



2017 CDBG-DR Problem Solving Clinic



# Duplication of Benefits

## Pro Tips – Case Studies, Process, and Documentation



# Welcome & Speakers

- Session Objectives
  - Review DOB for frame of reference
  - Learn tips from real world scenarios
  - Invite peer-to-peer learning
- Speaker
  - Makani Drummond, HUD
  - Jad Atallah, HUD



# Agenda

- Define Duplication of Benefits (DOB)
- Review how DOB is calculated
- Discuss how HUD monitors DOB
- Discuss how insurance may impact DOB
- Review Case Studies



# What is a DOB?

- Recovery assistance may be provided by many sources
- A duplication of benefits (DOB) occurs when:
  - Assistance from multiple sources and
  - Total Assistance > Need for that Type Assistance
- Responsible use of taxpayer \$\$



# What is a DOB?

- Governments are also subject to DOB requirements
- The amount of the duplication is the amount of assistance provided in excess of need
  - Ex. Mr. Brown's home was damaged by a tornado
    - Estimated cost to repair is 100k
    - Mr. Brown receives 150k (\$25K from insurance, \$25K from FEMA, and \$100K from CDBG-DR)
    - DOB amount is the last \$50K of CBDG-DR funds



# Sources of DOB Requirements

- Section 312 (42 U.S.C. 5155) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act
- Necessary and reasonable requirements (24 CFR part 570 and Uniform Requirements at 2 CFR part 200)
- CDBG-DR Appropriations Acts and HUD Federal Register Notices



# Primary Framework for CDBG-DR DOB analysis – 2011 DOB Federal Register Notice



# Federal Register Notice

- Published November 16, 2011
- 76 Fed. Reg. 71060
- Applies to any new program included in a new or amended action plan after publication date
- Link: <http://www.gpo.gov/fdsys/pkg/FR-2011-11-16/pdf/2011-29634.pdf>





# Structure of Notice

- Designed to outline the DOB process:
  - A. Determine need & duplicative benefits
  - B. Calculate award
  - C. Address remaining unmet need (if applicable)
  - D. Use of CDBG funds
  - E. Recapture (if applicable)



## A. Determine Need & Duplicative Benefits

### 1. Assess need.....

- Starting point for needs assessment:  
Basic recovery need
  - Ex. How much will it cost to replace/repair a home damaged by a Hurricane?
- Additional needs may be considered, depending on the program design
  - The CDBG-DR need may differ from an amount identified by another agency





# A. Determine Need & Duplicative Benefits

2. Identify all available assistance.....
  - Calculate total assistance available to the homeowner – e.g., insurance proceeds, FEMA award, private loan, line of credit, etc.





## A. Determine Need & Duplicative Benefits

3. Exclude non-duplicative funds.....
  - Exclude the private loan and the line of credit – these will not reduce the CDBG-DR award available to the homeowner





## B. Calculate Award

- Subtract all assistance found to be duplicative from identified need; reduce award if program cap in place
- Basic framework:

1. Identify Applicant's Total Need	\$ 100,000
2. Identify All Assistance Received	\$ 35,000
3. Deduct Assistance Determined to be Duplicative	\$ 30,000
4. Maximum Eligible Award (Item 1 less Item 3)	\$ 70,000
5. Program Cap (if applicable)	\$ 50,000
6. Final Award (lesser of Items 4 and 5)	\$ 50,000



# C. Unmet Needs

- Disaster recovery needs are calculated at a point in time; a subsequent change may affect need
  - e.g., vandalism, contractor fraud, an increase in the cost of materials and/or labor, subsequent damage, etc.
- May provide additional assistance if initial need not fully met
  - Unmet need is typically identified after CDBG-DR funds have been provided...but in some cases, may be provided before
- Discretion to determine ways to identify and verify unmet need; physical inspection/professional appraisals are highly recommended



# D. Use of CDBG-DR Funds

- Funds must be used for eligible purposes of the program or activity for which they have been provided
  - e.g., funds provided to repair a home should be used strictly for the repair of that home; funds provided to a business for equipment replacement, or structural repair, should be used only for those purposes



# E. Recapture

- Federal Agency that provides the funds responsible for recapture. For HUD, means CDBG-DR grantees
- DOB policies and procedures should address recapture
- To ensure recapture, a subrogation agreement or similar agreement must be signed by every applicant prior to the receipt of assistance
- Risk of DOB may inform policy regarding monitoring for DOB after CDBG-DR award
  - Ex: If future assistance is nearly certain but amount is uncertain, higher risk of DOB





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Assistance must be  
necessary and reasonable



# OMB Cost Principles – Necessary and Reasonable

- OMB Cost Principles
  - Necessary – not defined in 2 CFR part 200. Is it eligible? For a permissible recovery purpose?
  - Reasonable – a cost 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.
    - Other factors related to the reasonableness of the cost are described in 2 CFR part 200
- SBA Loans: presumption that use of CDBG funds to pay down SBA loans is not necessary or reasonable



# Treatment of Declined SBA Loans

- July 25, 2013 Memorandum, “HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG Disaster Recovery (DR) Assistance” – made a grant requirement by HUD Federal Register Notices
- Grantees will incorporate policies and procedures that:
  - Identify the circumstances under which the applicant declined the SBA assistance;
  - Establish why CDBG DR assistance is appropriate for the applicant; and
  - Determine, most commonly through underwriting, the amount of CDBG DR assistance that is necessary and reasonable to assist the applicant in achieving recovery



# What does HUD look for when monitoring for DOB?



# Monitoring for DOB

- HUD may ask a grantee to walk through a typical DOB analysis
- Data sharing with SBA, NFIP, and FEMA?
- Policies and procedures, including recapture policies and procedures?
- Reasonable assumptions regarding necessary documentation and due diligence
- Analysis at the applicant level, not program level



# Critical information

- When reviewing activities, HUD expects to see:
  - Description of DOB (likely in application)
  - Identification of applicant's CDBG-DR need
  - Signed privacy waiver
  - Identification of sources of assistance provided to applicant
  - Verification of FEMA and insurance proceeds (e.g., FEMA award letter, SBA data feed, insurance letter)
  - Verification of SBA or other proceeds,
  - Treatment of declined SBA awards in accordance with 2013 guidance
  - CDBG-DR award calculation
  - Subrogation agreement (or similar agreement to recapture funds if necessary)



# Monitoring for DOB

- Grantee monitoring post-award
- The DOB file should also include:
  - Policy to address recapture;
  - A process to enforce recapture; and
  - A subrogation agreement signed by beneficiary prior to receipt of assistance
- Discussion:
  - CPD monitoring handbook Exhibit 6-5



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# Insurance





# Insurance and DOB

- Not all insurance may be a duplication
- Common types of homeowner coverage:
  - Coverage for the structure of your home – may include detached structures such as a garage, tool shed or gazebo
  - Coverage for your personal belongings
  - Liability protection
  - Additional living expenses if you are temporarily unable to live in your home because of an insured disaster



# Insurance and DOB

- Insurance disputes and late payouts
- Forced mortgage payoffs
- Are CDBG-DR beneficiaries required to submit insurance claims?
  - What do the courts have to say?
  - Assignments and Subrogation agreements



# Case Studies



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# Questions?