DUPLICATION OF BENEFITS AND NECESSARY AND REASONABLENESS OF CDBG-DR ASSISTANCE

Community Development Block Grant Disaster Recovery (CDBG-DR) assistance is typically the last federal assistance available for the long term recovery, after a series of other funding sources have been made available for different levels and stages of repair or recovery. The order in which CDBG-DR funds are available is important, as subrecipients are responsible for ensuring that all funding previously awarded to program applicants is accounted for and there is no "double dipping" in public assistance.



Key Point

When administering CDBG-DR funds, the State of Texas requires that subrecipients apply DOB procedures per 76 FR 71060.

Although the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121–5207), as amended (the Stafford Act) established the basic definitions and requirements for duplication of benefits (DOB), another document, 76 FR 71060, is responsible for clarifying the compliance details. The Stafford Act provided basic language to guard against ineligible uses of taxpayers' funds and fraud; 76 FR 71060 expanded on that language by outlining specific roles of the federal government and its grantees, subgrantees, and subrecipients in determining DOB. Additional detail was added from 24 CFR 570 and OMB Cost Circulars. More specifically, 24 CFR 570 was written specifically for administration of Community Development Block Grants while the OMB Cost Circulars, codified in title 2 of the Code of Federal Regulations (2 CFR Part 200), apply generally to all federal funds.

Ensuring CDBG-DR funds are not provided as a DOB is not limited to beneficiaries, and regulations exist to protect against administrative non-compliance. 24 CFR 570.489, for example, requires states "have fiscal and administrative requirements which ensure that funds received are only spent 'for reasonable and necessary costs of operating programs'" (76 FR 71060). Subrecipients and local governments are given similar provisions in 24 CFR 570.503 and 24 CFR 470.610, respectively. Appendix A to 2 CFR 200.225 provides greater detail on what costs qualify as necessary and reasonable for state, local, and Indian tribal governments.

While each regulation has its own nuances, the core competency of all the federal funding guidelines here described is simple: all federal costs, and *especially those for disaster recovery*, should be demonstrably necessary and reasonable.

Analysis: 76 FR 71060

What it Means?

- Clarifies DOB requirements under the Stafford Act.

Keep in Mind

- Subrecipients must have written policies for DOB analysis and management. Award analysis policies must meet federal guidelines, as well as state and local guidelines, where they exceed federal minimum requirements.
- Determining whether costs are necessary and reasonable is critical for a complete DOB analysis (refer to 2 CFR Part 200 for detailed cost principles).
- Grantees are required to ensure subrecipients are completing DOB analyses for each person, business or entity receiving CDBG-DR funds.
- DOB can occur between two programs administered by a single subrecipient.
- Private loans are an exception and should not be included in the duplication of benefit calculation.
- Subrecipients are required to determine which types and amounts of costs are necessary and reasonable given applicable Federal laws.

Resource List

Below is a quick listing of resources that are accessible, relevant and valuable.

Icon denotes the most relevant resources at the DOB 101 level.

CDBG-DR Resources	Links
CDBG-DR Overview	https://www.hudexchange.info/resources/documents/CDBG-Disaster-Recovery-Overview.pdf
HUD DOB Federal Register Notice	http://recovery.texas.gov/local-government/resources/duplication-of-benefits/index.html
GLO DOB Calculation Form	http://recovery.texas.gov/files/resources/housing/s4-dupblicationofbenefitscalculationform.xlsm
DOB Webinar (HUD)	https://www.hudexchange.info/trainings/courses/2016-cdbg-dr-duplication-of-benefits-webinar/
Buyout Award Calculation with DOB	https://www.hudexchange.info/resource/2864/disaster-recovery-buyout-program-award-calculation-methodology-advanced/
CDBG-DR Subrecipient and Recordkeeping	https://www.hudexchange.info/course-content/2016-cdbg-dr-subrecipient-management-and-recordkeeping-webinar/2016-CDBG-DR-Subrecipient-Management-and-Recordkeeping-Webinar-Slides-2016-05-16.pdf

Pertinent Citations

Federal

- Section 312 (42 U.S.C. 5155) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act
- 2 CFR §200.225 Appendix A – *Cost Principles for State, Local, and Indian Tribal Governments*
- 2 CFR §200.403-4 – *Reasonable Costs*
- 24 CFR 570.489 – *Program Administrative Requirements*
- 24 CFR Appendix A – *Guidelines and Objectives for Evaluating Project Costs and Financial Requirements*



Key Point

Guidance from HUD is pending on Section 1210 of the Disaster Recovery Reform Act (DRRA). This guidance will address how subrecipients should treat loans with regard to DOB.

GLO CDBG-DR Harvey Housing Guidelines

- Section 4.C. – *Applicant Eligibility Requirements*

GLO CDBG-DR Implementation Manual

- Chapter 3 – *Recordkeeping & Reporting*
- Chapter 4 – *Financial Management*

Glossary

HUD has many existing resources in place to help understand CDBG-DR laws, regulations and practices. Below is a quick listing of relevant terms and phrases.

Affidavit	A statement signed by applicants (and typically notarized) often used with DOB calculations to affirm the amount of assistance received or a commitment to repay any duplicative benefits. Program administrators should attempt to verify all assistance through third party resources, but after all efforts have been exhausted, an affidavit may be used. Applicants who submit inaccurate affidavit statements may be subject to penalties and consequences outlined in applicable federal, state and local laws.
Assistance	Any financial support awarded to a beneficiary.
Award Calculation	The sum of total need for a specific activity, less duplicative funding, subject to any applicable award limit.
Beneficiary	The recipient of a benefit.
Benefit	A contribution, in-cash or in-kind, provided to a recipient or beneficiary to help in the recovery process following a disaster.
Commercially Reasonable Actions	Prudent and responsible actions a person or business-owner would take when making financial decisions with their own finances.

Damage Assessment or Estimated Cost of Repair	Awards should be calculated based on an estimate of the damage and costs for repair. These damage assessments should be carried out by the administering agency (or their contractors) and should be detailed enough to develop a scope of work and/or assess the value of work complete.
DOB Calculation	The sum of total assistance received and available for a specific activity.
Duplication of Benefit	When a beneficiary receives assistance from multiple sources for a total amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need.
Eligible Expenses	Expenses which are necessary, reasonable and allocable.
Expenditure Verification	The action of confirming, with documentation, that reported costs were properly expended on eligible activities, for their intended purpose, and at an appropriate time.
Fraud	The intentional omission or misrepresentation of information.
In-kind Contributions	Any work counted as an eligible contribution to a project scope and budget.
Ineligible Expenses	Expenses deemed unnecessary, unreasonable, or unallocable; could be due to expenditure outside of an eligible timeframe.
Monitoring	Any compliance review of programs, policies, procedures, projects, awards, or individual activities executed by the responsible administering agency.
Necessary Costs	Costs for work that must be done to complete an eligible CDBG-DR activity and that meet program standards. For example, if a subrecipient were using CDBG-DR funds to repair a damaged fire station with 3 bays, which is the number of bays needed to serve the community in which it is located, necessary costs may include the costs of repair and any additional resilience measures that may mitigate against the impacts of future events. However, it would not be necessary or reasonable to expand the fire station to 9 bays, since that would far exceed the capacity necessary to serve the community.
Partial Benefit	A contribution provided to a recipient that is unable to cover the full cost of an eligible activity.
Pre-award Analysis	A pre-award calculation of total unmet need and all assistance provided.
Proof of Loss Statement	An inventory of losses to support a formal claim of damages; typically includes a description of the loss, a date and description of the cause of the loss, an estimate for the loss, a list of who is claiming the loss and who has interest in the claim, and documentation verifying the loss.

Purpose	The use for which assistance was provided; could be specific or general. The purpose for which other funding sources are provided should be considered when determining whether those other funding sources are duplicative with the CDBG-DR assistance.
Reasonable Costs	Any cost that, in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made.
Reasonably Anticipated Assistance	Assistance that has been applied for, committed to, or is otherwise logically expected, but has not yet been provided to the recipient.
Recapture	Any action by a funding agency (i.e. HUD, TX GLO, Counties, municipalities) to reclaim duplicative or other ineligible funds that have been disbursed to the recipient. If beneficiaries do not willingly contribute their duplicative funds, the subrecipient can collect these funds as debts. Grantees and subrecipients should maintain explicit recapture policies and procedures to resolve duplicative benefits.
Recoverable Depreciation	Any amount of value lost on an insurable item, that you can recover, or receive, from your insurance company after you make a claim.
Subrogation	The act of one party claiming the legal rights of another to recapture losses. Specifically with CDBG-DR awards, a subrogation agreement reduces the risk of a duplication of benefit by eliminating the beneficiary's ability to claim addition benefit for damage or work covered by CDBG-DR funds. In other words, if a recipient receives additional duplicative assistance after CDBG-DR assistance is disbursed, the subrogation agreement requires the recipient to repay any duplicative benefits received to the agency administering CDBG-DR funds, and those funds will be returned to the US Treasury and are available to go toward other eligible grant costs.
Third-party Verification	Verification provided by another funding source such as FEMA, SBA, NFIP, or a private insurance carrier. Most commonly subrecipients can get third-party verification from direct data feeds from NFIP, FEMA and SBA, or directly from an insurer.
[Total] Unmet Need	A pre-award calculation of all costs needed to cover eligible activities, taking into account any assistance already received or available to the grantee, subrecipient, applicant or beneficiary.