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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-6169-N-01]**

**Updates to Duplication of Benefits Requirements Under the Stafford Act for  
Community Development Block Grant (CDBG) Disaster Recovery Grantees**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice describes the requirements to prevent duplication of benefits applicable to Community Development Block Grant disaster recovery (CDBG-DR) grants received in response to a disaster declared between 2015 and 2021. It updates existing duplication of benefits requirements to reflect recent CDBG-DR supplemental appropriations acts and amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act impacting certain grantees. The notice also includes minor clarifications regarding the duplication of benefits calculation.

**DATES:** Applicability Date: **[Insert date five days after date of publication in the FEDERAL REGISTER.]**

**FOR FURTHER INFORMATION CONTACT:** Claudette Fernandez, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 10166, Washington, DC 20410, telephone number 202-708-5287. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Ms. Fernandez at 202-708-0033. (Except for the "800" number, these telephone numbers are not toll-free). Email inquiries may be sent to [disaster\\_recovery@hud.gov](mailto:disaster_recovery@hud.gov).

**SUPPLEMENTARY INFORMATION:**

## **Table of Contents**

- I. Introduction
- II. Applicability
- III. Applicable Laws and Requirements
  - A. Stafford Act
  - B. CDBG-DR Appropriations Acts and Federal Register Notices
  - C. Necessary and Reasonable Requirements
- IV. Basic Duplication of Benefits Calculation Framework
  - A. Assess Applicant Need
  - B. Identify Total Assistance
    - 1. Types of Resources Included in Total Assistance
    - 2. Availability of Resources Included in Total Assistance
  - C. Exclude Non-Duplicative Amounts
    - 1. Funds for a Different Purpose
    - 2. Funds for Same Purpose, Different Allowable Use
  - D. Identify the DOB Amount and Calculate the Total CDBG-DR Award
  - E. Reassess Unmet Need When Necessary
- V. Special Considerations
  - A. Programmatic Considerations Related to Each Type of Assistance
  - B. Subsidized Loans
    - 1. Subsidized Loans
    - 2. Exceptions When Subsidized Loans Are Not A Duplication
      - (i) Short-term subsidized loans for costs later reimbursed with CDBG-DR.

(ii) Declined or cancelled subsidized loans.

(iii) The subsidized loan meets the requirements for a statutory exception under the DRRRA's amendments to the Stafford Act.

### 3. Use of CDBG-DR for Costs Initially Paid by Subsidized Loans

#### Following DRRRA Qualifying Disasters

C. Order of Assistance

D. Multiple Disasters

VI. Recordkeeping

VII. Agreement to Repay

VIII. Collecting a Duplication

IX. Catalog of Federal Domestic Assistance

X. Finding of No Significant Impact

Appendix A: Example DOB and CDGB-DR Award Calculations

## **I. Introduction**

Community Development Block Grant disaster recovery (CDBG-DR) grants are one of multiple Federal sources which assist disaster recovery. These sources of Federal assistance often can be used for the same purposes by grantees and disaster survivors. For this reason, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 – 5207) (Stafford Act) and CDBG-DR appropriations 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 a person, household, 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.

This notice has been developed in consultation with the Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA), which provide the most common forms of Federal disaster assistance to homeowners and businesses. As the agency that administers the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5207) (Stafford Act), HUD looks to FEMA to ensure uniformity in the prevention of DOB across Federal agencies that provide disaster assistance.

This notice implements a provision of the Disaster Recovery Reform Act of 2018 (DRRA) (division D of Public Law 115-254) that changes the treatment of loans under the Stafford Act for disasters declared between January 1, 2016 and December 31, 2021, so that when certain conditions are met, the loans are no longer a DOB. This notice also responds to pending requests from grantees to authorize the use of CDBG-DR funds to reimburse homeowners and businesses for the costs of eligible activities paid with subsidized loans provided by the U.S. Small Business Administration (SBA) or other sources.

The DRRA amendment did not directly address the use of CDBG-DR funds to reimburse costs paid with subsidized loans. However, the corollary request from grantees to permit reimbursement presents a range of policy and fiscal implications. CDBG-DR funds are provided for long-term disaster recovery to assist activities under title I of the Housing and Community Development Act of 1974. The primary objective of title I is the development of viable communities by the provision of decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. In authorizing the use of CDBG-DR funds for the reimbursement of costs paid with subsidized loans, the Department must ensure that a grantee's CDBG-DR resources will remain available principally to benefit low- and moderate-income persons, a group that often has difficulty qualifying for subsidized loan assistance. The Department notes that many CDBG-DR grantees face challenges in meeting this requirement. The Department recognizes, however, that CDBG-DR funds are provided as a federal block grant to States and local governments with an understanding that these grantees are best positioned to address the long-term disaster recovery needs of their communities by working within the requirements of the CDBG program, including the overall low- and moderate-income benefit requirement and the requirement that the use of all funds meet a national objective.

Further, in determining the amount of CDBG-DR funding provided to a grantee, one of the key factors for HUD is an estimate of severe unmet housing need. This estimation deducts out SBA loan proceeds in a manner that is unaffected by the DRRA amendment. As a result, any CDBG-DR funds directed to reimburse eligible costs paid with subsidized loans are funds that are not directed to severe unmet housing needs or economic revitalization needs as estimated by HUD.

This notice incorporates a range of safeguards to ensure that CDBG-DR funds are used for reimbursement of eligible costs of meeting the housing rehabilitation needs or economic revitalization needs of applicants that applied for, were approved for, and borrowed SBA loans funds. The Department, in consultation with partner Federal agencies, has developed these safeguards to promote a responsible approach to requests to use CDBG-DR funds to reimburse for eligible recovery costs originally paid with subsidized loan funds.

Accordingly, the Department has structured this notice and the companion Federal Register notice governing its implementation to: (i) require CDBG-DR grantees to fully inform the public of the proposed use of CDBG-DR funds for reimbursement of costs paid with subsidized loans through its citizen participation process and through an amendment to the grantee's action plan; (ii) to preserve the primary mission of CDBG-DR funds to assist low- and moderate-income persons by maintaining a grantee's requirement to use its CDBG-DR funds principally to benefit low- and moderate-income persons; and (iii) to provide the Department with a means of evaluating the impact of this policy on the recovery of low- and moderate-income persons if it is used for DRRA Qualifying Disasters.

## **II. Applicability**

This notice describes DOB requirements for CDBG-DR grants received in response to a disaster declared between January 1, 2015 and December 31, 2021. It includes information about preventing and collecting a DOB. The requirements of this notice will apply once it is made applicable to a grant by a Federal Register notice or grant agreement. This notice reflects the requirements of recent CDBG-DR supplemental appropriations acts and amendments to the Stafford Act, which impact DOB for certain grantees.

This notice does not change the DOB requirements applicable to grantees receiving awards in response to disasters declared before 2015.<sup>1</sup>

This notice does not apply to grants under the State CDBG program, the Entitlement CDBG program, Insular Areas CDBG program, or the HUD Administered Small Cities CDBG Program in Hawaii.

### **III. Applicable Law**

Section 312 of the Stafford Act and CDBG-DR appropriations acts require that CDBG-DR grantees prevent DOB when administering grants. Federal Register notices governing CDBG-DR awards impose these DOB requirements on grantees. The “necessary and reasonable” cost principles in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in subpart E of 2 CFR part 200 (the Cost Principles) similarly prohibit grantees from charging to the grant a cost paid by another source.

#### **III.A. Stafford Act**

The Stafford Act is the primary legal authority establishing the framework for the Federal government to provide disaster and emergency assistance.

Section 312 of the Stafford Act directs Federal agencies that provide disaster assistance to assure that people, businesses, or other entities do not receive financial assistance that duplicates any part of their disaster loss covered by insurance or another source (42 U.S.C. 5155(a)). That section also makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)).

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<sup>1</sup> This notice does not amend the Federal Register notice requirements applicable to grantees that received funds under the Disaster Relief Appropriations Act, 2013 (Public Law 113-2) for disasters declared in 2011, 2012, or 2013, including requirements related to the July 25, 2013 memorandum “*HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG-DR Assistance.*”

The Stafford Act also provides that when assistance covers only a part of the recipient's disaster needs, additional assistance to cover needs not met by other sources will not cause a DOB (42 U.S.C. 5155(b)(3)). CDBG-DR assistance may only pay for eligible activities to address unmet needs. This notice advises grantees on the calculation of unmet needs through a duplication of benefits analysis.

On October 5, 2018, the DOB provision in section 312 of the Stafford Act was amended by section 1210 of the DRRA. This notice describes corresponding changes in HUD's policies and grant requirements. Those changes are discussed in detail in section V.B.2. and V.B.3. of this notice.

### **III.B. CDBG-DR Appropriations Acts and Federal Register Notices**

CDBG-DR funds are made available for "necessary expenses" by appropriations acts that contain statutory requirements on the use of the grant funds.<sup>2</sup> HUD allocates funds and publishes grant requirements in Federal Register notices. Grantees are subject to the requirements of the appropriations acts and the Federal Register notices.

Since 2013, as a condition of making any CDBG-DR grant, the Secretary must certify that the grantee has established adequate procedures to prevent DOB. Grantees subject to this requirement must submit DOB policies to HUD for review before HUD signs the grant agreement. "Adequate" procedures meet the standards HUD publishes in a Federal Register notice and related checklists that are available online. They require grantees to establish DOB policies that incorporate certain steps before committing or awarding assistance. Typically, the steps include determining a total need, verifying total assistance available from all sources of

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<sup>2</sup> Appropriations acts, Federal Register notices governing the use of CDBG-DR grants, and related checklists are available online: <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>



disaster assistance (using recent data available from FEMA, SBA, and other sources), excluding non-duplicative assistance from total assistance to calculate DOB, reducing the total award by the amount of the DOB, and obtaining an agreement from applicants to repay duplicative assistance.

The Federal Register notices that identify CDBG-DR grant requirements also require CDBG-DR grantees to consider projected sources of disaster assistance in the needs assessment that is part of an action plan for disaster recovery. Consideration of other potential sources of assistance when planning for the use of grant funds helps to limit the possibility of duplication between CDBG-DR and other assistance.

### **III.C. Necessary and Reasonable Requirements**

The Cost Principles applicable to all CDBG-DR grantees and their subrecipients require that costs are necessary and reasonable. The Cost Principles are made applicable to States by 24 CFR 570.489(p) and to local governments through 24 CFR 570.502. State grantees are also subject to 24 CFR 570.489(d), which requires that states shall have fiscal and administrative requirements to ensure that grant funds are used “for reasonable and necessary costs of operating programs.”

Under the Cost Principles, a cost assigned to a grant “is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost” (2 CFR 200.404).

Grantees must consider factors described at 2 CFR 200.404(a) through (e) when determining which types and amounts of cost items are necessary and reasonable. Based on these factors, HUD generally presumes that if a cost has been paid by another source, charging it

to the Federal award violates the necessary and reasonable standard unless grant requirements permit reimbursement.

#### **IV. Basic Duplication of Benefits Calculation Framework**

The Stafford Act requires a fact specific inquiry into assistance received by each applicant. This notice refers to the subject of a DOB review as an “applicant” or “CDBG-DR applicant” and uses the term “applicant” to include individuals, businesses, households, or other entities that apply to the grantee or a subrecipient for CDBG-DR assistance, as well as entities that use CDBG-DR assistance for an activity without submitting an application (e.g., the department or agency of the grantee administering the grant, other state or local departments or agencies, or local governments).

A grantee is prohibited from making a blanket determination that CDBG-DR assistance under one of its programs or activities does not duplicate another category or source of assistance. The grantee must conduct an individualized review of each applicant to determine that the amount of assistance will not cause a DOB by exceeding the unmet needs of that applicant. A review specific to each applicant is necessary because assistance available to each applicant varies widely based on individual insurance coverage, eligibility for various sources of assistance, and other factors.

This section establishes the primary considerations that must be part of a DOB analysis when providing CDBG-DR assistance, and a framework for analyzing need and avoiding DOB when calculating awards. CDBG-DR grantees have discretion to develop policies and procedures that tailor their DOB analyses to their own programs and activities so long as the grantee’s policies and procedures are consistent with the requirements of this notice. If the Federal Register notices governing the CDBG-DR grant require the Secretary to certify that the

grantee's DOB procedures are adequate, the grantee's procedures must meet standards HUD adopts to determine adequacy.

#### **IV. A. Assess Applicant Need**

A grantee must determine an applicant's total need. Total need is calculated based on need estimates at a point in time; total need is the current need. However, if the grantee's action plan permits CDBG-DR assistance to reimburse costs of CDBG-DR eligible activities undertaken by the applicant before submitting an application (see section V.B.3. for a discussion of reimbursement) the total need also includes these costs. Generally, total need is calculated without regard to the grantee's program-specific caps on the amount of assistance.

For rehabilitation, reconstruction, or new construction activities, the need is relatively easy to determine from construction cost estimates.

For recovery programs of the grantee that do not entail physical rebuilding, such as special economic development activities to provide an affected business with working capital, the total need will be determined by the requirements or parameters of the program or activity. For special economic development activities, total need should be guided by standard underwriting guidelines (some CDBG-DR grants require grantees and subrecipients to comply with the underwriting guidelines in Appendix A to 24 CFR part 570 when assisting a for-profit entity as part of a special economic development project).

The grantee's assessment of total need must consider in-kind donations of materials or services that are known to the grantee at the time it calculates need and makes the award. In-kind donations are non-cash contributions, such as donations of professional services, use of construction equipment, or contributions of building materials. In-kind donations are not "financial assistance" that creates a DOB under the Stafford Act, but they do reduce the amount

of CDBG-DR assistance for unmet need because the donated goods or services reduce activity costs.

#### **IV. B. Identify Total Assistance**

To calculate DOB, grantees are required to identify “total assistance.” For this notice, total assistance includes all reasonably identifiable financial assistance available to an applicant.

##### **IV.B.1. Types of Resources Included in Total Assistance**

Total assistance includes resources such as cash 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. At a minimum, the grantee’s efforts to identify total assistance must include a review to determine whether the applicant received FEMA, SBA, insurance, and any other major forms of assistance (e.g., State disaster assistance programs) generally available to applicants.

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.

For this notice, a private loan is a loan that is not provided by or guaranteed by a governmental entity, 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.

By contrast, subsidized loans for the same purpose are to be included in the DOB calculation unless an exception applies (see discussion below in section V.B.2.).

#### **IV.B.2. Availability of Resources Included in Total Assistance**

Total assistance includes available assistance. Assistance is available if an applicant: (1) would have received it by acting in a reasonable manner, or in other words, 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 (2) has received the assistance and has legal control over it. Available assistance includes reasonably anticipated assistance that has been awarded and accepted but has not yet been received. For example, if a local government seeks CDBG-DR assistance to fund part of a project that also has been awarded FEMA Hazard Mitigation Grant Program (HMGP) assistance, the entire HMGP award must be included in the calculation of total assistance even if FEMA obligates the first award increment for the project, but subsequent increments remain unfunded until certain project milestones are met.

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. For example, it may be reasonable for an applicant to elect to receive an immediate lump sum insurance settlement based on estimated cost of rehabilitation instead of waiting for a longer period of time for the insurance company to calculate reimbursement based on actual replacement costs, even if the reimbursement based on actual costs would exceed the lump sum insurance settlement.

HUD generally considers assistance to be available if it is awarded to the applicant but is administered by another party instead of being directly deposited with the applicant. For example, if an entity administering homeowner rehabilitation assistance pays a contractor directly to complete the rehabilitation, the assistance is still considered available to the applicant.

By contrast, funds that are not available to an applicant must be excluded from the final CDBG-DR award calculation. For example, insurance or rehabilitation assistance received by a previous owner of a disaster damaged housing unit is not available to a current owner that acquired the unit by sale or transfer (including a current owner that inherited the unit as a result of the death of the previous owner) unless the current owner is a co-recipient of that assistance.

Funds are not available to an applicant if the applicant does not have legal control of the funds when they are received. For example, if a homeowner's mortgage requires insurance proceeds to be applied to reduce the unpaid mortgage principal, then the lender/mortgage holder (not the homeowner) has legal control over those funds. The homeowner is legally obligated to use insurance proceeds for the purpose of reducing the unpaid mortgage principal and does not have a choice in using them for any other purpose, such as to rehabilitate the house. Under these circumstances, insurance proceeds do not reduce CDBG-DR rehabilitation assistance eligibility.

Alternatively, if a lender requires use of insurance for rehabilitation, or a disaster-affected homeowner chooses to apply insurance proceeds received for damage to the building to reduce an unpaid mortgage principal, these insurance proceeds are treated as a DOB and reduce the amount of CDBG-DR funds the grantee may provide for rehabilitation.

#### **IV.C. Exclude Non-Duplicative Amounts**

Once a grantee has determined the total need and the total assistance, it determines which sources it must exclude as non-duplicative for the DOB calculation. Grantees must exclude amounts that are: (1) provided for a different purpose; or (2) provided for the same purpose (eligible activity), but for a different, allowable use (cost). Below, each of these categories is explained in greater detail.

##### **IV.C. 1. Funds for a Different Purpose**

Any assistance provided for a different purpose than the CDBG-DR eligible activity, or a general, non-specific purpose (e.g., “disaster relief/recovery”) and not used for the same purpose must be excluded from total assistance when calculating the amount of the DOB.

Insurance proceeds for damage or destruction of a building are for the same purpose as CDBG-DR assistance to rehabilitate or reconstruct that building. On the other hand, grantees may exclude, as non-duplicative, insurance provided for a different purpose (e.g., insurance proceeds for loss of contents and personal property, or insurance proceeds for loss of buildings (such as a detached garage) that the grantee has determined it will not assist with CDBG-DR funds). However, a grantee may treat all insurance proceeds as duplicative if it is impractical to identify the portion of insurance proceeds that are non-duplicative because they are for a different purpose than the CDBG-DR assistance.

Similarly, CDBG-DR assistance paid to a homeowner as a housing incentive for the purpose of inducing the homeowner to sell the home to the grantee (e.g., in conjunction with a buyout) are for a different purpose than funds provided for interim housing (e.g., temporary assistance for rental housing during a period when a household is unable to reside in its home). In such a case, interim housing assistance may be excluded from the final DOB calculation as non-duplicative of funds paid for the housing incentive.

#### **IV.C.2. Funds for Same Purpose, Different Allowable Use**

Assistance provided for the same purpose as the CDBG-DR purpose (the CDBG-DR eligible activity) 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 (cost) of the CDBG-DR assistance (e.g., the purpose is housing rehabilitation, the use of the other assistance was roof replacement and the use of the CDBG-DR

assistance is rehabilitation of the interior of the house). Grantees are advised to consult with HUD to determine what documentation is appropriate in this circumstance. As a starting point, grantees should consider whether the source of the assistance requires beneficiaries to maintain documentation of how the assistance was used.

Whether the use of the non-CDBG-DR assistance is an allowable use depends on the rules imposed by the source that provided the assistance. For example, assume that a CDBG-DR grantee is administering a homeowner rehabilitation program and an applicant to the program can document that he/she previously received and used FEMA funds for interim housing costs (i.e., rent). If FEMA permitted the applicant to use its assistance for the general purpose of meeting any housing need, the CDBG-DR grantee can exclude the FEMA assistance used for interim housing as non-duplicative of the CDBG-DR assistance for rehabilitation.

If, on the other hand, FEMA limited the use of FEMA funds to housing rehabilitation, then the full amount of the FEMA assistance must be considered for the specific purpose of housing rehabilitation and cannot be excluded if the applicant used those funds for interim housing. If interim housing is not an allowable use, the amount of the FEMA housing rehabilitation assistance used for interim housing is considered a DOB. If the grantee thinks the actual use of the FEMA assistance may be allowable, the CDBG-DR grantee should contact FEMA for clarification.

Assistance provided for the purpose of housing rehabilitation, including assistance provided for temporary or minor rehabilitation, is for the same purpose as CDBG-DR rehabilitation assistance. However, the grantee can exclude assistance used for different costs of the rehabilitation, which are a different allowable use (rehabilitation costs not assisted with CDBG-DR). For example, if the other assistance is used for minor or temporary rehabilitation



which enabled the applicant family to live in their home instead of moving to temporary housing until rehabilitation can be completed, the grantee can undertake remaining work necessary to complete rehabilitation. The grantee's assessment of total need at the time of application may include the costs of replacing temporary materials with permanent construction and of completing mold remediation by removing drywall installed with other assistance. These types of costs to modify partially completed rehabilitation that the grantee determines are necessary to comply with the requirements of CDBG-DR assistance do not duplicate other assistance used for the partial rehabilitation.

Grantees are encouraged to contact HUD for further guidance in cases when it is unclear whether non-CDBG-DR assistance for the same general purpose can be excluded from the DOB calculation because it was used for a different allowable use.

#### **IV.D. Identify DOB Amount and Calculate the Total CDBG-DR Award**

The total DOB is calculated by subtracting non-duplicative exclusions from total assistance. Therefore, to calculate the total maximum amount of the CDBG-DR award, the grantee must: (1) identify total need; (2) identify total assistance; (3) subtract exclusions from total assistance to determine the amount of the DOB; and (4) subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG-DR award.

Three considerations may change the maximum amount of the CDBG-DR award.

First, the grantee may impose a program cap that limits the amount of assistance an applicant is eligible to receive, which may reduce the potential CDBG-DR assistance available to the applicant.

Second, the grantee may increase the amount of an award if the applicant agrees to repay duplicative assistance it receives in the future (unless prohibited by a statutory order of

assistance, as discussed in section V.C.). Section 312(b) of the Stafford Act permits a grantee to provide CDBG-DR assistance to an applicant who is or may be entitled to receive assistance that would be duplicative if: (1) the applicant has not received the other assistance at the time the CDBG-DR grantee makes its award; and (2) the applicant agrees to repay the CDBG-DR grantee for any duplicative assistance once it is received. The agreement to repay from future funds may enable a faster recovery in cases when other sources of assistance are delayed (e.g., due to insurance litigation). HUD requires all grantees to enter agreements with applicants that require applicants to repay duplicative assistance before receiving CDBG-DR assistance, as discussed in section VII of this notice.

Third, the applicant's CDBG-DR award may increase if a reassessment shows that the applicant has additional unmet need, as discussed in section IV.E. of this notice.

#### **IV.E. 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; or theft of materials. Unmet need may also change if other resources become available to pay for costs of the activity (such as FEMA or Army Corps), and reduce the need for CDBG-DR.

To the extent that an original disaster recovery need was not fully met or was exacerbated by factors beyond the control of the applicant, the grantee may provide additional CDBG-DR funds to meet the increased unmet need.

Grantees must be able to identify and document additional unmet need, for example, by completing a professional inspection to verify the revised estimate of costs to rehabilitate or reconstruct damaged property.

## **V. Special Considerations**

### **V.A. Programmatic Considerations Related to Each Type of Assistance**

The potential for DOB arises most frequently under homeowner rehabilitation programs but is not limited solely to that type of activity. The following examples do not form an exhaustive list of all CDBG-DR funded programs or activities. They are included to illustrate instances when duplicative assistance can occur when assisting other recovery activities:

1. Assistance to businesses. Many grantees carry out economic revitalization programs that provide working capital assistance to businesses. Generally, working capital assistance is calculated after assessing a business's ability to use its current assets to pay its current liabilities. The grantee's DOB analysis must consider total assistance, which includes all sources of financial assistance available to the applicant to pay a portion of liabilities that will become due. For example, a downtown business alliance might award business recovery grants from its funds to cover some of the same liabilities. Even if the downtown business alliance does not call its assistance "working capital" assistance, the amount the business received from the downtown business alliance to pay the same costs as the CDBG-DR funds is a DOB. Therefore, a grantee's basis for calculating CDBG-DR economic development assistance and the

- purposes for which the applicant can use the assistance should be clearly identified so that grantees can prevent a DOB. As discussed above, assets such as cash and cash equivalents (excluding deposits of insurance proceeds or other disaster assistance), inventories, short-term investments and securities, accounts receivable, and other assets of the business are not financial assistance, although those assets may be relevant to underwriting.
2. Assistance for infrastructure. State grantees may assist state or local government entities by providing funding to restore infrastructure (public facilities and improvements) after a disaster. CDBG-DR funds used directly by state and local governments for public facilities and improvements or other purposes are also subject to the DOB requirements of the Stafford Act. For example, a wastewater treatment facility owned by a local government may need to be rehabilitated. In this instance, total assistance, for a DOB analysis, would not only include any other federal assistance available to rehabilitate the facility, but it must also include any local funds that are available for this activity. And if local funds were previously designated or planned for the activity, but are no longer available, the grantee should document that the local government recipient does not have funds set aside for the activity in any capital improvement plan (or similar document showing planned use of funds).
  3. Payments made under the Uniform Relocation Assistance and Real Property Acquisition Act (URA). Grantees may provide a displaced person (as defined under 24 CFR 570.606) with rental assistance payments under the URA. To comply with CDBG-DR DOB requirements, before issuance of rental assistance payments required by the URA, grantees must complete a DOB analysis. For example, a

CDBG-DR grantee must check FEMA assistance data to determine that FEMA did not provide rental assistance payments during the same time period (under the URA or as part of a FEMA Individual Assistance Award). The URA also prohibits payments for the same “purpose and effect” as another payment to a displaced person (49 CFR 24.3).

## **V.B. Subsidized Loans**

This notice updates guidance on the treatment of subsidized loans in a DOB analysis as the result of recent statutory changes. Private loans are not “assistance” and therefore are not a duplication (see section IV.B.1 above for a discussion of private loans).

The full amount of a subsidized loan available to the applicant for the same purpose as CDBG-DR assistance is assistance that must be included in the DOB calculation unless one of the exceptions in section V.B.2. applies, including the exception in V.B.2(iii) authorized in the DRRRA amendments to section 312 of the Stafford Act (which applies to disasters occurring between January 1, 2016 and December 31, 2021, until the amendment sunsets October 5, 2023). A subsidized loan is available when it is accepted, meaning that the borrower has signed a note or other loan document that allows the lender to advance loan proceeds.

CDBG-DR grantees are reminded that CDBG-DR supplemental appropriation acts typically provide that CDBG-DR funds “may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers.” This prohibition (or similar prohibitions) in CDBG-DR appropriations acts applies to loans even if the loans would not be treated as a DOB under the exceptions in V.B.2. below.

### **V.B.1. Subsidized Loans**

For this notice, subsidized loans (including forgivable loans) are 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.

### **V.B.2 Exceptions When Subsidized Loans are Not a Duplication**

**(i) Short-term subsidized loans for costs later reimbursed with CDBG-DR.** Federal Register notices governing CDBG-DR grants generally permit grantees to reimburse costs of the grantee or subrecipient for eligible activities on or after the date of the disaster. If the grantee or subrecipient obtained a subsidized short-term loan to pay for eligible costs before CDBG-DR funds became available (for example, a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan does not create a duplication.

**(ii) Declined or cancelled subsidized loans.** The amount of a subsidized loan that is declined or cancelled is not a DOB. To exclude declined or cancelled loan amounts from the DOB calculation, the grantee must document that all or a portion of the subsidized loan is cancelled or declined unless the loan qualifies under the exclusion discussed in (iii) below.

*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. The CDBG-DR supplemental appropriation for 2017 disasters<sup>3</sup> provides “the Secretary and any grantee ... shall not take into consideration or reduce the amount provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major declared disasters that occurred in 2014, 2015, 2016, and 2017 from the

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<sup>3</sup> Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Pub. L. 115-123, approved February 9, 2018).

Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b)).”

CDBG-DR grantees shall 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). If a grantee’s DOB policies and procedures treat declined loans as a DOB, the grantee must update its policies and procedures.

A grantee is only required to document declined loans if information available to the grantee (e.g., the data the grantee receives from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and the grantee is unable to determine from that available information that the applicant declined the loan. If the grantee is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, the grantee must 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 documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available: (a) a written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no

longer available to the applicant; or (b) a legally binding agreement between the CDBG-DR grantee (or local government or subrecipient administering the CDBG-DR assistance) and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts. The documentation described above must be maintained by the grantee. Without this documentation, any approved but undisbursed portion of a subsidized loan must be included in the grantee's calculation of the total assistance amount unless another exception applies.

For cancelled SBA loans, the grantee must 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.

**(iii) The subsidized loan meets the requirements for a statutory exception under the DRRRA's amendments to the Stafford Act.** The DRRRA amendments apply only to major disasters or emergencies declared between January 1, 2016, and December 31, 2021 (DRRA Qualifying Disasters). However, the DRRRA also provides that the amendment sunsets (i.e., the Stafford Act is amended to remove this provision) on the date that is 5 years after the date the DRRRA's enactment, therefore, the exception for DRRRA Qualifying disasters no longer applies after October 5, 2023. Grantees shall continue to treat loans accepted in response to disasters declared in 2015 as a duplication of benefits, unless another exception applies.

For DRRRA Qualifying Disasters, FEMA has advised that a loan is not a prohibited duplication of benefits under section 312(b)(4)(C) of the Stafford Act, as amended by section 1210 of the DRRRA, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency.<sup>4</sup>

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<sup>4</sup> [https://www.fema.gov/media-library-data/1551126628749-68761acce84dda93f590eb91676ce63e/Section\\_1210\\_FactSheet\\_Final\\_Draft\\_2019.pdf](https://www.fema.gov/media-library-data/1551126628749-68761acce84dda93f590eb91676ce63e/Section_1210_FactSheet_Final_Draft_2019.pdf)



**a. Treatment of disbursed loans that meet the statutory exception under the DRRA amendments.**

FEMA also advised that the DRRA amendments do not automatically require or authorize repayment of existing loan amounts. Instead, FEMA advised “whether particular federal grant funds are available for the purpose of paying down a loan provided for disaster losses is a determination reserved for the grant awarding agency, pursuant to its statutory program authorities and appropriations.” HUD requirements on the reimbursement of costs paid with subsidized loans is provided in section V.B.3, below.

**b. Treatment of undisbursed loans that meet the statutory exception under the DRRA amendments.**

For subsidized loans made in response to DRRA Qualifying Disasters, accepted but undisbursed loan amounts (e.g., accepted but undisbursed SBA loan amounts) are not considered a DOB. Grantees that received a CDBG-DR grant in response to a DRRA Qualifying Disaster may revise awards to applicants with undisbursed subsidized loan assistance from SBA or other sources to provide additional CDBG-DR assistance. The amount of additional CDBG-DR assistance must be based on a revised DOB analysis that excludes accepted but undisbursed loan amounts from total assistance when calculating the maximum CDBG-DR award. If the grantee provides additional CDBG-DR assistance, the grantee must notify the lender and must obtain a written agreement from the applicant that the applicant will not make additional draws from the subsidized loan without the grantee’s approval. The grantee must review and approve any subsequent draws to determine whether all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency, as required by the DRRA.

If providing additional assistance in the amount of undisbursed loans would be inconsistent with the grantee's approved CDBG-DR action plan, the grantee must amend its action plan.

### **V.B.3 Use of CDBG-DR for Reimbursement of Costs Paid by Subsidized Loans Following DRRA Qualifying Disasters**

As a general rule, CDBG-DR grant funds are available only to pay for new activities. However, most Federal Register notices governing CDBG-DR grants permit payment of costs dating back to the date of the disaster that led to the CDBG-DR grant award. These Federal Register notices require grantees to adhere to reimbursement requirements previously established by HUD when reimbursing applicants' costs.<sup>5</sup> Reimbursement is not permitted if payment of the cost with CDBG-DR funds will cause a DOB because an exception does not apply or violate the requirement that CDBG-DR funds shall not be used for activities reimbursable by, or for which funds are made available by, FEMA or the Army Corps of Engineers.

This notice establishes a new policy for grantees that received CDBG-DR grants made in response to DRRA Qualifying Disasters. Subject to conditions of this notice, grantees that received CDBG-DR grants in response to DRRA Qualifying Disasters may grant CDBG-DR funds to reimburse individuals and businesses (other than the grantee or subrecipients) for some costs of CDBG-DR eligible activities that were paid with subsidized loans. The conditions for payment of these costs are:

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<sup>5</sup> The most recent CPD notice made applicable by Federal Register notices governing CDBG-DR grants is CPD Notice 2015-07, "Guidance for Charging Pre-Application Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants" (<https://files.hudexchange.info/resources/documents/Notice-CPD-15-07-Guidance-for-Charging-Pre-Application-Costs.pdf>). HUD may update this notice and amend reimbursement requirements in Federal Register notices from time to time. This notice applies to reimbursement of applicants other than the grantee and subrecipient. The requirements on reimbursement of costs of the grantee or subrecipient are described in the Federal Register notices governing the grants.

- (i) The grantee must document in the applicant's file that all federal assistance (including CDBG-DR and subsidized loan assistance) is used toward a loss suffered as a result of the major disaster or emergency. If the subsidized loan is used to carry out a CDBG-DR eligible activity that addresses a loss suffered as a result of a major disaster or emergency, HUD considers reimbursement of eligible costs paid with that loan to be used toward a loss suffered as a result of the major disaster or emergency. Under the terms of the DRRRA amendments to the Stafford Act, if a federal loan is used for a purpose other than disaster losses, the subsidized loan still duplicates other sources provided for the same purpose.
- (ii) The grantee must meet all grant requirements for reimbursement of costs, which are imposed by Federal Register notices that govern CDBG-DR grants.
- (iii) If the grantee has already received the application and completed an initial DOB analysis, the grantee must complete a revised DOB analysis that updates the applicant's unmet needs and assistance from all sources, and excludes subsidized loans used for disaster losses and other nonduplicative assistance from the total assistance to calculate the revised DOB amount.
- (iv) The grantee must document that the reimbursed cost was for an activity that was a CDBG-DR eligible activity on the effective date of this notice, such as housing rehabilitation costs paid with SBA loan proceeds, or for an activity that is otherwise eligible pursuant to a waiver provided by the Department. Grantees are prohibited from reimbursing costs that are not otherwise eligible for CDBG-DR assistance, such as compensation for personal property loss or late fees. Payment of interest is not generally an eligible activity, but if permitted by an applicable Federal Register notice

- granting a waiver, grantees may pay interest due at the time of reimbursement for eligible activities (e.g., interest incurred by the applicant for the portion of an SBA loan used for a CDBG-DR eligible activity).
- (v) Statutes or loan documents governing subsidized loans may require the lender to receive payments that reimburse costs paid with subsidized loans. The reimbursement award to the applicant must require the applicant to comply with any requirements in the loan documents that the applicant use amounts received for reimbursement to repay the loan's outstanding principal and interest. When a grantee reimburses costs paid by SBA loans, SBA has determined that it is required to receive the payment. The grantee must notify the SBA of the reimbursement and issue a joint payment to the SBA and the applicant.
  - (vi) Grantees must advise applicants (either collectively or individually) that submitting an application for CDBG-DR reimbursement assistance does not relieve the applicant of a duty to make payments on a subsidized loan, and that until a subsidized loan is satisfied in full, failure to make principal and interest payments when due could result in a referral to collection agencies, reporting to credit bureaus, or other significant consequences.
  - (vii) The grantee must document compliance with environmental requirements at 24 CFR part 58 prior to reimbursement for a CDBG-DR eligible activity. Grantees are required to consult with the State Historic Preservation Officer, Fish and Wildlife Service and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C.

- 306108) and section 7 of the Endangered Species Act (16 U.S.C. 1536) when designing a reimbursement program.
- (viii) CDBG-DR funds are provided principally to benefit low- and moderate-income persons. Therefore, as a condition of reimbursing costs paid with SBA loans, the grantee must submit a substantial action plan amendment to HUD describing the activity and must meet the following requirements:
- a. The needs analysis in the action plan must include an updated unmet housing needs assessment to reflect the remaining total number of housing units with damage
  - b. The grantee's action plan must identify the number of eligible households yet to be served who have applied to the grantee's CDBG-DR housing assistance programs and identify how the grantee shall address all remaining unmet needs of its applicants for housing assistance;
  - c. The grantee shall reimburse costs paid with subsidized loans for all low- and moderate-income applicants before reimbursing applicants with incomes greater than 80 percent of area median income (AMI) but less than or equal to 120 percent AMI;
  - d. The total aggregate amount the grantee designates for reimbursement of costs paid with subsidized loans to applicants with incomes over 80 percent AMI shall not reduce the overall low- and moderate-income benefit applicable to the grant.
  - e. The grantee shall only grant CDBG-DR funds to reimburse costs paid with subsidized loans for applicants with incomes that exceed 120 percent of AMI

when the grantee requests, and HUD approves, a hardship exception for the applicants.

Before requesting a hardship exception, the grantee must specify in its action plan the criteria it will use to define a hardship for applicants with incomes that exceed 120 percent AMI and establish a policy that provides full or partial reimbursement to alleviate the hardship. The grantee's hardship criteria must include the following elements: (1) a demonstration of the applicant's financial necessity for full or partial reimbursement of costs paid with subsidized loans; (2) a definition of financial necessity that is sufficient to distinguish between applicants with significant need for full or partial reimbursement to enable the applicant to pay for basic household or business expenses, and applicants who are not eligible for a hardship exception because they seek reimbursement for reasons other than financial necessity; and (3) a requirement that the amount of the full or partial reimbursement shall not exceed the amount needed to address the applicant's financial necessity. The grantee must also develop policies and procedures that identify the information the grantee will use to make the determination of financial necessity.

HUD will consider requests for hardship exceptions for applicants based on HUD's determination that the grantee's hardship criteria in its action plan comply with this notice, and the hardship exception requests are consistent with the grantee's hardship criteria as provided for in its action plan. Hardship exceptions shall only be authorized until October 5, 2023, for applicants that received

assistance in response to disasters declared between January 1, 2016, and December 31, 2021, consistent with the DRRA.

- (ix) Before October 5, 2023, HUD will evaluate the impact of policies provided in this Notice using data provided by its grantees. To conduct this evaluation, one year from the approval of the substantial action plan amendment required in paragraph (viii) above, the grantee shall submit to HUD an assessment and supporting data that provides: (1) The total amount of CDBG-DR funds used for the reimbursement of SBA and other subsidized loans; (2) the total number of households and the number of low-to moderate-income households that have been reimbursed; and (3) the SBA loan number and the FEMA Registrant ID of each individual household that was reimbursed for its SBA loan costs. HUD will also coordinate with FEMA on reports required by section 1210(a)(5) of Public Law 115-254, which will report on efforts to improve coordination between Federal agencies and clarify the sequence of delivery of disaster assistance to individuals.

Any future grantee request for a waiver of the overall benefit requirement applicable to a CDBG-DR grant will be evaluated by HUD in light of the amount of assistance the grantee has or plans to use to reimburse applicants with incomes in excess of 80 percent AMI for costs paid by SBA and other subsidized loans.

#### **V. C. 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

grantees 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 will be reimbursed by FEMA or the Army Corps, the grantee cannot 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 the CDBG-DR grantee's responsibility to recapture CDBG-DR assistance that duplicates assistance from FEMA or the Army Corps.

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

FEMA regulations at 44 CFR 206.191 set forth a delivery sequence that establishes which source of assistance is duplicative for certain programs. CDBG-DR assistance is not listed in FEMA's sequence, but as a practical matter, CDBG-DR assistance duplicates other sources received before the CDBG-DR for the same purpose and portion of need. Any amount received from other sources before the CDBG-DR assistance that is determined to be duplicative must be collected by the grantee. The mandatory agreement to repay (discussed in VII. below) can be used to prevent duplication by assistance that is available, but not yet received. If the duplicative assistance is received after CDBG-DR, the grantee must collect the DOB or contact HUD if it has questions about whether another Federal agency is responsible for collecting the duplication.



## **V. D. Multiple Disasters**

When multiple disasters occur in the same location, and the applicant has not recovered from the first disaster at the time of a second disaster, the assistance provided in response to the second disaster may duplicate assistance for the same purpose and need as assistance provided after the first disaster. HUD recognizes that in this scenario, DOB calculations can be complicated. Damage from a second disaster, for example, may destroy work funded and completed in response to the first disaster. The second disaster may also damage or destroy receipts and other documentation of how applicants expended assistance provided after the first disaster.

Therefore, HUD is adopting the following policy that is applicable to circumstances when two disasters occur in the same area, and the applicant has not fully recovered from the first disaster before the second disaster occurs: Applicants are not required to maintain documentation related to the use of public disaster assistance (Federal, State, and local) beyond the period required by the agency that provided the assistance. If documentation cannot be provided, the grantee may accept a self-certification regarding how the applicant used the other agency's assistance, provided that the applicant is advised of the criminal and civil penalties that apply in cases of false claims and fraud, and the grantee determines that the applicant's total need is consistent with data the grantee has about the nature of damage caused by the disasters (e.g., flood inundation levels). For example, a second disaster strikes three years after an agency provided assistance in response to the first disaster, and that agency required applicants to maintain documentation for two years, the grantee may accept a self-certification regarding how the applicant used the other agency's assistance.

Applicants must continue to follow all requirements to obtain and maintain flood insurance as a condition of receiving Federal flood disaster assistance. No Federal disaster relief assistance made available in a flood disaster area may be used to make a payment to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property. See 42 U.S.C. 5154a.

## **VI. Recordkeeping**

The Grantee must document compliance with DOB requirements. Policies and procedures for DOB should may be specific for each program funded by the CDBG-DR grantee and should be commensurate with risk. Grantees should be especially careful to sufficiently document the DOB analysis for activities they are carrying out directly. Insufficient documentation on DOB can lead to findings, which can be difficult to resolve if records are missing, inadequate, or inaccurate to demonstrate compliance with DOB requirements.

When documenting its DOB analysis, grantees cannot rely on certification alone for proof of other sources of funds for the same purpose (unless authorized by this notice, see V.D. above). Any certification by an applicant must be based on supporting evidence that will be kept available for inspection by HUD. For example, if an applicant certifies that other sources of funds were received and expended for a different purpose than the CDBG-DR funds, grantees must substantiate this assertion with an additional source of information (e.g., physical inspections, credit card statements, work estimates, contractor invoices, flood inundation records, or receipts). For these reasons, HUD recommends that as soon as possible after a disaster,

grantees advise the public and potential applicants to retain all receipts that document expenditures for recovery needs. Grantees should consult their CPD representative with questions about the sufficiency of documentation.

## **VII. Agreement to Repay**

The Stafford Act requires grantees to ensure that applicants agree to repay all duplicative assistance to the agency providing that Federal assistance. To address any potential DOB, each applicant must also enter into an agreement with the CDBG-DR grantee to repay any assistance later received for the same purpose for which the CDBG-DR funds were provided. This agreement can be in the form of a subrogation agreement or similar document and must be signed by every applicant before the grantee disburses any CDBG-DR assistance to the applicant.

In its policies and procedures, the grantee must establish a method to monitor each applicant's compliance with the agreement for a reasonable period after project completion (i.e., a time period commensurate with risk). Additionally, if required by the Federal Register notice governing the use of the CDBG-DR grant funds, the grantee's agreement must also include the following language: "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, 1001 and 31 U.S.C. 3729." If the Federal Register notice governing the use of a grantee's CDBG-DR grant does not require that language to be added, grantees may include this or similar language at their discretion.

## **VIII. Collecting a Duplication**

If a potential DOB is discovered after CDBG-DR assistance has been provided, the grantee must reassess the applicant's need at that time (see section IV.E.). If additional need is

not demonstrated, CDBG-DR funds shall 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. This determination, however, may depend on what sources of assistance were last received by the applicant.

If a grantee fails to recapture funds from an applicant, HUD may impose corrective actions pursuant to 24 CFR 570.495, 24 CFR 570.910, and Federal Register notices, as applicable. Also, HUD reminds grantees that the Stafford Act states that “A person receiving Federal assistance for a major disaster or emergency shall 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.” If the grantee does not recapture the duplicative assistance, that individual applicant will still be liable to the United States government.

The grantee may refer to any relevant guidance or the debt collection procedures in place for the state or local government. HUD is available to provide guidance to grantees in establishing or revising the grantee’s duplication of benefits policies and procedures.

## **IX. Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.218 for Units of General Local Governments (UGLG); 14.228 for States

## **X. Finding of No Significant Impact**

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division,

Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

Dated: \_\_\_\_\_

\_\_\_\_\_  
/s/  
Brian D. Montgomery  
Acting Deputy Secretary

## Appendix A: Example DOB and CDGB-DR Award Calculations

Table 1 illustrates a basic way to complete a duplication of benefits analysis and apply a program cap to calculate a CDBG-DR housing rehabilitation award. In this example, the total unmet need is greater than the program cap set by the grantee.

**Table 1: Basic Framework for DOB Calculation - Homeowner Rehabilitation**

### Example

1. Identify Applicant's Total Need Calculated at a Point in Time	\$ 100,000
<i>Grantee estimates \$100,000 to rehabilitate a damaged home. This estimate was done after the removal of a tree but before any construction and represents current need for rehabilitation costs.</i>	
2. Identify Total Assistance Available	
<i>Homeowner received the following assistance:</i>	
<i>\$20,000 from insurance for damage to the home.</i>	
<i>\$10,000 from FEMA for rehabilitation of the home.</i>	
	\$ 30,000
3. Identify the Amount to Exclude as Non-Duplicative (Amounts used for a different purpose, or same purpose, different allowable use)	
<i>Homeowner can document that she used \$5,000 to remove a large tree that fell on the home, and still has \$25,000 of insurance and FEMA assistance unexpended.</i>	
<i>Total exclusions = \$5,000. Exclude \$5,000 used for the same purpose, different allowable use.</i>	
	\$ 5,000
4. Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions)	
<i>\$30,000 in total assistance minus \$5,000 for non-duplicative exclusions.</i>	
	\$ 25,000
5. Calculate Maximum Award (Total Need Minus Total DOB Amount)	
<i>\$100,000 in total need based on estimate minus \$25,000 identified as the total DOB in step 4.</i>	
	\$ 75,000
6. Program Cap (if applicable)	\$ 50,000

<i>In this example, the grantee has a rehabilitation program cap in its policies and procedures of \$50,000. Program caps are set by the grantee in its discretion.</i>	
7. Final Award (Program Cap = Final Award if Maximum Award is Greater than the Program Cap)	\$ 50,000

Table 2, below, uses the same basic framework to calculate a CDBG-DR homeowner rehabilitation award when the applicant received insurance, FEMA assistance, and an SBA loan for housing rehabilitation. In this example, the homeowner received the full SBA loan amount. The SBA loan amount is a DOB because the loan is for the same purpose as the CDBG-DR award, and no exception applies to exclude the SBA loan amount from the duplication (e.g., the loan was made in response to a disaster that occurred in 2015, so the DRRRA exception does not apply):

**Table 2: Basic Framework for DOB Calculation - Homeowner**

**Rehabilitation Example When Subsidized Loans Are a Duplication of Benefits**

1. Identify Applicant's Total Need Calculated at a Point in Time  <i>Grantee estimates \$100,000 to finish rehabilitating a damaged home. This estimate represents remaining rehabilitation costs after the homeowner used \$40,000 of non-CDBG-DR assistance for partial rehabilitation and tree removal.</i>  <i>Total need = \$100,000 for rehabilitation not yet completed at the point in time that need was assessed.</i>	\$ 100,000
2. Identify Total Assistance Available <i>Homeowner received the following assistance:</i>  <i>\$5,000 from insurance for loss of contents.</i>  <i>\$25,000 from insurance for damage to the home.</i>  <i>\$15,000 from FEMA for rehabilitation of the home.</i>  <i>\$25,000 from SBA for rehabilitation. The DRRRA exception does not apply, so the SBA amounts are included in total assistance.</i>	\$ 70,000

<p>3. Identify the Amount to Exclude as Non-Duplicative (Amounts used for a different purpose, or same purpose, different allowable use)</p> <p><i>Homeowner can show that \$5,000 of insurance proceeds was a payment for loss of contents.</i></p> <p><i>Homeowner can document that she used \$5,000 to remove a large tree that fell on the home.</i></p> <p><i>Homeowner can document that she paid a contractor \$35,000 for partial rehabilitation so that she could live in her home until rehabilitation was completed.</i></p> <p><i>Total exclusions = \$45,000. Exclude \$5,000 for different purpose (insurance payment for contents) and exclude \$40,000 used for the same purpose, different allowable use (tree removal and partial rehabilitation).</i></p>	\$ 45,000
<p>4. Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions)</p> <p><i>\$70,000 in total assistance minus \$45,000 for non-duplicative exclusions.</i></p>	\$ 25,000
<p>5. Calculate Maximum Award (Total Need Minus Total DOB Amount)</p>	\$ 75,000
<p>6. Program Cap (if applicable)</p> <p><i>In this example, the grantee has a rehabilitation program cap in its policies and procedures of \$150,000. Program caps are set by the grantee in its discretion.</i></p>	\$ 150,000
<p>7. Final Award (Program Cap = Final Award if Maximum Award is equal to or greater than the Program Cap)</p> <p><i>In this case, the program cap is greater than the maximum award, so the applicant can receive the maximum award.</i></p>	\$ 75,000

Table 3 modifies the example in Table 2 to illustrate how the analysis would change if an exception applies to exempt the loan from treatment as a DOB, and if the maximum award is greater than the program cap. In this example, the applicant received a subsidized loan from SBA for the same purpose (housing rehabilitation) as the CDBG-DR assistance, and the assistance



was provided in response to a DRRA Qualifying Disaster (a disaster occurring between January 1, 2016 and December 31, 2021). The loan is not a DOB because the applicant can document that all of the loan proceeds were used for a disaster-related loss and therefore the DRRA exception applies.

**Table 3: Basic Framework for DOB Calculation - Homeowner**

**Rehabilitation Example When Subsidized Loans Are Not a Duplication of**

**Benefits**

<p>1. Identify Applicant's Total Need Calculated at a Point in Time</p> <p><i>Grantee estimates \$100,000 to finish rehabilitating a home damaged by a 2016 disaster. This estimate represents remaining rehabilitation costs after the homeowner completed \$25,000 in partial rehabilitation with SBA loan proceeds, \$5,000 in tree removal with insurance proceeds, and \$35,000 in rehabilitation with FEMA and insurance (\$65,000 total rehabilitation costs since the date of the disaster).</i></p> <p><i>Total need = \$100,000 in rehabilitation not yet completed at the point in time that need was assessed + \$25,000 in reimbursement for costs of CDBG-DR eligible activities paid with an SBA loan received in response to a DRRA Qualifying Disaster.</i></p>	<p>\$ 125,000</p>
<p>2. Identify Total Assistance Available</p> <p><i>Homeowner received the following assistance:</i></p> <p><i>\$5,000 from insurance for loss of contents.</i></p> <p><i>\$30,000 from insurance for damage to the home.</i></p> <p><i>\$15,000 from FEMA for rehabilitation of the home.</i></p> <p><i>Because the homeowner can document that the SBA loan proceeds of \$25,000 were used for rehabilitation, the DRRA exception applies and the SBA loan funds are not included in total assistance and do not need to be considered in the DOB analysis. Even though the grantee does not need to consider the SBA loan in the DOB analysis, the grantee must follow the requirements of this notice before reimbursing costs paid with SBA loans for DRRA Qualifying Disasters (reimbursement is described section V.B.3.).</i></p>	<p>\$ 50,000</p>

<p>3. Identify the Amount of Total Assistance to Exclude as Non-Duplicative (Amounts used for a different purpose, or same purpose, different allowable use)</p> <p><i>Homeowner can show that \$5,000 of insurance proceeds was a payment for loss of contents.</i></p> <p><i>Homeowner can document that she used \$5,000 to remove a large tree that fell on the home.</i></p> <p><i>Homeowner can document that she paid a contractor \$35,000 for partial rehabilitation with FEMA and insurance funds so that she could live in her home until rehabilitation was completed (in addition to the \$25,000 in rehabilitation completed with SBA loan proceeds, which is excluded from the DOB calculation because the DRRA exception applies).</i></p> <p><i>Total exclusions = \$45,000. Exclude \$5,000 for different purpose (insurance payment for contents) and \$40,000 used for the same purpose, different allowable use (\$35,000 partial rehabilitation completed with insurance and FEMA assistance, and \$5,000 for tree removal).</i></p>	<p>\$ 45,000</p>
<p>4. Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions)</p> <p><i>\$50,000 in total assistance minus \$45,000 for non-duplicative exclusions.</i></p>	<p>\$ 5,000</p>
<p>5. Calculate Maximum Award (Total Need Minus Total DOB Amount)</p> <p><i>If the grantee did not have a program cap, the maximum award would be less than total need by \$5,000 (the amount of the DOB). Therefore, absent a program cap, the grantee would be able to complete the remaining \$100,000 rehabilitation work and reimburse \$20,000 in rehabilitation costs paid with SBA loan proceeds.</i></p>	<p>\$ 120,000</p>
<p>6. Program Cap (if applicable)</p> <p><i>In this example, the grantee has a rehabilitation program cap in its policies and procedures of \$115,000. Program caps are set by the grantee in its discretion.</i></p>	<p>\$ 115,000</p>
<p>7. Final Award (Program Cap = Final Award if Maximum Award is equal to or greater than the Program Cap)</p> <p><i>In this case, the program cap is less than the maximum award, so the applicant can receive only the amount of the program cap. The grantee can award the applicant \$100,000 to complete the</i></p>	<p>\$ 115,000</p>

*rehabilitation (so that the applicant can occupy the home and the rehabilitation activity can meet a national objective) and the grantee can also award the applicant \$15,000 to reimburse rehabilitation costs paid with SBA loan proceeds if the grantee complies with the reimbursement requirements of this notice.*

Table 4 provides an example of a DOB calculation when the applicant seeks rehabilitation assistance to recover from damage caused by two disasters that occurred within three years. The applicant has completed some rehabilitation, but still has remaining rehabilitation need.

#### **Table 4: Basic Framework for DOB Calculation - Homeowner Rehabilitation**

##### **Example When a Homeowner Experiences Multiple Disasters**

1. Identify Applicant's Total Need Calculated at a Point in Time | \$ 100,000

*Grantee estimates \$100,000 to finish rehabilitating a home damaged by a 2018 disaster. This home was also damaged by a 2015 disaster. It is impossible to tell from the inspection if the damage was caused by the 2015 disaster or the 2018 disaster. This is the first time the grantee has done an inspection on this home.*

*This estimate represents remaining rehabilitation costs after the homeowner completed \$50,000 in partial rehabilitation with other sources of assistance. \$30,000 in rehabilitation was from sources in response to the 2018 disaster and \$15,000 in rehabilitation was from sources in response to the 2015 disaster.*

*Total need = \$100,000 in rehabilitation not yet completed at the point in time that need was assessed.*

2. Identify Total Assistance Available

*Homeowner received the following assistance for the 2015 disaster:*

*\$5,000 from insurance for loss of contents.*

*\$15,000 from the State housing agency for rehabilitation of the home.*

*Homeowner received the following assistance for the 2018 disaster:*

\$ 50,000

<i>\$30,000 from FEMA for rehabilitation of the home.</i>	
<p>3. Identify the Amount to Exclude as Non-Duplicative (Amounts used for a different purpose, or same purpose, different allowable use)</p> <p><i>Homeowner can show that \$5,000 of insurance proceeds was a payment for loss of contents.</i></p> <p><i>Homeowner no longer has the documentation for the FEMA assistance given in response to the 2015 disaster. Because the application for assistance was submitted more than two years after the homeowner received assistance from the State housing agency to recover from the 2015 disaster, and the State housing agency only required the homeowner to keep records for two years, the homeowner self-certifies that she paid a contractor \$15,000 for rehabilitation after the 2015 disaster but before the 2018 disaster.</i></p> <p><i>Homeowner can document that she paid a contractor \$30,000 for partial rehabilitation so that she could live in the home until rehabilitation was completed, in response to the 2018 disaster.</i></p> <p><i>Total exclusions = \$50,000. Exclude \$5,000 for different purpose (insurance payment for contents), \$15,000 self-certification for rehabilitation completed for 2015 disasters that was also damaged by the 2018 disaster, \$30,000 used for the same purpose, different allowable use (partial rehabilitation completed with FEMA assistance following the 2018 disaster).</i></p>	\$ 50,000
4. Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions)	\$0
5. Calculate Maximum Award (Total Need Minus Total DOB Amount)	\$ 100,000
6. Program Cap (if applicable)	\$ 100,000
7. Final Award (Program Cap = Final Award if Maximum Award is equal to or greater than the Program Cap)	\$ 100,000