

State of West Virginia Department of
Economic Development
Community Advancement and Development
CDBG-MIT Duplication of Benefits
Policies and Procedures

Last Revised: October 2021



Table of Contents

Contents

Table of Contents	2
1. Duplication of Benefits (DOB) Overview	4
A. Responsible Staff.....	5
2. Duplication of Benefits (DOB) Verification Procedures	5
A. Other Sources.....	6
3. Permissible Expenditures	6
5. Basic Framework for Calculating Program Awards and Determining Unmet Need ..	7
6. Repayment/Recapture	8
A. DOB and Repayment/Recapture Examples	8
B. Recapture/Repayment Process	8
7. Subrogation of Funds	9

1. Duplication of Benefits (DOB) Overview

A Duplication of Benefits (DOB) occurs when (1) an applicant receives assistance from multiple sources intended for the same purpose, or (2) the amount of assistance provided to an applicant exceeds the total identified need.

The Robert T. Stafford Act (Stafford Act) prohibits the use of federal disaster assistance to pay a person, household, or entity twice for the same disaster loss. The Stafford Act also requires CDBG grantees to limit their assistance to **unmet needs** for eligible activities. An **unmet need** exists when the total need for eligible activities is **more than** the total assistance received for the same purpose.

To comply with the Stafford Act and prevent a DOB, WVDED will account for and verify all assistance received by CDBG applicants before awarding CDBG-MIT funds to a project. A DOB analysis is performed for each applicant to consider all possible duplicative funding sources when processing applications for CDBG-MIT funding. Duplicative assistance sources include but are not limited to:

- Federal Emergency Management Agency (FEMA);
- Economic Development Authority (EDA)
- US Department of Agriculture (USDA)
- WV Department of Environmental Protection (WVDEP)
- US Army Corps of Engineers (USACE)
- National Flood Insurance Program (NFIP);
- Small Business Administration (SBA);
- Private Insurance;
- Emergency Management Division (EMD);
- Municipal Budgets;
- Private and nonprofit disaster assistance.

The following steps are taken by the WVDED to prevent a DOB for applicants requesting CDBG funds **prior to the award of any CDBG funds**:

1. **Applicant self-reports** all potentially duplicative assistance received, and may submit documentation accounting for how previously received funds were expended
2. **CDBG project managers verify** the **amount** and **intended purpose** of assistance received to validate the applicant's self-reported information via direct verification with agencies, published municipal budgets, insurers, or private/nonprofit entities
3. **CDBG project managers review** permissible expenditure documentation to determine if the amount of duplicative assistance received can be reduced for permitted expenses
4. **CDBG project managers determine if funding adjustments are required** to an applicant's CDBG award to account for a **DOB Gap**, specifically when assistance received exceeds permissible expenditures

CDBG project managers establish an unmet need exists by confirming the applicant's total remaining need for eligible activities is more than the applicant's total assistance received for the same purpose. The WVDED also has policies and procedures in place to request repayment or recapture of any duplicative assistance received after the award of CDBG funds from the WVDED. Repayment or recapture policies and procedures also apply in instances when an applicant must return all or part of the CDBG awarded funding to the respective program (i.e. due to fraudulent activity or non-compliance with grant award terms and conditions).

A. Responsible Staff

CDBG project managers are responsible for completing duplication of benefits as outlined in the table below, including:

- Verification of applicant self-reported duplicative assistance received
- Review of permissible expenditures
- Verifying calculations for any funding adjustments (DOB gap), unmet need, and CDBG Award calculations
- Recapture/Repayment and Subrogation of Funds

2. Duplication of Benefits (DOB) Verification Procedures

Project managers collect information from program applicants necessary to verify all potentially duplicative assistance received, based on the type of CDBG funds the applicant is requesting (. All sources of potentially duplicative benefits received are requested from applicants and must be disclosed on the application for CDBG funds.

Prior to making a CDBG award, the project managers utilize the most recent data available from third-party data sources to verify self-reported information. Data sharing agreements between WVDED and other federal entities ensure the continuous exchange of data throughout the life of the program, supporting accurate award calculation. Specifically, the project managers communicate directly with third-parties identify and obtain documentation of the amount and intended purpose of assistance previously provided to applicants. In instances when third-party data is not available, project managers will complete direct verification with private or nonprofit entities to verify the amount and intended purpose of assistance received.

The following potentially duplicative benefit sources are verified, when applicable:

- Federal Emergency Management Agency (FEMA);
- Economic Development Authority (EDA)
- US Department of Agriculture (USDA)
- WV Department of Environmental Protection (WVDEP)
- US Army Corps of Engineers (USACE)
- National Flood Insurance Program (NFIP);
- Small Business Administration (SBA);
- Private Insurance;

- Emergency Management Division (EMD);
- Municipal Budgets;
- Private and nonprofit disaster assistance.

For each of the potentially duplicative benefit sources, project managers will send a project DOB verification request via email to contacts from each of the listed sources. The verification email will allow agencies and funding sources to indicate whether the project has received potentially duplicative funding from the relevant party. If a potential DOB is found, the CDBG project managers will follow up with the agency to analyze the funds. If no DOB is found, the verification email from the third party will document that no funds are identified to be duplicative and the form or email will be kept in the project file. If a DOB is found, the CDBG managers will determine the new unmet need and the awarding amount will be adjusted.

A. Other Sources

Applicants will provide documentation to their project manager showing funds and assistance received from other federal, state, and local sources other than those listed above, including nonprofit charitable funding. These funds will be verified by the project manager directly with the entities that provided funding. Contact information for the entities will be provided by applicants. Project managers will verify the amount and intended purpose of funds paid to determine if funds should be considered a DOB.

Amounts received for contents damage will not be considered a DOB.

3. Permissible Expenditures

WVDED will allow for reductions to duplicative assistance received by an applicant if the program can verify funds were used for permissible expenditures, or funds received were not controlled by the applicant. The Program will ultimately adhere to the Federal Register Notice allotting its grant funding.

4. Duplication of Benefits (DOB) Gap Funding

In some cases, the applicant may have received duplicative assistance that exceeds permissible expenditures, resulting in a *DOB Gap*.

In some cases, the project scope of work can be reduced to offset (account for) a DOB Gap. The Program will attempt to reduce or eliminate the DOB Gap by reducing the amount funded for eligible activities through the CDGB award. If the DOB Gap is greater than zero after all work order reductions have been made, the applicant will be required to pay the DOB Gap funds to be eligible to receive a CDBG award.

The project manager will contact the applicant to review the DOB Gap information verbally. After the DOB Gap information is reviewed with the applicant, the project manager will mail the applicant a DOB Gap letter. To continue in the program, applicants must secure the DOB Gap funds in the form of a cashier's check or money order and deliver to the project manager in the name of the contractor. The project manager will deliver the DOB check to the contractor. Applicants who fail to provide DOB Gap funds will be deemed ineligible to receive CDBG funds.

The project manager will show a reduction of project costs by including a copy of the cashier's check in the Homeowner Agreement packet. The project manager will issue the DOB Gap

payment to the contractor upon key turnover and/or final inspection at project completion.

When a CDBG funded project is completed, the DOB Gap funds will be used to pay the construction contractor before any CDBG Program funds are paid to the contractor.

5. Basic Framework for Calculating Program Awards and Determining Unmet Need

In accordance with the Clarification of Duplication of Benefits Requirements Under the Stafford Act (FR-5582-N-01¹ and as amended in FR-6169-N-02²), the WVDED uses the following methodology for calculating CDBG awards as shown below.

Basic Framework for Calculating CDBG Awards	
1. Identify Applicant's Total Need Prior to Any Assistance	\$100,000
2. Identify All Potentially Duplicative Assistance	\$35,000
3. Deduct Assistance Determined to be Duplicative (DOB Amount)	\$30,000
4. Maximum Eligible Award or <i>Unmet Need</i> (Item 1 less Item 3)	\$70,000
5. Program Cap (if applicable)	\$50,000
6. Determine Final Program Award (lesser of items 4 and 5); cannot exceed the program cap	\$50,000

Additional examples of DOB calculations are provided in the amended DOB June 20, 2019 FR-6169-N-02 on pages 28845, 28846 and 28847.

To determine an applicant's unmet need, project managers will deduct any assistance determined to be duplicative (DOB) from the applicant's total need for eligible activities prior to awarding any CDBG funds. Total need prior to awarding any CDBG assistance will be determined based on eligible activities, generally determined through an onsite inspection or assessment of damage (i.e. estimated rehabilitation costs, estimated reconstruction cost, property acquisition costs, or infrastructure projects costs). When reimbursement is permitted by the CDBG program grant requirements, unmet needs can include amounts needed for reimbursement.

If an applicant's total need for eligible activities prior to awarding any CDBG assistance is ***not*** greater than the amount of assistance determined to be duplicative (DOB), the applicant will be determined ineligible to receive CDBG funds as no unmet need exists.

¹ <https://www.govinfo.gov/content/pkg/FR-2011-11-16/pdf/2011-29634.pdf>

² https://www.hud.gov/sites/dfiles/Main/documents/6169-N-02_Implementation_Notice.pdf

6. Repayment/Recapture

Instances may arise where an applicant must return all or part of a CDBG award to the respective program. The Program is responsible for recapturing funds from applicants. This section articulates the policies that will guide WVDED's CDBG program in its efforts to recapture funds that have been overpaid to applicants. The Program will ensure CDBG grant disbursements comply with West Virginia's Action Plan and any subsequent amendments, the grant agreement executed by and between West Virginia and HUD, and any state and federal regulations. Under the CDBG Program, applicants are awarded funding pursuant to the policies and procedures outlined in this document.

CDBG regulations (24 CFR 570.502)³ governing grant administration and OMB cost principles (2 CFR 200.403 (a))⁴ require that payment of CDBG funds to beneficiaries be necessary and reasonable; and prohibit beneficiaries from retaining excess funds not used for eligible, approved costs. The provision of CDBG funds more than what is needed for immediate use is also prohibited (2 CFR 200.305 (b) (1))⁵. In addition, the Stafford Act and the CDBG Notice indicate that funding may only be provided to the extent that it does not duplicate funding provided to a beneficiary for the same purpose.

A. DOB and Repayment/Recapture Examples

Common circumstances that may result in a revision to a CDBG award, which may result in repayment of grant award funds from an applicant include:

- DOB (as noted above);
- Ineligibility;
- Substantial program non-compliance or threat of bodily harm;
- Awards from multiple programs;
- Voluntary withdrawals;
- Fraud.

³ <https://files.hudexchange.info/resources/documents/24-CFR-Part%20-570-CDBGs.pdf>

⁴ <https://www.law.cornell.edu/cfr/text/2/200.403>

⁵ <https://www.law.cornell.edu/cfr/text/2/200.305>

B. Recapture/Repayment Process

All applicant files will be reviewed and reconciled for accuracy to ensure DOB or overpayment did not occur. Once this process has been completed, if an applicant has been identified as receiving a potential overpayment, the project manager will document the amount and basis for the repayment in a written letter to the applicant. In addition, the letter will contain the conditions for repaying funds and all appeal rights available to the applicant.

The applicant has 30 days to appeal the determination of recapture or repayment. If an appeal is made, the project manager will review the written appeal and issue a final written determination of its decision within 30 days of receipt by the Program. Appeals may be denied or granted in whole or in part. The project manager will only review facts and information already included in an applicant's file unless the applicant submits new documentation. The project manager has the discretion to accept or reject new documentation based upon its relevance to the appeal. If the applicant fails to file an

appeal with the Program within the 30-day period, the inaction will be deemed as an acceptance of the determination and a waiver of any further right to contest or appeal the amount to be repaid. In addition, if the applicant's appeal is denied or there is failure on the part of the applicant to appeal within 30 days the Program will proceed with collecting the repayment amount. If the appeal resulted in a revision to the award amount or eligibility, the applicant will sign a new CDBG grant agreement and fulfill any requirement related to such changes and will work to repay any remaining recapture amount.

Once it has been determined that the applicant must return funds to the CDBG grant fund, the applicant must repay their funds in a timely manner. All repayments shall be expected to be repaid in full as one lump sum amount. The project manager will review any applicant claims of financial hardship and may make limited accommodations for repayment plans. All funds recovered as a result of this policy will be tracked in DRGR and returned to the state's CDBG account(s) or U.S. Treasury if the CDBG grant has been closed out.

7. Subrogation of Funds

Subrogation of funds occurs when duplicative assistance is paid to an applicant after an applicant has received an award of CDBG funds from WVDED; any subsequent funds issued to an applicant for the same purpose as the CDBG award must be paid to the Program to resolve a DOB.

All applicants are required to sign a Subrogation Agreement to participate in a CDBG Program. Applicants acknowledge in the Subrogation Agreement that they must subrogate (or pay to the program) any subsequent funds received that result in a DOB. At grant or project closeout, Project managers will complete a DOB analysis utilizing third-party data sources as outlined in the *Duplication of Benefits (DOB) Verification Procedures* section to verify if additional duplicative assistance is received for the same purpose. Third-party data sources will also be monitored for up to two years after project completion to confirm if additional duplicative assistance is received for the same purpose. Project managers will follow the *Recapture/Repayment Process* outlined above if repayment is needed to recapture additional duplicative assistance received for the same purpose.

If it can be established that an applicant has additional need, the subsequent funds would not be considered a DOB. Project managers verify documentation related to additional need to determine that circumstances have changed in accordance with guidance 84FR 28840-41 Sections IV B and IV E⁶. However, if an additional need is not demonstrated, CDBG funds must be recaptured to the extent they are more than the unmet need and/or duplicate other assistance received by the applicant for the same purpose. If Program funds were provided last and unknowingly create a DOB, the method of recapturing those funds will be consistent with HUD 2 CFR 200⁷.

⁶ <https://www.govinfo.gov/content/pkg/FR-2019-06-20/pdf/2019-12571.pdf>

⁷ <https://www.hud.gov/sites/documents/CFR200.PDF>