

State of West Virginia Development Office  
Community Advancement and Development  
CDBG-DR and CDBG-MIT Duplication of  
Benefits Policies and Procedures

Last Revised: September 2020



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## 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, WVDO will account for and verify all assistance received by CDBG applicants before awarding CDBG-DR or 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-DR or CDBG-MIT funding. Duplicative assistance sources include but are not limited to:

- Federal Emergency Management Agency (FEMA);
- Small Business Administration (SBA);
- National Flood Insurance Program (NFIP);
- Increased Cost of Compliance (ICC);
- Private Insurance;
- Private and nonprofit disaster assistance; and/or
- Coordinated Assistance Network (CAN).

The following steps are taken by the WVDO 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 most recent third-party data sources or direct verification with 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
5. **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 WVDO 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 WVDO. 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

| Team/Unit              | Role                        | Contact Information  |
|------------------------|-----------------------------|--|
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**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 (CDBG-DR or CDBG-MIT). All sources of potentially duplicative benefits received are requested from applicants, or any member of the household, 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 (i.e. provided by FEMA, SBA, or NFIP) to verify self-reported information. Data sharing agreements between WVDO and other federal entities ensure the continuous exchange of data throughout the life of the program, supporting accurate award calculation. Specifically, the project managers access the most recent third-party data files indicating 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:

- FEMA – Federal Emergency Management Agency
- SBA – Small Business Administration (SBA) Loans and Other Subsidized Loans
- NFIP – National Flood Insurance Program (NFIP)
- ICC – Increased Cost of Compliance
- Private Insurance Claims
- Other federal, state or local funding
- Other nonprofit, private sector or charitable funding

For each of the potentially duplicative benefit sources, project managers will request verification of assistance received specific to the CDBG funds requested by the applicant (i.e. CDBG-DR or CDBG-MIT). Documentation related to benefits verification, including screenshots from third-party data sources or direct verifications (i.e. email communications) will be retained and stored within each applicant file.

#### **A. Federal Emergency Management Agency (FEMA)**

Project managers will verify any FEMA award amounts paid to applicants using the FEMA database (i.e. FEMA Individual Assistance (IA) or FEMA Hazard Mitigation Grant Program (HMGP)). If a FEMA match is found, project managers will verify the amount and intended purpose of funds paid to determine if funds should be considered a DOB.

If an applicant receives funding for temporary living expenses, it will not be counted as a DOB unless the applicant has submitted eligible temporary living expense documentation. Funds expensed for temporary living expenses will be applied first to offset eligible expenses. If additional expenses remain, the Rehabilitation or Reconstruction amounts may be used to offset the balance.

If no FEMA match is found, the DOB amount will be considered zero.

Additionally, if a FEMA match is found, but the applicant did not comply with the flood insurance requirement for acceptance of the FEMA funds, the applicant will be deemed ineligible for assistance from the Program due to FEMA Non-Compliance.

#### **B. Small Business Administration (SBA) Loans and Other Subsidized Loans**

DOB for SBA funds (loans) are verified by a database search based on data provided by SBA. The database will be searched for the property/project address applying for CDBG funds. If an SBA match is found, project managers will verify the amount and intended purpose of funds paid to determine if funds should be considered a DOB.

If no SBA match is found, the DOB amount will be considered zero.

Project managers will collect documentation from applicants for any other subsidized loans secured by the applicant. To verify subsidized loan funds received, a verification request will be sent by the project manager to the lending company or agent. Project

managers will verify the amount and intended purpose of funds paid to determine if funds should be considered a DOB.

Project managers will also determine if an SBA or other subsidized loan was declined or cancelled. WVDO will not consider declined or cancelled loans as a DOB. Program funds cannot be used to pay down an SBA or other subsidized loan.

### **C. National Flood Insurance Program (NFIP)**

DOB for NFIP funds are verified by a search of the FEMA IA dataset provided by NFIP. The database will be searched for the property/project address applying for CDBG funds. If an NFIP match is found, project managers will verify the amount and intended purpose of funds paid to determine if funds should be considered a DOB.

NFIP payments for contents will not be considered a DOB.

If no NFIP match for real property is found, the DOB amount will be considered zero.

### **D. Increased Cost of Compliance (ICC)**

Structures damaged by a flood may be required to meet certain building requirements to reduce the risk of future flood damage before the structure can be repaired or rebuilt. To help cover these costs, the National Flood Insurance Program (NFIP) includes ICC coverage for all new and renewed Standard Flood Insurance Policies.

If a structure owner requests reimbursement or additional assistance for one or more of the four options available under ICC (elevation, demolition, flood proofing or relocation) and receives an ICC benefit under the NFIP, then ICC is considered a DOB.

The receipt of ICC funds will be verified in the NFIP data set. Project managers will ask each applicant who has NFIP coverage whether ICC benefits were received and will verify the receipt of ICC benefits. If a match for an ICC payment is found for an applicant, the payment will be considered a DOB.

Additional instructions related to the assignment of benefits may be found at: <https://www.fema.gov/steps-assignment-coverage-d-increased-cost-compliance-coverage>.

### **E. Private Insurance Claims**

The project manager will collect insurance documentation from applicants with private insurance at the time of the disaster. To verify private insurance, a verification request will be sent by the project manager to the insurance company or agent. Project managers will verify the amount and intended purpose of funds paid to determine if funds should be considered a DOB.

Funds received for contents damage are not considered a DOB.

**Settlement Determination:** When an applicant received payment from a civil action or settlement from the insurance company, the applicant must provide a copy of the settlement check and a breakdown of the award (personal and real property or other claims). The Settlement documentation will be reviewed to determine that the applicant's primary residence is the home address provided in the settlement that sustained damage.

- If no settlement breakdown can be provided the full amount received will be counted as a DOB.
- If the Agreement states that any of the settlement funds were paid for dwelling or structure damage/repair, the amount (Settlement amount less attorney's fees and expenses) found on the settlement check breakdown will be considered a DOB.
- If there was an initial claim payment made prior to the settlement, this amount will be included in the DOB.
- If dwelling damage is NOT mentioned in the settlement, only the original claim payment is considered a DOB.

#### **F. Coordinated Assistance Network**

Each applicant will be reviewed to determine if assistance was received through the Coordinated Assistance Network (if applicable based on the type of CDBG funding requested by the applicant).

To verify whether benefits were received, the project manager will send a Consent to Release form signed by the applicant. Project managers will verify the amount and intended purpose of funds paid to determine if funds should be considered a DOB.

Funds received for contents damage will not considered a DOB.

#### **G. 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**

WVDO 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. Such permissible expense types may include, but are not limited to the following:

- Eligible Repairs;
- Forced Mortgage Payoff;
- Legal Fees;
- Contractor Fraud; or
- Temporary Living Expenses.

Since permissible expenditures could potentially increase an applicant's CDBG award amount, each expense type requires certain documentation to verify a reduction in DOB is allowed. These circumstances will be analyzed and verified by project managers on a case-by-case basis.



## **A. Eligible Repairs**

Funds spent to repair or reconstruct the property/project address applying for CDBG funds may be eligible to reduce the calculated DOB. The applicant may be required to submit third-party documentation such as invoices or receipts, as well as proof of payment, such as a bank statement. The repairs will be verified as part of the damage assessment or inspection process. The site inspector will prepare an estimate of repairs made with recovery benefits received.

Once the expenses are verified and deemed eligible, the amount of eligible repair expense reduces the DOB calculation. Note, that eligible repair offsets may also include assistance received through the Coordinated Assistance Network (CAN) and nonprofit entities.

## **B. Forced Mortgage Payoffs**

Forced mortgage payoffs (funds not in the control of the applicant) may be used to reduce a DOB if applicants provide a letter, on official letterhead from the mortgage company, stating the total amount of insurance funds used to pay off or reduce the lien. The letter must also include language that the payoff was required (forced) by the mortgage company. The letter must also note the address of the property that verifies that the lien was for the property/project address applying for CDBG funds. Alternative documentation for forced mortgage payoffs will be reviewed and verified by project managers on a case-by-case basis.

If sufficient documentation for forced mortgage payoff reduction is provided, the amount of the forced mortgage payoff will be used to reduce a DOB.

Voluntary payoffs do not qualify for a reduction to an applicant's DOB.

## **C. Legal Fees**

In the event of legal fees incurred due to insurance settlement or contractor fraud, a reduction for amounts paid to attorneys in obtaining settlement funds is considered a permissible expenditure. Most amounts captured for settlements will be net of the attorney's fees already. Project managers will review the settlement payment breakdown to confirm whether the gross or net amounts were included.

If sufficient documentation for legal fees is provided, the amount of the legal fees will be used to reduce a DOB.

## **D. Contractor Fraud**

To receive a DOB reduction for contractor fraud, applicants must have filed a complaint with a state or local agency with authority to act against, or otherwise penalize, the contractor. This can be the local District Attorney, State Attorney General, Department of Insurance, etc. This complaint must have been filed prior to receiving an award. The applicant will provide project managers with (1) the contractor's name, (2) a specific amount for which the applicant claims to have been defrauded, and (3) evidence the fraud was reported to the proper authorities.

If sufficient documentation for contractor fraud is provided, the amount of the contractor fraud will be used to reduce a DOB.

#### **E. Temporary Living Expenses**

Funds spent by an applicant for temporary living expenses from the date of the disaster can be used to reduce a DOB. Applicants must submit documentation to verify funds were used for eligible temporary living expenses. Documents submitted by applicants can include hotel receipts, apartment leases, rental agreements, rental receipts, and/or proof of payment for other temporary living arrangements. Eligible temporary living expenses verified by project managers will be applied first to offset eligible expenses.

If sufficient documentation for temporary living expenses, the amount of the eligible temporary living expenses will be used to reduce a DOB.

Food expenses do not qualify for a reduction to an applicant's DOB.

### **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-01<sup>1</sup> and as amended in FR-6169-N-02<sup>2</sup>), the WVDO 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.

## 6. Repayment/Recapture

Instances may arise where an applicant must return all or part of a CDBG award to the respective program (CDBG-DR or CDBG-MIT). The Program is responsible for recapturing funds from applicants. This section articulates the policies that will guide WVDO'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

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

<sup>2</sup> [https://www.hud.gov/sites/dfiles/Main/documents/6169-N-02\\_Implementation\\_Notice.pdf](https://www.hud.gov/sites/dfiles/Main/documents/6169-N-02_Implementation_Notice.pdf)

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)<sup>3</sup> governing grant administration and OMB cost principles (2 CFR 200.403 (a))<sup>4</sup> 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))<sup>5</sup>. 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.

#### **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 requirements

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

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

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

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 WVDO; 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 E<sup>6</sup>. 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 200<sup>7</sup>.

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

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