires Grantees to assure that CDBG-DR/NDR payments do not cover the same cost already paid from other federal, state, local, or private sources. The Recapture Plan establishes the methodology and steps to be taken to recover funds determined to be improperly paid, and basis for waiving pursuit of repayment.

The administratively instituted Recapture Plan has one standard exception to repayment and one very unusual exception/ Standard exception follows the federal rule on necessary and reasonable cost in the case of pursuing repayment. If the likely cost of pursuing repayment will exceed the amount to be repaid, then in it is acceptable for a Grantee to not pursue repayment other than a standard repayment demand letter. In the case of Minot, the threshold is \$1,000.

The unusual exception to repayment has no threshold but, rather, establishes discretion on the part of the City, for extenuating circumstances to not pursue repayment. The extenuating circumstances that have been used by the City in 2014-2016 were homeowners who qualified as LMI. Decision was made to not pursue repayment for overpayment to LMI homeowners under the Housing Rehabilitation and Reconstruction Program because it was unlikely they could afford to repay. While there can be merit for such exceptions, deciding not to pursue repayment in these circumstances exposes the city to liability with the likelihood that HUD can require the city to reimburse to HUD through city funds the overpayments.

B. Proposed Project

Request is for the City Council to confirm the Duplication of Benefit and Recapture Plan policies to eliminate any question on basis of origination and to strengthen the effectiveness for HUD as being policies of the Grantee.

IV. IMPACT:

A. Strategic Impact:

N/A

B. Service/Delivery Impact:

N/A

C. Fiscal Impact:

N/A

V. ALTERNATIVES

N/A

VI. TIME CONSTRAINTS

VII. LIST OF ATTACHMENTS

- i. Copy of Recapture Plan
- ii. Copy of Duplication of Benefits Policy