



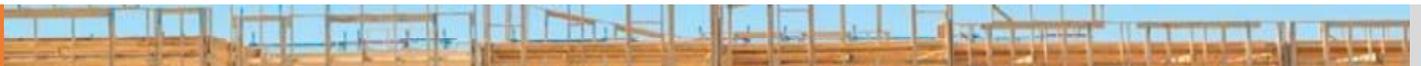
# Duplication of Benefits: Understanding and Applying the Requirements

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CDBG-DR and CDBG-MIT Webinar Series  
Summer 2020

# Welcome and Speakers

- Agenda:
  - Overview of DOB
  - Understanding DOB exclusions
  - Complex DOB examples
  - Aligning policies and procedures with the 2019 DOB Notice
  - After a DOB analysis
  - What to expect when HUD monitors DOB
- Speakers
  - Jennifer Carpenter, HUD
  - Carey Whitehead, HUD
  - Mikayla Catani, HUD



# Overview: Duplication of Benefits

*Mikayla Catani*



## What is a DOB?

A duplication of benefits occurs when a person, household, business, government, or other entity receives financial assistance from multiple sources for the same purpose, and the total assistance received for that purpose is more than the total need for assistance.



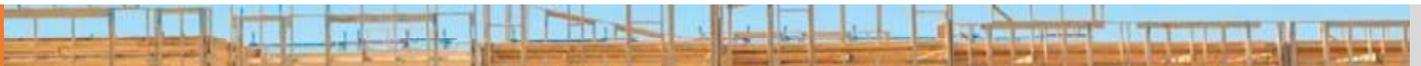
## What is a DOB?

- A DOB occurs when:
  - ✓ Assistance from multiple sources
  - ✓ Total Assistance > Need for that type of Assistance
- The amount of the DOB is the amount of Assistance in excess of the need
- Individuals, businesses, governments, and other entities are all subject to DOB requirements



# What are the 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
- OMB Cost Principles (24 CFR part 570 and 2 CFR 200, subpart E)



# Duplication of Benefits Notices

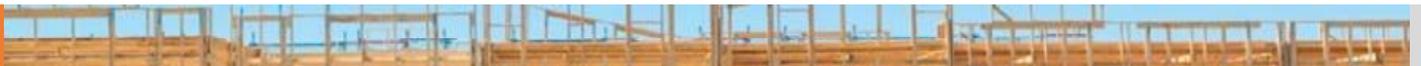
Federal Register Notices published on:

- November 16, 2011 at 76 FR 71060 (the “2011 DOB Notice”)
- June 20, 2019 at 84 FR 28836 (the “2019 DOB Notice”)
- June 20, 2019 at 84 FR 28848 (the “2019 DOB Implementation Notice”)



# OMB Cost Principles

- A cost allocated to the grant must “be necessary and reasonable for the performance of the Federal award. . .” (2 CFR 200.403(a); 2 CFR 200.404; and 2 CFR 200.405)
- What is meant by “necessary and reasonable”?
  - **Necessary:** Is the cost for an eligible activity? Is there a need for the assistance? Is it for a permissible recovery purpose (cost)?
  - **Reasonable:** Would a prudent person consider the cost to be payable by the award?



# Understanding DOB Exclusions and Exceptions from Total Assistance

*Jennifer Carpenter*



# What is not a DOB?

There is not a DOB when funds are:

- For a different purpose
- For the same purpose but a different allowable use
- Not available to the applicant
- A private loan, or
- An asset or line of credit



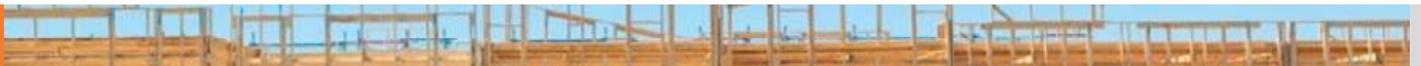
# What can be excluded or excepted?

- A list of exceptions from Total Assistance
  - Funds not available (including declined or cancelled subsidized loans)
  - Private Loans, lines of credit
- A list of exclusions that are not a DOB and would not reduce the CDBG-DR award:
  - Funds for a different purpose or general, non-specific purpose
  - Funds for the same purpose, different allowable use



# Types of Loans

- Declined Loans
  - Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but was 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



# Types of Loans Continued

- Short-Term Subsidized Loans
  - Short-Term subsidized loans cover costs that will be reimbursed with CDBG-DR funds.
  - If a grant allows for reimbursement, and a grantee or subrecipient obtained a subsidized short-term loan to pay for eligible costs before CDBG-DR funds became available, the reimbursement of the cost paid by the loan does not create a duplication.



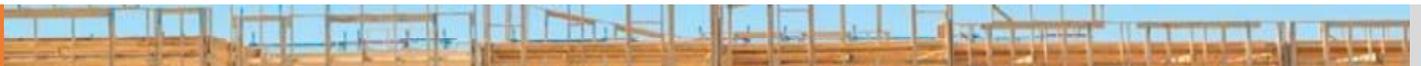
# Declined and Cancelled Loans

- For declined Loans:
  - If a grantee is unable to determine if an applicant declined a loan, the grantee must obtain a written self-certification from the applicant stating that they did not accept and receive the loan
- For cancelled loans, the grantee must:
  - Obtain written communication from the lender that the loan has been cancelled, OR
  - Establish a legally binding agreement (between itself and the applicant) that the applicant will not reinstate the loan or draw additional funds



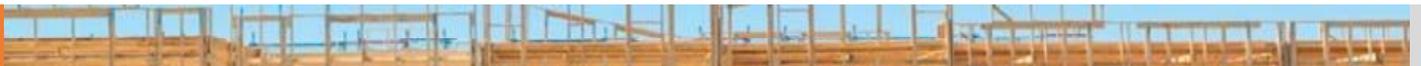
# Disaster Recovery Reform Act of 2018 (DRRA)

- A loan (including a subsidized loan) is not a prohibited duplication of benefits, provided that all Federal assistance is used towards a loss suffered as a result of a major disaster or emergency.
- Applicable for 2016 – 2021 disasters
- When a subsidized loan is accepted, either:
  1. All or a portion has not been undisbursed, or
  2. The loan has been disbursed



# DRRA Continued

1. **Undisbursed Loan Amounts:** All or a portion has not been dispersed
  - Revise DOB analysis to eliminate undisbursed amounts from total assistance,
  - Notify the lender, and
  - Obtain the applicant's agreement not to draw funds without approval (do not approve additional loan funds unless used towards a disaster loss)
  
2. **Disbursed Loan Amounts:** All or a portion of the loan has been disbursed
  - Not a DOB if there you can verify that the assistance was used toward a loss suffered as a result of a major disaster or emergency, and
  - May be eligible for reimbursement
    - Follow reimbursement requirements in the notice



# Aligning Policies and Procedures with the 2019 DOB Notice

*Jennifer Carpenter*



# General DOB Policies and Procedures

- Conduct individual DOB analyses.
- Verify all sources of assistance received by the subrecipient or applicant, as applicable, prior to the award of CDBG–DR funds.
- Determine a subrecipient’s or an applicant’s remaining funding need(s) for CDBG-DR assistance before committing funds or awarding assistance.
- Require beneficiaries to enter into a signed agreement to repay any duplicative assistance if they later receive additional assistance for the same purpose for which the CDBG–DR award was provided.



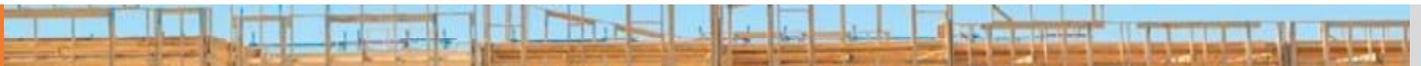
## General DOB Policies and Procedures Continued

- Use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of local, State and Federal sources of funding to prevent DOB prior to an award of CDBG-DR assistance.
- **Apply the Necessary and Reasonable cost principles and Audit Requirements for Federal Awards in subpart E of 2 CFR 200.**
- Reflect treatment of loans that is consistent with the requirements of the Declined Loans Provision and the DRRRA



# Updating DOB Policies and Procedures (2015-2017)

*“Grantees that revise their duplication of benefits policies and procedures to conform to the requirements of this notice and the 2019 DOB Notice must resubmit their policies and procedures to HUD for review. The grantee must amend or update policies and procedures that HUD determines are inadequate” (84 FR28849)*



## 2015 CDBG-DR Grantees

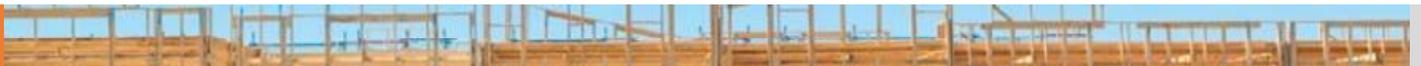
### These steps should have been taken in June 2019:

- **Step 1:** Grantee reviews the current action plan and policies and procedures to make sure they comply with the Declined Loans provision
- **Step 2:** Grantee decides whether it will change its treatment of cancelled loans for existing programs and activities
- **Step 3:** If the grantee decides it will amend its treatment of cancelled loans for existing activities, implement the change
- **Step 4:** If the grantee adds a new program or activity in its action plan on or after June 25, 2019, the 2019 DOB Notice applies



## 2016 or 2017 CDBG-DR Grantees

- **Step 1:** Follow steps on Declined and Cancelled loans on previous slide for 2015 grantees
- **Step 2:** Grantee decides whether to eliminate treatment of subsidized loans (disbursed or undisbursed) as a DOB for existing programs and activities
- **Step 3:** If the grantee decides to eliminate treatment of subsidized loans as a DOB for existing programs and activities, implement the change
- **Step 4:** If the grantee adds a new program or activity in its action plan on or after June 25, 2019, the 2019 DOB Notice applies



## CDBG-MIT & 2018/2019 CDBG-DR Grantees

- Each of the Federal Register notices directs grantees to certify its DOB policies and procedures are in accordance with the 2019 DOB Notice.
- Generally, DOB policies and procedures are adequate if:
  - The treatment of loans is consistent with the Declined Loans Provision and the DRRA in addition to other requirements of applicable Federal Register notices.



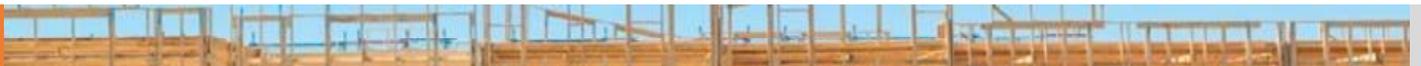
# Complex Examples

*Carey Whitehead*



# The DOB Analysis

1. Determine the applicant's total need
2. Identify the total assistance available to the applicant
3. Exclude any non-duplicative amounts from the DOB analysis
4. Calculate DOB (Total assistance – Non-Duplicative Amounts)
5. Calculate Max award (Total Need – DOB)
6. Apply any program caps (if applicable) to get Final Award
7. Reassess unmet need when necessary



## Example 1: Different Purpose, Unnecessary Windfall

After a 2016 (DRRA qualified) disaster, Cautious County creates a CDBG-DR funded buyout program to reduce flood risk next to the river. The County will use pre-disaster value for buyouts.

Carl lives in the buyout target area. He received \$20,000 from FEMA IHP to rehabilitate his house. He accepted a \$60,000 SBA loan for rehabilitation (expended all SBA and \$10,000 FEMA on rehab at the time he received the buyout offer).

**Pre-storm value: \$140,000**

**Current FMV: \$70,000**

**How are the rehabilitation funds treated in the Buyout DOB?**



# Example 1: Different Purpose, Unnecessary Windfall

## DOB analysis for Carl's Buyout

Identify Total Need	Prestorm value of \$140,000* (* this is a preliminary amount)
Identify Total Assistance	\$20,000 (does not include SBA, because this is a DRRA disaster and all loan funds were expended for a disaster loss)
Exclude Non-duplicative items	\$20,000 FEMA funds (funds for a different purpose)
Identify the total DOB	\$0
Calculate Maximum Award	\$140,000* (*preliminary)

**What is missing?**



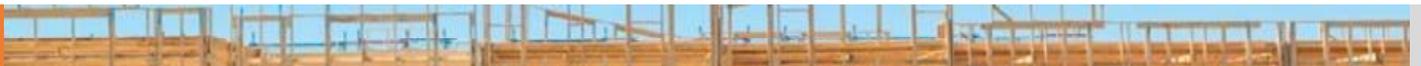
## Example 1: Different Purpose, Unnecessary Windfall

- All grantees must comply with necessary and reasonable cost principles.
- Costs must be necessary and reasonable for the performance of the Federal award.
- A cost is reasonable if it passes the prudent person test.
- In this case, Carl has \$10,000 cash in his pocket that FEMA provided for rehabilitation. The rehabilitation will not be finished because of the buyout.
- Options?



## Example 1: Different Purpose, Unnecessary Windfall

- Options to ensure all costs are necessary and reasonable?
  - Require Carl to return \$10,000 to FEMA
  - Reduce the amount of Carl's buyout by \$10,000
- What about the requirement that all buyout participants must be given either pre-disaster or post-disaster value?



# Example 1a: Different Purpose, Unnecessary Windfall

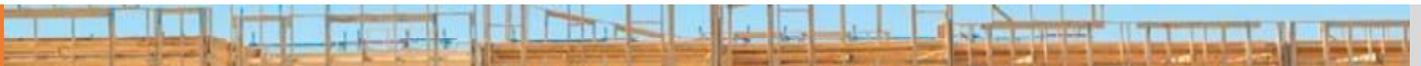
DOB analysis for Carl's Buyout - notice requires initial total need to be the same, but does not prohibit reductions for DOB and N&R costs

Identify Total Need	Prestorm value of \$140,000* (* this is a preliminary amount)
Identify Total Assistance	\$20,000 (does not include SBA, because this is a DRRA disaster and all loan funds were expended for a disaster loss)
Exclude Non-duplicative items	\$20,000 FEMA funds (funds for a different purpose)
Identify the total DOB	\$0
Calculate Maximum Award <b>and apply necessary and reasonable analysis</b>	\$130,000* (\$140,000*preliminary - \$10,000 unexpended FEMA cash not returned to FEMA)



## Example 1b

- What if Carl spent all FEMA funds but not all SBA funds?



## Example 1b: Different Purpose, Unnecessary Windfall

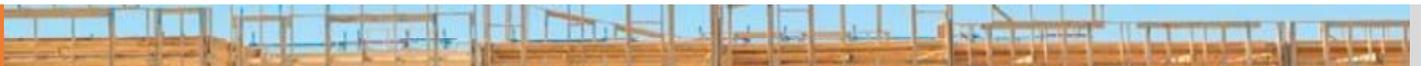
DOB analysis for Carl's Buyout – Carl spent all FEMA funds, not all SBA funds. If SBA funds haven't been disbursed, they can be cancelled and subtracted from total assistance.

Identify Total Need	Prestorm value of \$140,000
Identify Total Assistance	\$20,000* (*assuming SBA loan is undisbursed and cancelled in accordance with 2019 DOB notice.)
Exclude Non-duplicative items	\$20,000 FEMA funds* (*any undisbursed SBA loans would also be excluded funds for a different purpose)
Identify the total DOB	\$0
Calculate Maximum Award	\$140,000* (*necessary and reasonable analysis not likely to affect even if funds are disbursed. Why?)



## Example 1c

- What if the reduction would cause the price to dip below FMV?



## Example 1c: Different Purpose, Unnecessary Windfall

DOB analysis for Carl's Buyout – Assume total assistance unexpended from FEMA is \$30,000 and FMV is \$115,000.

Identify Total Need	Prestorm value of \$140,000* (* this is a preliminary amount)
Identify Total Assistance	\$30,000 (does not include SBA, because this is a DRRA disaster and all loan funds were expended for a disaster loss)
Exclude Non-duplicative items	\$30,000 FEMA funds (funds for a different purpose)
Identify the total DOB	\$0
Calculate Maximum Award	\$140,000* (*preliminary), subject to necessary and reasonable analysis. \$30,000 cash on hand. Reduce price to \$110,000, which is below FMV?

Conclusion: likely ok to pay FMV for home, because the grantee is receiving something for the value. However, grantee may wish to take extra precautions to demonstration reasonability.

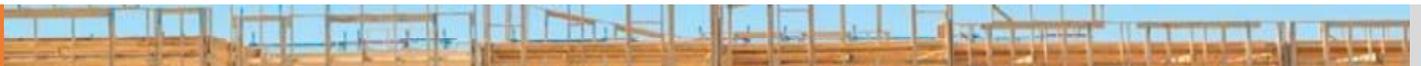


## Example 2: Multiple Disasters

A flood strikes the State of Bad Luck in 2015. Most of the area affected by the 2015 flood is flooded again by a massive storm in 2017.

Sally owns a home that was affected by both floods. In 2015, she applied to FEMA and received \$20,000 to rehabilitate her home. Before the 2017 flood she started but hadn't completed the rehabilitation. Most of her rehabilitation work was damaged by the second flood. In 2017, FEMA provided Sally an additional \$20,000. She has not completed any rehab since the 2017 flood.

Sally sought CDBG-DR assistance from the State for the rehabilitation of her home. The remaining rehabilitation will cost \$100,000.

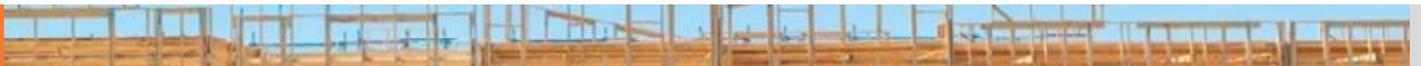


## Example 2: Multiple Disasters

### DOB analysis for Sally's Rehabilitation

Identify Total Need	\$100,000
Identify Total Assistance	\$40,000 (includes FEMA 2015 funds and FEMA 2017 funds)
Exclude Non-duplicative items	???
Identify the total DOB	???
Calculate Maximum Award	???

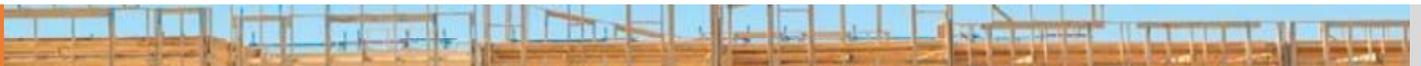
**How should the State treat the FEMA funds?**



## Example 2: Multiple Disasters

The grantee must consider: **All rehabilitation funds for both disasters are for the *same purpose*. Any funds not expended for rehab are a DOB.**

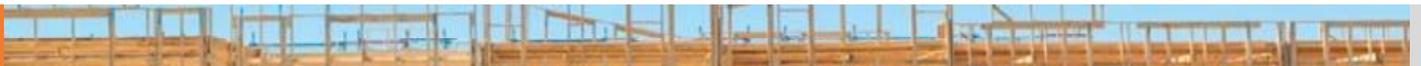
- Does Sally have documentation for her original rehabilitation after the 2015 flood?
- If not, how long does FEMA require the grantee to maintain documentation?
- If the period FEMA required Sally to maintain documentation has passed, does Sally know how much she expended? If so, she can sign a self-certification [with proper fraud warnings]
- BUT....did Sally obtain and maintain flood insurance?



## Example 2a: Multiple Disasters

DOB analysis for Sally's Rehabilitation - Assume Sally signs a self-certification indicating that she expended \$15,000, and the grantee doesn't have any evidence of fraud. FEMA's documentation retention period has passed. Sally was covered by the group flood insurance policy.

Identify Total Need	\$100,000
Identify Total Assistance	\$40,000 (includes FEMA 2015 funds and FEMA 2017 funds)
Exclude Non-duplicative items	\$15,000
Identify the total DOB	\$25,000
Calculate Maximum Award	\$75,000



## Example 2b

- **What if FEMA's documentation period has not passed?**



## Example 2b: Multiple Disasters

DOB analysis for Sally's Rehabilitation - FEMA's documentation retention period has not passed, and Sally has no documentation. The grantee does an inspection and corroborates with flood levels, and reasonably estimates that recent work done immediately before the 2017 disaster is valued at \$20,000. Sally was covered by the group flood insurance policy.

Identify Total Need	\$100,000
Identify Total Assistance	\$40,000 (includes FEMA 2015 funds and FEMA 2017 funds)
Exclude Non-duplicative items	\$20,000
Identify the total DOB	\$20,000
Calculate Maximum Award	\$80,000



## Example 2c

- **What if the State has no evidence that Sally used FEMA funds?**



## Facing a DOB – Assistance Strategies

Example - Sally: \$100,000 rehab need. \$40,000 in FEMA rehabilitation assistance **for the *same purpose***. ***Any funds not expended for rehab are a DOB.***

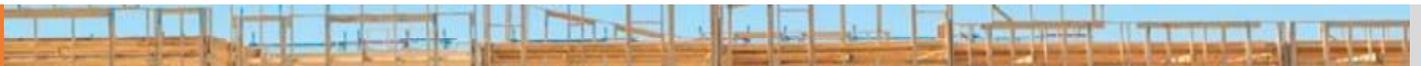
- Does Sally have any cash on hand? If so, ask her to pay it into escrow or bring to closing. Can you delay closing to allow her to get these funds?
- Can the grantee reduce the scope of the needed rehabilitation and still get a certificate of occupancy?



## Facing a DOB – Assistance Strategies

Example - Sally: \$100,000 rehab need. \$40,000 in FEMA rehabilitation assistance **for the *same purpose***. ***Any funds not expended for rehab are a DOB.***

- Can FEMA revise its award to shift some funds to ONA?
- Did the FEMA award allow use of funds for interim housing, and if so, can Sally show some funds were used for that eligible purpose?
- Is buyout an option? If yes, consider necessary and reasonable implications of cash on hand.



## What if Sally runs a business?

Example: Sally Shoemaker and Repair Shop, a for-profit business, shut down because of damage to her business. Sally's business accepted a \$30,000 grant for a local economic development authority to pay working capital costs (current assets – current liabilities). However, her business is still struggling in the depressed post-disaster economy and she may have to lay off some employees.

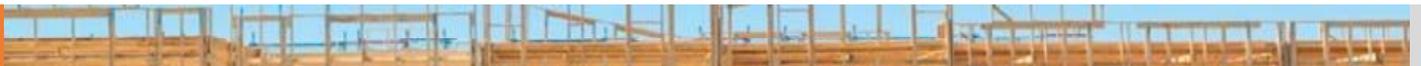


## What if Sally runs a business?

- Example (cont.) How can a grantee assist Sally without a DOB?

There is no DOB if:

- 1) the CDBG-DR grantee provides assistance for costs of CDBG-eligible activities that are *not* one of the eligible uses of the economic development authority grant;
- 2) Sally Shoemaker has not received financial assistance for that cost for some other source; *AND*
- 3) need still remains (in other words, Sally Shoemaker didn't misuse economic development authority funds to meet the need).



## What if Sally runs a business?

- Example (cont.) How can a grantee assist Sally without a DOB?

If Sally Shoemaker uses economic development authority grant funds for working capital needs such as payroll, employee health insurance, mortgage interest, rent, utilities, interest on debt obligations, the CDBG-DR grantee provide *funds for a different purpose*.



## What if Sally runs a business?

- Example (cont.) How can a grantee assist Sally without a DOB?

When providing *Funds for a different purpose* . . .

- Strategic investments can save the business short-term and long-term costs or increase revenue, without causing a DOB:
  - Upgrading the shop's HVAC system or adding solar to save on future electric bills, enabling the business to retain threatened jobs; or
  - Refinancing other high interest loans; or
  - Reconfiguring the building and parking lot to add drive-through window service that will enable the business to grow and add more jobs.

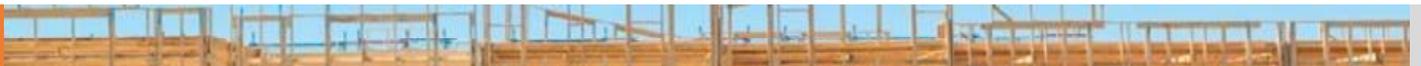


## What if Sally runs a business?

- Example (cont.) How can a grantee assist Sally without a DOB?

To speed assistance before CDBG-DR funds are available, state and local sources can provide short-term, subsidized loan assistance *without* causing a DOB.

- TIPS:
  - **Draft loan documents to make sure that the term of the assistance is short, i.e., must be repaid within 1 year or whenever long-term financing is available.**

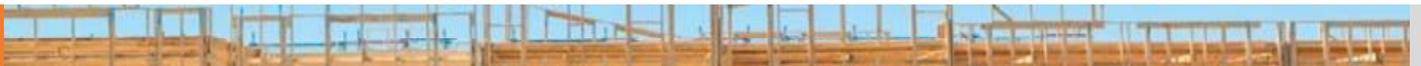


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  - Draft loan documents to make sure that the term of the assistance is short, i.e., must be repaid within 1 year or whenever long-term financing is available.
  - **Recitals can indicate that assistance is provided only for short term until other funds are available.**



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  - Recitals can indicate that assistance is provided only for short term until other funds are available.
  - **If forgivable, must still have loan terms that are enforceable if conditions are not met. I.e., not a grant in disguise.**



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  - Draft loan documents to make sure that the term of the assistance is short, i.e., must be repaid within 1 year or whenever long-term financing is available.
  - Recitals can indicate that assistance is provided only for short term until other funds are available.
  - If forgivable, must still have loan terms that are enforceable if conditions are not met. I.e., not a grant in disguise.
  - **Must complete underwriting for economic development assistance.**



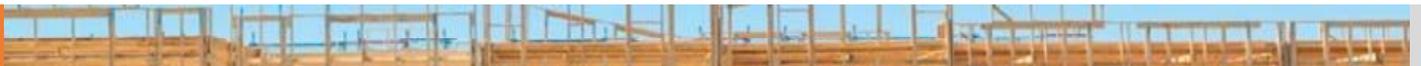
# After a DOB Analysis

*Mikayla Catani*



# Recapture

- 2019 DOB notice requires that 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.
- Subrogation agreement (or similar agreement) must be established and signed by each beneficiary prior to receiving a CDBG-DR award
- Grantees (and subrecipients) need to have recapture policies and procedures
  - Policy to address recapture
  - Process to enforce recapture
  - Risk of potential DOB should be a factor grantees consider
- Grantees have discretion to determine the method and timeframes of recapture



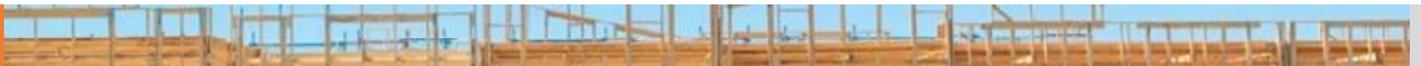
# Best Practices to Avoid a DOB

- Best practices are:
  - Determine what other funds are available to assist potential applicants
  - Look at designing a program with CDBG-eligible activities that aren't funded, or aren't fully-funded by other programs
  - Communicate with other recovery assistance providers and potential beneficiaries
  - Stagger application periods



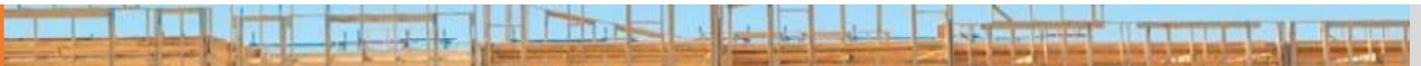
# Best Practices to Avoid a DOB

- Best practices are:
  - Establish data sharing agreements early
  - Subrogation (or similar) agreements
  - Provide Technical Assistance to subrecipients and contractors that may be involved in the DOB analysis



## If a DOB is Found

- Steps to take if potential DOB is identified:
  - Re-evaluate the need and document the remaining DOB
  - Check documentation in the file
  - Letter to beneficiary requesting repayment
  - Debt collection procedures
  - Collected amounts are CDBG-DR funds



# What to Expect When HUD Monitors DOB



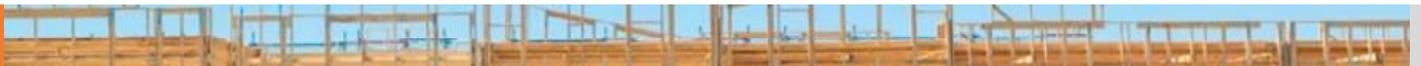
# Monitoring DOB

- A walk through of the grantee's DOB analysis process
- Review of grantee's policies and procedures
- Data sharing agreements with SBA, NFIP, FEMA, and others as applicable
- Review individual beneficiary files for:
  - CDBG-DR unmet need
  - Sources of assistance provided
  - Compliance with the appropriate DOB Notice
  - Verification of sources
  - Calculation and determination of the CDBG-DR award
  - Subrogation agreement or similar agreement in place



# Summary

- Key Messages of DOB:
  - Communicate to the public early
  - Explain to potential beneficiaries the importance of spending funds awarded for the purpose the award was given
  - Reassess or increase award amounts, as needed
  - Analyze the risks and potential of a duplication occurring



# Resources



# DOB Resources

- June 2019 Webinar

<https://www.hudexchange.info/trainings/courses/duplication-of-benefits-webinar-2019/2970/>

- Federal Register Notices

- <https://www.govinfo.gov/content/pkg/FR-2011-11-16/pdf/2011-29634.pdf>
- <https://www.govinfo.gov/content/pkg/FR-2019-06-20/pdf/2019-13146.pdf>
- <https://www.govinfo.gov/content/pkg/FR-2019-06-20/pdf/2019-13147.pdf>

- Other Guidance

<https://www.hudexchange.info/resource/3137/cdbg-dr-duplication-of-benefit-requirements-and-provision-of-assistance-with-sba-funds/>





## Thank you! Questions?

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- Questions
- Contact Info
  - Assigned CPD Representative
  - HUD Policy Unit, [DRSIPolicyUnit@hud.gov](mailto:DRSIPolicyUnit@hud.gov)