



Duplication of Benefits

Overview of the 2019 DOB Notice and the 2019 DOB
Implementation Notice

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Welcome & Speakers

- Session Objectives

- Learn tools to spot and resolve duplication of benefits concerns related to loan assistance
- Gain familiarity with the structure and contents of the revised DOB notice
- Provide grantees an opportunity to submit questions about the notice to HUD

- Speakers

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



Agenda

- Quick Review of Core DOB Requirements
- Review of 2018 DOB legislation
- Deep Dive into the 2019 DOB Notice “Updates to Duplication of Benefits Requirements Under the Stafford Act for [CDBG-DR] Grantees”
- Deep Dive into the 2019 DOB Implementation Notice “Applicability of Updates to Duplication of Benefits Requirements Under the Stafford Act for [CDBG-DR] Grantees”
- Examples
- Questions?



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 CDBG-DR funds
 - **Bonus points: Why the last 50K?**



2018 Statutory Changes Related to DOB



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)



Declined Loans - CDBG-DR appropriation approved Feb. 9, 2018 (Public Law 115-123)

Provided further, That with respect to any such duplication of benefits, the Secretary and any grantee under this section 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 Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b)):



Declined Loans - CDBG-DR appropriation approved Feb. 9, 2018 (Public Law 115-123)

- What are 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.
 - The term does not include undrawn loan amounts when the borrower has entered a loan agreement.



Declined Loans - CDBG-DR appropriation approved Feb. 9, 2018 (Public Law 115-123)

- No Effect on disasters between 2011 and 2013
 - These disasters are not covered by the proviso or by the new DOB notice.
 - CDBG-DR grants for disasters 2011 - 2013 are 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").
 - Required grantees to take steps to make a necessary and reasonable determination before assisting applicants that declined SBA loans.



Declined Loans - CDBG-DR appropriation approved Feb. 9, 2018 (Public Law 115-123)

- Effect on disasters after 2014

- Declined loan provision in 115-123 applies to disasters that occurred in 2014, 2015, 2016, and 2017 (no CDBG-DR appropriation for 2014 disasters).
- The 2019 DOB notice imposes the same requirements for declined loans for all disasters declared during the period covered by the notice (2015 – 2021).
- Grantees shall not treat declined loans (including SBA loans) as a DOB or consider declined loans in the DOB analysis, but are not prohibited from considering declined loans for other reasons, such as underwriting.
- Grantees for disasters covered by the new DOB notice (2015 – 2021) are not required to comply with the July 25, 2013 “HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG–DR Assistance.”
- If a grantee’s current DOB policies and procedures treat declined loans as a DOB, the grantee must update its policies and procedures.



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 to add a new subsection 312(b)(4) (42 U.S.C. 5155(b)(4)).

“(4) WAIVER OF GENERAL PROHIBITION.— “(A) IN GENERAL.—The President may waive the general prohibition provided in subsection (a) upon request of a Governor on behalf of the State or on behalf of a person, business concern, or any other entity suffering losses as a result of a major disaster or emergency, if the President finds such waiver is in the public interest and will not result in waste, fraud, or abuse.

“(B) GRANT OR DENIAL OF WAIVER.—A request under subparagraph (A) shall be granted or denied not later than 45 days after submission of such request.

“(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.”.



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

HUD looked to FEMA for guidance on legal interpretation since FEMA administers Stafford.

FEMA published guidance in February 2019 that said:

Waivers

Section 1210 of the Disaster Recovery Reform Act (DRRA) amends Section 312 of the Stafford Act to add a new provision that allows the President to waive DOB at the request of the governor when the President determines that waiver is in the public interest and will not result in waste, fraud or abuse.

- Sets factors President MAY consider
- Excludes FEMA PA (Sec. 406) and IA (Sec. 408)

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



New Federal Register Notices

Deep Dive



Structure of Notices

2019 DOB Notice

- Introduction and Applicability
- Laws and Requirements
- Basic DOB Calculation Framework
- Special Considerations
- Recordkeeping
- Agreement to Repay
- Collecting A Duplication

Applicability Notice

- Separate notice makes conforming amendments to FR notices governing existing grants for 2015, 2016, and 2017 disasters
- Makes conforming amendments to reimbursement notice
- Includes waivers and alternative requirements
- FR notices governing future grants will include similar implementation language making those grants subject to the 2019 DOB notice



Key Provisions in Applicability Notice

- Waivers and alternative requirements:
 - a) contents of action plan;
 - b) payment of outstanding interest for eligible activities (not interest previously paid, not interest attributable to ineligible costs like replacement of contents); and
 - c) reporting 1 year from substantial action plan amendment permitting reimbursement of costs paid with SBA loans



Key Provisions in Applicability Notice

- Supersedes July 2013 declined loans memorandum: instead, “Grants are subject to the requirement under the tenth proviso following the Community Development Fund heading of Public Law 115-123 (Declined Loans Provision) and the requirements for its implementation in the 2019 DOB Notice.”
- Subjects grants for 2016 and 2017 disasters to DRRRA (NOT grants for 2015 disasters).
- Amends standard for Secretary’s certification that DOB procedures are adequate: Grantees that revise DOB policies and procedures must resubmit to HUD for review.
- Makes conforming amendments to reimbursement notice: a) reimbursement of costs paid with SBA loan not limited to costs incurred within one year after the disaster; and b) date of application, which is the date that applicants must “stop work” until grantee completes environmental review, is the date of application (if application not submitted), or date of substantial action plan amendment (if application is submitted)



Applicability

2019 DOB Notices

- Declined loan provision applies to all grants for disasters declared Jan 1, 2015 – December 31, 2021.
- Other terms apply to grants for disasters in 2015 - 2021 for new activities added to action plan after date of notice.
- Grantee MAY choose to apply loan terms to existing activities.

2011 DOB Notice

- Published November 16, 2011 (76 Fed. Reg. 71060).
- Applied to any new program included in a new or amended action plan after publication date.
- Will continue to apply to disasters before 2015.
- Will continue to apply to existing activities for disasters 2015 - 2017 (unless grantee chooses to apply 2019 notice).



2019 DOB Notice

- **Introduction**

- General overview of policies reflected in the notice

- **Applicability and Timing**

- **DRRA amendments apply to major disasters occurring between 2016 and 2021.**

New notice covers period addressed by DRRA and the declined loan provision in PL 115-123. The notice provides as much consistency as possible for disasters declared January 1, 2015 – December 31, 2021, even though the DRRA does not apply to disasters occurring before January 1, 2016.

- **The DRRA also provides that the Stafford Act amendment sunsets 5 years after enactment (*i.e.*, the Stafford Act is amended to remove the DRRA provision).**

Therefore, the exception for DRRA Qualifying disasters no longer applies after October 5, 2023.

- Ex. A business receives an SBA loan in May 2021 to pay for disaster-related rehabilitation following a March 2021 tornado. The loan is not a DOB and disaster-related losses paid with loan proceeds can be reimbursed until October 5, 2023. After Oct 5, 2023, the DRRA sunsets and the loan is treated as a DOB.



2019 DOB Notice – Summary of DOB Requirements

- Stafford Act remains the primary source of DOB requirements.
- DOB requirements in most CDBG-DR appropriations
 - Recent appropriations include a certification requirement: That as a condition of making any grant, the Secretary shall certify in advance that such grantee . . . has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155)
- Order of Assistance provisions in CDBG-DR appropriations
 - Provided further, That such 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.



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



2019 DOB Notice – Basic DOB 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



2019 DOB Notice – Basic DOB Calculation Framework

A. Assess Applicant Need



2019 DOB Notice – Basic DOB Calculation Framework

B. Identify Total Assistance Available

1. Types of Resources
2. Availability of Resources



2019 DOB Notice – Basic DOB Calculation Framework

C. Exclude Non-Duplicative Amounts

1. Funds for a Different Purpose
2. Funds for Same Purpose, Different Allowable Use



2019 DOB Notice – Basic DOB Calculation Framework

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

Total DOB = Total assistance minus non-duplicative exclusions

Maximum amount of the CDBG-DR award = Total Need – Total DOB



2019 DOB Notice – Basic DOB Calculation Framework

E. Reassess Unmet Need when Necessary



2019 DOB Notice – Special Considerations

- A. Examples of DOB outside of the housing context
- B. Subsidized Loans
- C. Order of Assistance
- D. Multiple Disasters



2019 DOB Notice – Special Considerations

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
 - a. Disbursed Loan Amounts
 - b. Undisbursed Loan Amounts

3. Use of CDBG-DR for Costs initially paid with Loans (DRRA Qualifying Disasters only)



2019 DOB Notice – Special Considerations

Requirements on the Use of CDBG-DR funds to reimburse costs paid with subsidized loans, including SBA loans

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.”

- Prioritize assistance to LMI persons, consistent with title I of the HCD Act
- Hardship Exceptions
- What if a grantee has already reimbursed some costs? What if grantee’s program is in progress?



2019 DOB Notice – Special Considerations

C. Order of Assistance

D. Multiple Disasters

- Does not solve all concerns raised by multiple disasters
- Solutions for multiple disasters limited by the authorities governing other sources of assistance
- HUD is limited because it cannot authorize applicants to use other sources of funds for unauthorized purposes.



2019 DOB Notice Other Items

- Recordkeeping
- Agreement to Repay
- Collecting A Duplication



Examples



Sample DOB Calculation

1. Identify Applicant's Total Need Calculated at a Point in Time	\$ 100,000
2. Identify Total Assistance Available	\$ 35,000
3. Exclude Non-Duplicative Amounts (Amounts used for a different purpose, or same purpose, different allowable use)	\$ 30,000
4. Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions)	\$ 5,000
5. Calculate Maximum Award (Total Need Minus Total DOB Amount)	\$ 95,000
6. Program Cap (if applicable)	\$ 50,000
7. Final Award (= Program Cap if Maximum Award > Program Cap)	\$50,000

Sample DOB Calculation #2

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	\$100,000
<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>	
2. Identify Total Assistance Available	70,000
<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 DRRR exception does not apply, so the SBA amounts are included in total assistance.</i>	
3. Identify the Amount to Exclude as Non-Duplicative (Amounts used for a different purpose, or same purpose, different allowable use)	45,000
<i>Homeowner can show that \$5,000 of insurance proceeds was a payment for loss of contents.</i>	
<i>Homeowner can document that she used \$5,000 to remove a large tree that fell on the home.</i>	
<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>	
<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>	
4. Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions)	25,000
<i>\$70,000 in total assistance minus \$45,000 for non-duplicative exclusions.</i>	
5. Calculate Maximum Award (Total Need Minus Total DOB Amount)	75,000
6. Program Cap (if applicable)	150,000
<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>	
7. Final Award (Program Cap = Final Award if Maximum Award is equal to or greater than the Program Cap)	75,000
<i>In this case, the program cap is greater than the maximum award, so the applicant can receive the maximum award.</i>	



Questions?



Sample DOB Calculation #3

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 DRRRA Qualifying Disaster.</i></p>	<p>\$ 125,000</p>
<p>2. Identify Total Assistance Available</p> <p><i>Homeowner received the following assistance:</i></p> <ul style="list-style-type: none"> <i>\$5,000 from insurance for loss of contents.</i> <i>\$30,000 from insurance for damage to the home.</i> <i>\$15,000 from FEMA for rehabilitation of the home.</i> <p><i>Because the homeowner can document that the SBA loan proceeds of \$25,000 were used for rehabilitation, the DRRRA 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 DRRRA Qualifying Disasters (reimbursement is described section V.B.3.).</i></p>	<p>50,000</p>



Sample DOB Calculation #3, cont.

<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> <i>Homeowner can document that she used \$5,000 to remove a large tree that fell on the home.</i> <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 DRRRA exception applies).</i> <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>	45,000
<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>	5,000
<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>	120,000
<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 \$115,000. Program caps are set by the grantee in its discretion.</i></p>	115,000
<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 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 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.</i></p>	115,000



Sample DOB Calculation #4

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
<p><i>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.</i></p> <p><i>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.</i></p> <p><i>Total need = \$100,000 in rehabilitation not yet completed at the point in time that need was assessed.</i></p>	
2. Identify Total Assistance Available	50,000
<p><i>Homeowner received the following assistance for the 2015 disaster:</i></p> <p><i>\$5,000 from insurance for loss of contents.</i></p> <p><i>\$15,000 from the State housing agency for rehabilitation of the home.</i></p> <p><i>Homeowner received the following assistance for the 2018 disaster:</i></p> <p><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)	50,000
<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>	
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).	
<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>	
7. Final Award (Program Cap = Final Award if Maximum Award is equal to or greater than the Program Cap)	100,000

