



Duplication of Benefits Updates from the 2019 DOB Notice

2019 CDBG-DR Problem Solving Clinic

Kansas City – Overland Park | July 30 – August 1, 2019

Welcome and Speakers

- Session Objectives

- Learn tools to spot and resolve duplication of benefits concerns related to loan assistance
- Gain familiarity with recent Statutory Changes and the revised DOB notice
- Understand how these changes affect your grant
- Provide grantees an opportunity to ask questions about DOB

- Speakers

- Jen Carpenter, HUD DRSI
- Carey Whitehead, HUD OGC



Overview: What is a duplication of benefits?



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
- Basic Principle: Responsible use of taxpayer \$\$



What is a DOB?

- Individuals, businesses, governments, and other entities are all 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 rehabilitate 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
 - **Bonus points: Why the last 50K?**



2018 Statutory Changes Related to DOB



Let's define some terms

- Private Loans

- 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.

- Subsidized Loans

- Subsidized loans (including forgivable loans) are loans other than private loans. Both SBA and FEMA provide subsidized loans for disaster recovery.



Let's define some terms, cont.

- Declined 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.

- Cancelled Loans

- The borrower has entered a loan agreement, 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. (must document)
 - 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.



Pre-2018 Sources of DOB Requirements

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



Public Law 115-123 – Declined Loans

...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...



Disaster Recovery Reform Act of 2018 (PL 115-254, Division D) (“DRRA”)

Section 1210 of the DRRA amended the DOB provision in the Stafford Act

“(C) PROHIBITION ON DETERMINATION THAT LOAN IS A DUPLICATION.

- Notwithstanding subsection (c), in carrying out subparagraph (A), the President may not determine that a loan is a duplication of assistance, provided that all Federal assistance is used toward a loss suffered as a result of the major disaster or emergency.”



DRRA – Subsidized Loans

FEMA published guidance in February 2019 that said:

Loans

- Waiver process doesn't apply to loans
- Loans are not a DOB for years covered by DRRA (2016 – 2021 disasters)
- Doesn't automatically require use of federal grant funds to repay loans – depends on grant program requirements.

Source: FEMA Fact Sheet, Waiver of Duplication of Benefits under the Disaster Recovery Reform Act, available at:

https://www.fema.gov/media-library-data/1551126628749-68761acce84dda93f590eb91676ce63e/Section_1210_FactSheet_Final_Draft_2019.pdf



2011 to 2013 Disaster Grantees

- How does this affect these grantees?
 - These disasters are not covered by the law or by the new DOB notice.
 - These grantees continue to be subject to HUD's 2013 policy on declined SBA loans (July 25, 2013 Memorandum, "HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG Disaster Recovery (DR) Assistance").
 - These grantees are required to take steps to make a necessary and reasonable determination before assisting applicants that declined SBA loans.



2015 Disaster Grantees

- How does this affect these grantees?
 - They shall not treat declined loans (including SBA loans) as a DOB or consider declined loans in the DOB analysis, but may consider declined loans for other reasons, such as underwriting.
 - Documentation (applicant certification) for declined loans is required if the grantee has information/data showing that the applicant was offered subsidized loan assistance, but that information does not indicate that the applicant declined the loan.
 - They can ignore cancelled amounts in the DOB analysis if the grantee has (a) a written communication from the lender that undisbursed amounts are not available; or (b) a legally binding agreement with the applicant that loan is no longer available for disbursement and the applicant agrees not to reinstate the loan or accept more disbursements.
 - They are not required to comply with the July 25, 2013 “HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG–DR Assistance.”
 - They must update DOB policies and procedures if the current DOB policies and procedures treat declined loan amounts as a DOB.



2016 – 2021 Disaster Grantees

- How does this affect these grantees?

- Same as 2015 grantees for declined and cancelled loans (*cancelled loan policy effectively supplanted by DRRRA amendments*).
- DRRRA amendments apply so that a subsidized loan is not a prohibited DOB, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency.
 - Accepted but undisbursed loan amounts are not considered a DOB.
 - Treatment of undisbursed loan amounts is similar to cancelled loans: Assistance for the same purpose as the undisbursed loan requires that the grantee notify the lender, obtain applicant's agreement not to draw loan funds without approval, and determine that all Federal assistance is used toward a loss resulting from a major disaster or emergency.
 - Updates to the action plan are required if assistance is inconsistent with grantee's plan.
- Subject to conditions in the 2019 DOB Notice, grantees 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.



2016 – 2021 Disaster Grantees, cont.

- How does this affect these grantees?

Certain rules apply if grantees wish to reimburse CDBG–DR eligible activities that were paid with subsidized loans:

1. Document that all federal assistance is used toward a loss suffered as a result of the major disaster or emergency;
2. Meet all grant requirements for reimbursement of costs in Federal Register notices (see CPD Notice 2015-17), including that the cost is not reimbursable by FEMA or Army Corps.
3. Complete a revised DOB analysis; reimburse before 2023 when the DRRRA sunsets;
4. Document that cost was for an activity that was eligible on the date of the 2019 DOB Notice.
5. If the payment is due to SBA, notify the SBA of the reimbursement and issue a joint payment to the SBA and the applicant. For all loans, require the applicant to comply with loan requirements related to reimbursement of costs.
6. Advise applicants 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
7. Document compliance with environmental requirements at 24 CFR part 58.



2016 – 2021 Disaster Grantees, cont.

- How does this affect these grantees?
 - Submit a substantial Action Plan Amendment for HUD’s approval that includes how you will:
 1. Prioritize assistance to LMI persons, consistent with title I of the HCD Act, update info in needs assessments and households yet to be served, serve persons 80% LMI and below before serving those over 80 % AMI but below 120% AMI.
 2. Allow for hardship exceptions for those over 120% AMI
 - (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.



Case Study 1: Funds for the Same Purpose

Issue: FEMA funds \$60,000 in rehabilitation assistance [temporary and partial repairs and rehabilitation]. The grantee can document that all funds were expended for the purpose FEMA awarded the funds. Needs remain. No other type of assistance is anticipated other than CDBG-DR:

1. The grantee's damage inspectors found structural damage to the foundation that must be rehabilitated. Repair of the structural damage requires replacing some of the exterior façade that FEMA funds already paid to replace.
Cost to complete: \$30,000
2. FEMA funds paid for bathroom rehabilitation. Subsequently, due to poor installation, there is mold growth in the walls behind bathtub.
Cost to remediate mold and correct installation problems: \$7,000
3. Bathtub is very basic and not the style that the homeowner wants.
Cost for tub upgrade: \$2,500



Case Study 1: Funds for the Same Purpose

1. Identify Applicant's Total Need Calculated at a Point in Time	\$ 37,000
What is the point in time?	AFTER FEMA-funded work completed.
What is included?	Structural repairs and mold remediation.
Why not a new bathtub?	Disaster-related need was met. Bathtub was replaced.
2. Identify Total Assistance Available	\$ 60,000
The only assistance available so far is FEMA assistance.	
3. Exclude Non-Duplicative Amounts	\$ 60,000
The full amount of the FEMA assistance is excluded because it was all expended for the purpose it was provided. Costs to modify partially completed rehab that the grantee determines are necessary do not duplicate other assistance used for rehab.	
4. Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions)	\$ 0
5. Calculate Maximum Award (Total Need Minus Total DOB Amount)	\$ 37,000
6. Program Cap (if applicable)	\$ 50,000
7. Final Award (= Program Cap if Maximum Award > Program Cap)	\$ 37,000



Case Study 2: Funds for the Same Purpose

Issue: Same scenario as Case Study 1, but now there is a recovery-related need to replace the bathtub with a shower. FEMA funds \$60,000 in rehabilitation assistance. Needs remain:

1. Structural damage to the foundation and related replacement of exterior façade that FEMA funds already paid to replace.
Cost to complete: \$30,000
2. FEMA funds paid for bathroom rehabilitation. Subsequently, due to poor installation, there is mold growth in the walls behind bathtub.
Cost to remediate mold and correct installation problems: \$7,000
3. Homeowner's mother's home also flooded. After the FEMA-funded rehab was completed, mom moved in. The home needs modifications to accommodate mom's disabilities. Modifications will affect work that FEMA completed (home needs accessible shower with seat and shower bars, home needs accessible kitchen and wider doorways).
Cost of accessibility modifications, including replacing tub with shower: \$15,000



Case Study 2: Funds for the Same Purpose

1. Identify Applicant's Total Need Calculated at a Point in Time What is the point in time? What is included? Is it ok to replace the tub with a shower?	AFTER FEMA-funded work completed. Structural repairs and mold remediation. Yes, to meet the disaster recovery need for an accessible home for mom.	\$ 52,000
2. Identify Total Assistance Available The only assistance available so far is FEMA assistance.		\$ 60,000
3. Exclude Non-Duplicative Amounts The full amount of the FEMA assistance is excluded because it was all expended for the purpose it was provided. Costs to modify partially completed rehab that the grantee determines are necessary do not duplicate other assistance used for rehab.		\$ 60,000
4. Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions)		\$ 0
5. Calculate Maximum Award (Total Need Minus Total DOB Amount)		\$ 52,000
6. Program Cap (if applicable)		\$ 50,000
7. Final Award (= Program Cap if Maximum Award > Program Cap)		\$ 50,000



Case Study 3: Availability of Funds in Total Assistance

Background: Home needs \$150,000 in rehabilitation. Since the disaster, no rehab has been completed.

Other funds: Homeowner received \$25,000 from FEMA IA. Insurer issued \$100,000 joint check to the homeowner and mortgage lender. Lender deposited the check in the lender's account. Homeowner states that they agreed to use the loan funds to repay the outstanding mortgage principal based on verbal instruction from the lender.

The bank will not provide the grantee with a letter stating that mortgage payoff was "required," but loan documents do say lender can require homeowner to apply insurance to mortgage balance.

Issue: Are the funds "available" and part of total assistance, or "unavailable" and not part of total assistance?



Case Study 3: Availability of Funds in Total Assistance

The \$100,000 question: was the mortgage principal repayment voluntary?

If the lender forced the payment, the insurance proceeds were not available and are not part of total assistance.

Total DOB (\$25k) = Total Assistance (\$25k) – Total exclusions (\$0).

Maximum CDBG–DR award (\$125k) = Total need (\$150k) – Total DOB (\$25k)

If the payment was voluntary (not required by the lender), the funds were available to the homeowner and are now part of the DOB analysis.

Total DOB (\$125k) = Total Assistance (\$125k) – Total exclusions (\$0).

Maximum CDBG–DR award (\$25k) = Total need (\$150k) – Total DOB (\$125k)



Case Study 3: Availability of Funds in Total Assistance

Grantee options:

- 1) For DRRA grantees, make a rehabilitation loan to the homeowner in the amount of the mortgage principal paid down by the insurance (no risk, fair to homeowner, subsidized loan is not a DOB).
- 2) Find a way to document what the bank really told the homeowner in the verbal or informal advice (may be impossible . . .). Did the servicer record phone calls? Does the lender have a written policy, or is there a pattern or practice that can be documented?

Other options?



Q&A from Recent DOB webinar

Question: Is SBA loan assistance “available” when an applicant receives an SBA disaster loan approval notification?

Answer: No.



Q&A from Recent DOB webinar

Related Questions:

- **How must a grantee document available financial assistance (e.g., SBA, FEMA, NFIP, state assistance, private nonprofit, or any other source) and how it was used?**
- **Can the grantee rely on applicant self-reporting or self-certification?**
- **Must grantees collect receipts from applicants totaling the amount of all available assistance?**
- **Can a grantee rely on cost estimates or inspections of previous repairs?**



Q&A from Recent DOB webinar

Answer:

- Grantee sets policies for documentation of non-CDBG-DR financial assistance received or used by an applicant. Documentation should be commensurate with risk. When in doubt, contact CPD Rep about sufficiency of documentation.
- Grantees cannot rely on self-reporting or certification alone to demonstrate receipt or use of other sources of funds for the same purpose (except if permitted, i.e., declined loans/multiple disasters).

Unless permitted by the notice, a certification must be based on supporting evidence in the file. Examples of supporting evidence include physical inspections, credit card statements, work estimates, contractor invoices, flood inundation records, or receipts.



Q&A from Recent DOB webinar

Answer (continued):

- Cost estimates and physical inspections may be sufficient documentation in some cases: estimating how grantees used non-CDBG-DR assistance, making CDBG-DR award for reimbursement of pre-application costs. Cost estimates can also be used to place a cap on the amount of CDBG-DR assistance.
- The grantee must document actual costs of activities undertaken after the applicant applies for CDBG-DR assistance (cost estimation is insufficient for this purpose).



Q&A from Recent DOB webinar

- **Question: If an applicant (homeowner) has begun rebuilding her home before applying for CDBG-DR assistance, what is HUD's guidance regarding the homeowner's eligibility to receive reimbursement for the costs the applicant paid for construction completed in the rebuild?**
- **Answer: Reimbursement consistent with CPD Notice 2015-07**



Q&A from Recent DOB webinar

- **Related question: If the grantee has completed environmental review requirements for a property (site specific), must the applicant seeking assistance to rehabilitate or reconstruct that property stop work while the grantee submits its action plan amendment related to reimbursement of costs paid with an SBA loan?**
- **Answer: The grantee does not need to require homeowners to stop work if the scope of the environmental review and work is the same work being completed under an existing contract.**

HOWEVER, work must stop if the scope will change to something not contemplated in the Tier 2 environmental review



Thank you! Questions?

