



# 10 Duplication of Benefits

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## 10 Duplication of Benefits

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5207) (Stafford Act), along with applicable CDBG-DR appropriation acts, require HUD and its grantees to coordinate with other federal agencies that provide disaster assistance to prevent the duplication of benefits (DOB). The Stafford Act's prohibition on DOB aims to ensure that federal assistance serves only to "supplement insurance and other forms of disaster assistance." (42 U.S.C. 5170)

CDBG-DR grantees must prevent DOB when carrying out eligible activities. A duplication occurs when any person, business, or other entity receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need. The amount of the DOB is the amount received in excess of the total need for the same purpose. When total need for eligible activities is more than total assistance for the same purpose, the difference between these amounts is an "unmet need." Grantees must limit their assistance to unmet needs for eligible activities to prevent a DOB. When reimbursement is permitted by the CDBG-DR grant requirements, unmet needs can include amounts needed for reimbursement. It is the responsibility of OHCS to determine that no DOB exists before paying CDBG-DR to a disaster recovery project to ensure that beneficiaries, persons, businesses, or other entities (includes local governments) are not receiving a DOB.

Specific DOB policies and procedures are included in policies and procedures for each CDBG-DR program identified in the CDBG-DR Public Action Plan. OHCS commits to having procedures to prevent any duplication of benefits as defined by section 312 (42 U.S.C. 5155) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). To this end:

1. OHCS's DOB policies and procedures include a uniform process that:
  - a. Verifies all sources of disaster assistance received (for subrecipient projects or applicants applying to applicant-based programs) and all reasonably identifiable financial assistance available (for projects or applicant-based programs), as applicable, before committing funds or awarding assistance;
  - b. Determines the amount of the need (for subrecipient projects or applicants applying to direct applicant-based programs) for CDBG-DR assistance before committing funds or awarding assistance;
  - c. Requires beneficiaries (includes subrecipients that are categorized as a beneficiary) to enter into a signed agreement to repay any duplicative assistance if they later receive additional assistance for the same purpose for which the CDBG-DR award was provided. [Section III.A.1.a.(3)(a) – (c)];

- d. Identifies the personnel or unit of government, or other subrecipient, for carrying out the DOB review; and
  - e. Retains the documentation in accordance with record keeping requirements.
2. OHCS's DOB policies and procedures identify a method to monitor compliance with the agreement for a reasonable period (i.e., a time period commensurate with risk) and articulates this method in its policies and procedures, including the basis for the period during which the grantee will monitor compliance. This agreement must also include the following language: "Warning: Any person who knowingly makes a false claim or statement to HUD or causes another to do so may be subject to civil or criminal penalties under 18 U.S.C. 2, 287, 1001 and 31 U.S.C. 3729." [Section III.A.1.a.(3)(c)]
  3. The policies and procedures provide that before the award of assistance, OHCS will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of local, state, and federal sources of funding to prevent the duplication of benefits. [Section III.A.1.a.(3)(c)]

The following sections lay out additional information for how OHCS will comply with each of these requirements. In the event OHCS funds subrecipients to administer programs on behalf of the agency, then those **subrecipients will be required to comply with the respective DOB policies and procedures, in line with the policy described below. In addition, information may be provided in specific program guidelines, so make sure to follow program procedures when possible.**

## 10.1 Duplication of Benefits Policies and Procedures Framework

OHCS will follow — or will require its subrecipients to follow — the following process for avoiding a DOB for individuals, businesses, and any subrecipients receiving CDBG-DR assistance prior to committing funds or awarding assistance:

- Assess applicant need.
- Identify total assistance.
- Exclude non-duplicative amounts.
- Identify DOB amount and calculate CDBG-DR award.
- Monitor compliance and reassess unmet need when necessary.

### 10.1.1 Assess Applicant Need

The need will be calculated based on assessment of the need at the time of application. OHCS is not currently reimbursing expenses for pre-award costs, but costs incurred prior to application will be considered when calculating the total recovery need for purposes of subtracting DOB. If OHCS does allow for reimbursement through future Action Plan and program amendments, then eligible activities undertaken by applicants prior to applying for funding will be included in the total need that is eligible for CDBG-DR funding. A budget estimate is used to establish the project cost for both subrecipients and persons applying for CDBG-DR assistance. This assessment must be conducted prior to the receipt of CDBG-DR funds. All costs determined for assistance to beneficiaries whether they be subrecipients or individuals must adhere to the federal cost principles, which include the “necessary and reasonable” definitions in 2 CFR Part 200. (See the Financial Management chapter for more information on cost principles.)

### 10.1.2 Identify Total Assistance

To calculate DOB, OHCS or subrecipients will identify “total assistance.” Total assistance includes all reasonably identifiable financial assistance available to an applicant.

#### 10.1.2.1 Total Assistance

Total assistance includes resources such as cash recovery awards, insurance proceeds, grants, and loans received by or available to each CDBG-DR applicant, including awards under local, state, or federal programs, and from private or nonprofit charity organizations. Total assistance does not include personal assets such as money in a checking or savings account (excluding insurance proceeds or disaster assistance deposited into the applicant’s account), retirement accounts, credit cards and lines of credit, in-kind donations (although these non-cash contributions known to the grantee reduce total need), and private loans.

#### 10.1.2.2 Available Assistance

Total assistance includes available assistance. Assistance is available if an applicant:

- Would have received it by acting in a reasonable manner, by taking the same practical steps toward funding recovery as would disaster survivors faced with the same situation but not eligible to receive CDBG-DR assistance; or
- Has received (the) assistance and has legal control over it.

Available assistance includes reasonably anticipated assistance that has been awarded and accepted for the same (recovery) purpose but has not yet been received. Applicants for CDBG-DR assistance are expected to seek insurance or other assistance to which they are legally entitled under existing policies and contracts, and to behave reasonably when negotiating payments to which they may be entitled.

Potential DOB sources include:

- Other HUD funds
- FEMA Public Assistance or Individual Assistance funds
- United States Forest Service funds
- U.S. Army Corps of Engineers funds
- Federal Economic Development funds
- U.S. Department of Transportation funds
- SBA loans
- Private insurance funds
- Legal settlement proceeds (if applicable)
- Other federal program funds
- Private and nonprofit organization funds
- State and local funds

#### 10.1.2.3 Private Loans

A **private loan** is a loan that is not provided by or guaranteed by a governmental entity (e.g., SBA), and that requires the CDBG-DR applicant (the borrower) to repay the full amount of the loan (principal and interest) under typical commercial lending terms (e.g., the loan is not forgivable). For DOB calculations, private loans are not financial assistance and need not be considered in the DOB calculation, regardless of whether the borrower is a person or entity.

#### 10.1.2.4 Subsidized Loans

By contrast, **subsidized loans** for the same purpose are to be included in the DOB calculation unless an exception applies. HUD defines subsidized loans as loans other than private loans. Both SBA and FEMA provide subsidized loans for disaster recovery. Subsidized loans may also be available from other sources. Subsidized loans are assistance that must be included in the DOB analysis unless an exception applies. Exceptions for when subsidized loans are not counted as a DOB occur when those loans are declined by the applicant or cancelled.

**Declined SBA Loans** — Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds.

OHCS will not treat declined subsidized loans, including declined SBA loans, as a DOB (but are not prohibited from considering declined subsidized loans for other reasons, such as underwriting). OHCS is only required to document declined loans if information available to OHCS (e.g., the data OHCS receives from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and OHCS is unable to determine from that available information that the applicant declined the loan. If OHCS is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, OHCS will obtain a written certification from the applicant that the applicant did not accept the subsidized loan by signing loan documents and did not receive the loan.

**Cancelled Loans** — Cancelled loans are loans (or portions of loans) that were initially accepted, but, for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant. The cancelled loan amount is the amount that is no longer available. The loan cancellation may be due to default of the borrower, agreement by both parties to cancel the undisbursed portion of the loan, or expiration of the term for which the loan was available for disbursement. The following list of documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available:

- A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or
- A legally binding agreement between OHCS and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take action to reinstate the loan or draw any additional undisbursed loan amounts. The documentation described above will be maintained by OHCS. Without this documentation, any approved but undisbursed portion of a subsidized loan will be included in the award calculation of the total assistance amount unless another exception applies.

For cancelled SBA loans, OHCS will notify the SBA that the applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts.

## 10.2 Exclude Non-Duplicative Amounts

Once OHCS has determined the total need and the total assistance, OHCS will determine which sources it must exclude as non-duplicative for the DOB calculation. OHCS will exclude amounts that are:

- Provided for a different purpose.
- Provided for the same purpose (eligible activity), but for a different, allowable use (cost).
- Funds not available for CDBG-DR projects or activities. Funds are considered available when they are received by a subrecipient or individual beneficiary and the subrecipient/individual gains legal control of them, or when a subrecipient/individual has been approved for a duplicate funding source, even if they have not yet drawn on the funds.

### 10.2.1 Funds for a Different Purpose

OHCS will exclude any assistance from total assistance, provided for a different purpose than the CDBG-DR eligible activities, or a general, nonspecific purpose (e.g., **disaster relief/recovery**) and not used for the same purpose when calculating the amount of the DOB.

### 10.2.2 Funds for the Same Purpose, Different Allowable Use

Assistance provided for the same purpose as the CDBG-DR purpose must be excluded when calculating the amount of the DOB if the applicant can document that actual specific use of the assistance was an allowable use of that assistance and was different than the use of the CDBG-DR assistance.

## 10.3 Identify DOB Amount and Calculate CDBG-DR Award

The total DOB will be calculated by subtracting non-duplicative exclusions from total assistance. Therefore, to calculate the total maximum amount of the CDBG-DR award, OHCS will follow these steps:

1. Identify total need.
2. Identify total assistance.
3. Subtract exclusions from total assistance to determine the amount of the DOB.



4. Subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG-DR award.
5. Adjust award, if needed to comply with program caps. The lesser of the maximum eligible amount or program cap determines the final amount.

## **10.4 Monitor Compliance and Reassess DOB when Necessary**

OHCS will work with subrecipients to reassess unmet need, when necessary. Although long-term recovery is a process, disaster recovery needs are calculated at points in time. As a result, a subsequent change in an applicant's circumstances can affect that applicant's remaining unmet need, meaning the need that was not met by CDBG-DR and other sources of assistance. Oftentimes, unmet need does not become apparent until after CDBG-DR assistance has been provided. Examples may include:

- A subsequent disaster that causes further damage to a partially rehabilitated home or business
- An increase in the cost of construction materials
- Vandalism
- Contractor fraud
- Forced mortgage payoffs
- Settlements from pursuing insurance claims
- Theft of materials

Additional assistance requests must be fully documented and include the method for identification and verification of the unmet need. Additional assistance requests must also be verified as not being duplicative benefit.

The period of monitoring for DOB after project completion is program specific and outlined in the specific program policies and procedures. The basis for the DOB monitoring is dependent on the eligible activities, overall level of risk, and post-completion requirements (such as an occupancy period). OHCS provides a method to monitor compliance for a reasonable period for each program in the program-specific policies and procedures. This method includes the basis for the period of time in which OHCS or its subrecipient will monitor for compliance. OHCS will monitor compliance by verifying amounts with other funding agencies included for the initial DOB calculation, and recalculating DOB if required.

If a duplication is discovered after CDBG-DR assistance has been provided, the duplicative funds will be recaptured to the extent that they are in excess of the need and duplicate other assistance received for the same purpose. See specific program guidance for the method of recapture and the relevant timeframe.

### 10.4.1 Agreement to Repay — Subrogation Agreement

As required by the Stafford Act, OHCS will ensure that applicants agree to repay all duplicative assistance to HUD or the applicable agency providing federal assistance through OHCS or its subrecipients. To address any potential DOB, OHCS will require each applicant to enter into an agreement with OHCS to repay any assistance later received for the same purpose for which CDBG-DR funds were provided. This agreement will be in the form of a subrogation agreement or similar document and must be signed by every applicant before OHCS disburses any CDBG-DR assistance to the applicant.

OHCS will document compliance with DOB requirements pre- and post-award, including any post-award monitoring. Policies and procedures for post-award monitoring of DOB will be specific for each program funded by OHCS and will be commensurate with risk. For each set of program policies and procedures, OHCS will establish a method to monitor each applicant's compliance with the subrogation agreement for a reasonable period after project completion.

The Subrecipient Agreement and Subrogation Agreement, as required by HUD, provide the following language:

**DOB Clause** — Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 18 U.S.C. 1001, and 31 U.S.C. 3729.

**Subrogation Clause** — Requires any person or entity that receives further assistance to repay that assistance, if the total amount of assistance (for the same purpose) exceeds the funding required to satisfy the unmet need of the project.

### 10.4.2 Collecting a Duplication

If a potential DOB is discovered after CDBG-DR assistance has been provided, OHCS will reassess the applicant's need at that time. If additional need is not demonstrated, CDBG-DR funds will be recaptured to the extent they are in excess of the remaining need and duplicate other assistance received by the applicant for the same purpose.

Under the Stafford Act, a federal agency that provides duplicative assistance must collect that assistance. For CDBG-DR grants, OHCS must and will collect duplicative assistance it provides.

## **10.5 Order of Assistance**

CDBG-DR appropriations acts generally include a statutory order of assistance for federal agencies. Although the language may vary among appropriations, the statutory order of assistance typically provides 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. This means that OHCS and its subrecipients must verify whether FEMA or Army Corps funds are available for an activity (i.e., the application period is open) or the costs are reimbursable by FEMA or Army Corps (i.e., the grantee will receive FEMA or Army Corps assistance to reimburse the costs of the activity) before awarding CDBG-DR assistance for costs of carrying out the same activity.

If FEMA or Army Corps are accepting applications for the activity, the applicant must seek assistance from those sources before receiving CDBG-DR assistance. If the applicant's costs for the activity are anticipated for reimbursement by FEMA or the Army Corps, OHCS cannot and will not provide the CDBG-DR assistance for those costs. In the event that FEMA or Army Corps assistance is awarded after the CDBG-DR to pay the same costs, it is OHCS's responsibility to recapture CDBG-DR assistance that duplicates assistance from FEMA or the Army Corps.