

XI. Duplication of Benefits

Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) prohibits federal agencies from providing assistance to any “person, business concern, or other entity” for any loss to which the entity has already received financial assistance from another source (42 U.S.C. 5155(a)). The Federal Register Notice, published November 16, 2011 (Docket No. FR-5582-N-01), requires adequate policies and procedures in place to prevent a duplication of benefit (DOB) and the recapture of funds, if necessary. Additional guidance was published on July 25, 2013, titled “Guidance on Duplication of Benefit Requirements and Provision of CDBG DR assistance.” The steps and actions described in both the 2011 and 2013 guidance documents are mandatory requirements applicable to the use of CDBG NDR funds.

CDBG NDR funds cannot be used for activities for which funds have been received (or will be received) from FEMA, SBA, National Flood Insurance Program, private insurers, the U. S. Army Corps of Engineers, SBA, or other sources. CDBG NDR funds may be used to provide assistance to the extent that a disaster recovery need has not been met by other sources.

It is HCD’s responsibility to ensure that each CDBG NDR program and subgrantee provides assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

Uniform procedures for addressing potential DOB are incorporated into the design and administration of projects and programs. At a minimum, these procedures include required actions for:

- Verifying all sources of disaster assistance.
- Determining the amount of the unmet need (for projects or applicant-based programs) before determining or awarding assistance.
- Ensuring beneficiaries enter a signed agreement to repay the assistance if they later receive other disaster assistance for the same purpose.
- Monitoring compliance with the beneficiary agreement for the duration of the grant administration.
- Identifying the personnel or unit of government responsible for carrying out the DOB review.
- The completion and retention of documentation demonstrating the review process in compliance with CDBG NDR record keeping requirements.

A. DOB Determination and Potential Sources

It is the responsibility of HCD to determine that no DOB exists before paying CDBG NDR funds to a recovery project. CDBG documentation for the determination of the total amount of CDBG NDR assistance, and to ensure that beneficiaries are not receiving a duplication of benefits, includes but is not limited to:

1. **An assessment of the needs of the beneficiary based on the CDBG NDR activity.** HCD determines the amount of

assistance needed to complete a CDBG NDR activity. An independent estimate is used to establish the project cost. This assessment must be conducted prior to the receipt of CDBG NDR funds. All costs determined for assistance to beneficiaries must meet the “necessary and reasonable” definitions in 24 CFR part 225 and 2 CFR part 200.

2. Identification of all available and duplicative assistance.

HCD identifies the total assistance available to an applicant for the project or CDBG NDR activity, including funds and assistance received or reasonably anticipated. Potential DOB sources include:

- Other HUD funding, including CDBG and CDBG DR
- FEMA Public Assistance or Individual Assistance funds
- USFS funds
- U.S. Army Corps of Engineers funding
- U.S. Department of Transportation (DOT) funding
- Federal Economic Development Agency funding
- Small Business Administration (SBA) loans
- National Flood Insurance Program (NFIP) funds
- Private insurance funding
- Local and state funds, including CAL FIRE and CalOES funding
- Other federal program funds
- Private and nonprofit organization funding

3. Exclusion of nonduplicative funds. Identify assistance that is not available for the project or CDBG NDR activity. Potential nonduplicative funds include:

- Funds received that are not for the same purpose as the project or CDBG NDR activity (e.g. CDBG DR funding used for housing recovery when the CDBG NDR activity is not funding a housing recovery project).
- Funds for the same purpose as the project or CDBG NDR activity but intended for a different eligible use (e.g. previous USFS funds provided for fuel reduction in a separately impacted area from CDBG NDR projects).
- Funds not available for CDBG NDR projects or activities (e.g. contractor fraud, etc.). Funds are considered “available” when they

are received by a subgrantee and the subgrantee has legal control of them, or when a subgrantee has been approved for a duplicate funding source, even if they have not yet drawn on the funds.

- Funds from private loans not guaranteed by the SBA.

B. DOB Calculation

The maximum CDBG NDR award can be calculated by subtracting the duplicative assistance from the proposed program or project cost. Below is an example of a DOB analysis on biomass removal and reforestation work:

1)	Identify total need (accomplished through an independent cost estimate of the biomass removal and reforestation work)	\$1,000,000
2)	All potentially duplicative assistance (USFS fuel reduction funding)	\$100,000
3)	Assistance determined duplicative (fuel reduction occurring in the same area as planned CDBG NDR assistance)	\$50,000
4)	Maximum eligible award (1 less 3)	\$950,000
5)	Program Cap (if applicable)	\$1,000,000
6)	Lesser of Maximum Eligible Amount = Final Amount	\$950,000

Disaster recovery assistance needs are calculated at a point in time. As a result, subsequent adjustments may occur that affect the need. If, after the assistance has been calculated and/or a CDBG NDR award has been made, and the subgrantee demonstrates a change in circumstances, then the award calculation may be subsequently reevaluated. The change in circumstances may be an increase in cost of materials and/or labor, unknown project requirements, contractor fraud, or a change in local zoning law or building codes, or other factors.

Additional assistance requests must be fully documented and include the method for identification and verification of the unmet need (physical inspection and professional appraisals are the standard; any variation from this standard must be approved by HCD prior to additional assistance being provided to any beneficiaries). Additional assistance requests must also be verified as not duplicative benefit. See table below for an example of additional assistance determination.

Final award (from initial need assessment)	\$950,000
Demonstrated additional unmet need (e.g. 6 months later, project costs have increased due to prices increasing based on shortages)	\$10,000
Amount of eligible additional award	\$960,000
Program cap	\$1,000,000

Final adjusted amount (Final amount + Eligible additional amount)	\$960,000
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C. DOB Verification

As required by the Stafford Act and prior to providing or awarding CDBG NDR funds, HCD conducts a DOB verification for each project or program to be funded by CDBG NDR funds.

Suitable documentation is dependent on the source of the DOB, but may include award letters from federal agencies, funding commitment letters from philanthropists or subgrantees, or SBA loan documents. DOB source documentation is added to the program or project file and retained in accordance with the CDBG NDR record retention requirements.

Per the procedures outlined above, the outcome of the DOB verification is documented and included in the project or applicant file.

D. Recapturing Duplicative Assistance

If a duplication is discovered after CDBG NDR assistance has been provided, the duplicative funds will be recaptured to the extent that they are in excess of the need and duplicate other assistance received for the same purpose.

The method of recapturing funds and the timeframe for doing so are determined on an individual project or program basis. However, the recapture method and timeframe will be consistent with the OMB Circular A-87 (2 CFR 225) or other applicable cost principles, any relevant guidance or handbook issued by the HUD OIG, and the Stafford Act, which requires that duplicative assistance shall be collected in accordance with Chapter 37 of Title 31 relating to debt collection.