

Duplication of Benefits

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Introduction

The Stafford Act provides the framework for federal disaster assistance, including how major disasters are declared. Although the statute is largely devoted to recovery programs administered by FEMA, certain sections also apply to all CDBG-DR assistance received from the Department of Community Affairs (DCA). For example, Section 312 of the Stafford Act, as amended, generally prohibits any entity from receiving financial assistance for any part of a loss for which they have already received financial assistance.

This provision requires New Jersey and its subrecipients to review and analyze all CDBG-DR assistance and benefits from all sources to ensure no duplication occurs. The review for Duplication of Benefits (DOB) will apply to all CDBG-DR disaster recovery programs that provide financial assistance to individuals, business concerns, and local units of government. To comply with Section 312, DCA has adopted policies ensuring each disaster activity only provides assistance when the person, business concern, or other entity has a disaster recovery need that has not been fully met.

DOB reviews must also comply with the “necessary and reasonable benefits” requirement as per [24 CFR Part 570](#), as well as cost principles outlined in [2 CFR Part 200](#). CDBG-DR funds cannot be used for restoration, repair, or mitigation if a subrecipient already received funds from another source for the same purpose.

In general, the entity administering a CDBG-DR funded infrastructure project must properly spend, or have available, all funds received from other government sources/grants, private insurance, and federal or state government assistance including other HUD programs, the National Flood Insurance Program (NFIP), the Hazard Mitigation Grant Program (HMGP), and any other sources before qualifying for CDBG-DR funds. DCA cannot comply with the Stafford Act without completing a DOB analysis specific to each infrastructure project, *even if no other benefits were received or are pending*. Neither DCA nor the subrecipient may determine that DOB does not exist under a CDBG-DR funded activity or program without first completing the required DOB analysis.

For infrastructure projects, the subrecipient must provide DCA with information on potentially duplicative sources both at the time of application and at the time of grant execution. DCA will verify the information and perform a DOB calculation, then share the resulting award with the subrecipient. Should the subrecipient wish to dispute the duplicative amounts, they will have a 30-day appeal window from the date of the original notification. The subrecipient will submit all relevant evidence to support their claim and submit it to DCA for analysis.

Identifying Assistance from Other Sources

Below is a list of funding sources that should be considered when evaluating potential DOB. These funding sources may or may not be applicable to all infrastructure projects funded by DCA.

FEMA Public Assistance (PA)

FEMA PA provides grants to state and local governments, federally recognized tribal governments, and certain non-profit entities to assist them with disaster recovery and response. Specifically, the program provides disaster assistance for debris removal, emergency protective measures, and permanent restoration of infrastructure. CDBG-DR funds can be used as the local match requirement for projects funded with FEMA PA.

FEMA Hazard Mitigation Grant Program (HMGP)

HMGP provides grants to state and local governments to implement long-term hazard mitigation measures after a major disaster declaration. The purpose of the HMGP is to reduce the loss of life and property caused by impacts from natural disasters and to enable mitigation measures to be implemented following a disaster. If necessary, DCA will request data on HMGP funds allocated to the subrecipient to determine whether duplicative funds were awarded.

U.S. Army Corps of Engineers (USACE)

USACE assists FEMA by coordinating federal public works and engineering-related support, as well as providing technical assistance and construction management for domestic incidents. USACE often requires a non-federal local match, which CDBG-DR funds can cover if the subrecipient appropriately demonstrates need to DCA. By law, (HCDA, note to section 105(a)) only \$250,000 or less of CDBG-DR funds may be used for the non-federal cost-share of any project funded by USACE. CDBG-DR funds cannot pay for any portion of a project funded by USACE or FEMA.

Commercial Insurance

If a subrecipient has insurance on the property or facility for which funds are being allocated but has not filed a claim at the time of applying to the CDBG-DR program, DCA should advise the subrecipient to file a claim immediately. DCA must not use CDBG-DR funds to duplicate other sources of assistance, including insurance, that are available for the same purpose. If the subrecipient fails to obtain available insurance funding, DCA must count the full amount of insurance coverage as duplicative.

Subsidized Loans

Under this policy, subsidized loans, including forgivable loans, are defined as loans other than private loans. FEMA provides subsidized loans for disaster recovery and such loans may also be available from other sources. Subsidized loans are considered assistance and must be included in the DOB analysis unless an exception applies.

The full amount of a subsidized loan available to the subrecipient for the same purpose as CDBG-DR assistance must be included in the DOB calculation unless an exception applies.

DCA and the subrecipient must adhere to the CDBG-DR supplemental appropriation requirement, which states that CDBG-DR 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.” This prohibition also applies to loans, even if the loans would not be treated as a DOB under the exceptions provided in this policy.

DOB Review and Analysis Requirements

The subrecipient must submit all relevant documentation requested by DCA for the DOB review process.

DCA will use standardized forms to collect information from subrecipients to determine the amount of CDBG-DR assistance they are eligible for.

Infrastructure Programs Review Process

Subrecipients are required to fill out and update an Infrastructure DOB and Non-supplanting Certification form for every project. This fillable Excel worksheet will be used to gather

information about sources of funding for each project and to calculate potential DOB. Subrecipients must also certify that CDBG-DR funds will not supplant any other funding sources appropriated for the project, including city or county funding previously budgeted for the project.

- **Attachment: Infrastructure DOB and Non-supplanting Certification**

This form must be filled out prior to grant execution and must be updated and resubmitted if any new sources of funding for the project are identified, and at grant closeout.

Procedure for Completing DOB Forms:

Step 1: Subrecipients will collect information on all project funding sources and complete **Attachment Infrastructure DOB and Non-supplanting Certification** to demonstrate how much funding is available and what each funding source would pay for a project's scope of work.

- Subrecipient submits **Attachment: Infrastructure DOB and Non-Supplanting Certification**.
- Subrecipient must demonstrate that an effort was made to obtain all funding that was available to them. For example, FEMA PA through the State or insurance proceeds that are available to the subrecipient for the same purpose as the CDBG-DR infrastructure funds.
- If assistance is no longer available, the subrecipient should document this change in the application to support the DOB analysis.

Step 2: DCA reviews the DOB documentation and verifies award amounts using supporting documentation submitted by the subrecipient, or contacting the source, if necessary. DCA may request a copy of the award determination letter or seek information from awarding entities to verify this information. DCA may also coordinate with other federal and state agencies to determine the existence of other awards and amounts.

Step 3: DCA provides the award amount to the subrecipient. The subrecipient can appeal the award amount.

- Once the award amount is final, DCA will work with the subrecipient to execute the grant agreement.

Step 4: Throughout the grant period of performance, the subrecipient updates and resubmits the **Infrastructure DOB and Non-supplanting Certification** if any additional sources of funding for the project are identified and at grant closeout.

Subrogation/Recapture

Agreement To Repay

The Stafford Act requires that states ensure that subrecipients agree to repay all duplicative assistance. To address any potential DOB, each subrecipient must enter into an agreement with the DCA to repay any duplicative assistance received at any point. The Subrogation Agreement must be signed by every subrecipient before funds are disbursed. An example of a Subrogation Agreement can be found in **Attachment: Infrastructure DOB Subrogation Agreement**.

DCA will establish a method to monitor each subrecipient's compliance with the agreement for a reasonable period after project completion (*i.e.*, a time period commensurate with risk).

Additionally, the Subrogation Agreement ensures the subrecipient is legally held to provisions of the Stafford Act, including the requirement to provide information about all sources of funding for the project to DCA throughout the course of the project. Additionally, subrecipients are subject to civil and/or criminal penalties under Federal law should they knowingly make a false statement to HUD and its grantee, DCA.

Recapturing a Duplicative Benefit

If a potential DOB is discovered after CDBG-DR assistance has been provided, DCA must reassess the subrecipient's need at that time. If it is determined that there is no additional need, the excess CDBG-DR funds must be returned or recaptured.

Appeal to DOB Findings

Should the DOB analysis identify duplicative funding, DCA is required to independently verify the information on funding sources directly from the source of funding and to provide the subrecipient an opportunity to contest DCA's findings. DCA may not deny, terminate, or make a final decision of any CDBG-DR assistance to a subrecipient, or take other adverse action against a subrecipient without first providing the subrecipient a minimum of thirty (30) days from the date of the notice, per 5 U.S.C. § 552a(p)(1)(C)(ii), to contest the findings.

Recordkeeping

DCA and subrecipients must appropriately document compliance with DOB requirements. Insufficient documentation on DOB can lead to HUD or DCA issuing a formal notice of noncompliance, which can be difficult to resolve if records are missing, inadequate, or inaccurate to demonstrate compliance with DOB requirements.

DCA will maintain documentation of subrecipient's certification, Subrogation Agreement, sources and uses of funding, and each completed DOB analysis. Subrecipients must retain all source documentation that details sources of funding and expenditures for disaster recovery and mitigation needs. DCA will consult with subrecipients regarding questions about the sufficiency of DOB documentation and provide appropriate technical assistance and guidance documentation.

Source Documents

File Name	Infrastructure DOB and Non-Supplanting Certification (Attachment)
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File Name	Infrastructure DOB Subrogation Agreement (Attachment)
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