

# Chapter 10: Duplication of Benefits

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## Introduction

The Stafford Act provides the framework for Federal disaster assistance and sets forth the process by which the President declares a major disaster. Although the statute is largely devoted to recovery programs administered by FEMA, certain sections of the act also apply to all CDBG-DR assistance received from the Kentucky Department for Local Government (DLG). Specifically,

*Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance for any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source.*

This provision establishes the requirement for the Commonwealth of Kentucky to implement policies and procedures for the review and analysis of CDBG-DR assistance and benefits from all sources to ensure no duplication occurs. The review for the 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 governments. To comply with Section 312, DLG will adopt policies to require that each disaster activity that provide disaster recovery assistance to a person, a business concern, or other entity only to the extent that the person, a business concern, or other entity has a disaster recovery need that has not been fully met.

In addition to this section of the Stafford Act, which is typically referenced within HUD CDBG-DR appropriations statutes, DOB reviews are also required to comply with the “necessary and reasonable benefits” requirement in accordance 24 CFR part 570, as well as in the cost principles found at 2 CFR Part 200, et al. It would not be necessary nor reasonable to use CDBG-DR funds to pay for the costs of restoration, repair, or mitigation in communities most impacted that an applicant had already received funds from another source.

In general, an applicant must have spent, or have available to spend all funds received from government sources, private insurance, Federal or Commonwealth government assistance including other HUD programs, the National Flood Insurance Program (NFIP), and any other sources for the intended purpose(s) and must still have an unmet need before the person, business concern, or other entity qualifies for CDBG-DR funds. Because assistance to each person, business concern, or other entity varies widely based on individual insurance coverage and eligibility for Federal funding, DLG cannot comply with the Stafford Act without completing a DOB analysis specific to each applicant, business concern, or other entity *even if to report that no other benefits were received or are pending*. DLG or the subrecipient may not make a blanket determination that DOB does not exist for all beneficiaries or recipients under a CDBG-DR funded disaster recovery activity or program. This includes the activities of planning, housing, economic revitalization, public services, infrastructure, and public facilities improvements as further detailed in the most current HUD-approved Public Action Plan, and any amendments thereto. Each program policy will have specific procedures to evidence DOB compliance and DOB compliance will be included in ongoing monitoring of all subrecipients.

Subrecipients who apply to DLG to administer housing programs will have a different role in the DOB process than those subrecipients that apply to DLG for funding of infrastructure projects, business entities, and planning grants.

For housing, the duplication of benefits review will be completed by the subrecipient and verified by DLG. At the time of application to DLG, the subrecipient will not have identified potential beneficiaries. Instead after being awarded by DLG, the subrecipient will create an application that beneficiaries will fill out. The subrecipient will collect information of potentially duplicative sources on its application and perform a DOB calculation to determine a preliminary award. That information will be submitted to DLG for them to verify the amounts of potentially duplicative sources and the DOB calculation. If necessary, DLG will re-calculate the award. The resulting CDBG-DR award amount will be shared with the subrecipient who will then make the award to the beneficiary. The beneficiary will have a 30-day appeals window to dispute the duplicative amounts. The subrecipient will work with the beneficiary to get all relevant evidence to support their claim and submit it to DLG for analysis.

For infrastructure projects, business entities, and planning grants, the subrecipient will be applying for themselves or a business and will have all the potentially duplicative sources information available at the time of application to DLG. This information will be submitted to DLG with the application and DLG will verify the information and perform a DOB calculation. The resulting award will be shared with the subrecipient. In this case the subrecipient or business beneficiary will have a 30 day appeals window to dispute the duplicative amounts. The subrecipient will submit all relevant evidence to support their claim and submit it to DLG for analysis.

The DOB analysis is detailed in section 10-B. DOB Review and Analysis Requirements.

### 10-A Identifying Assistance from Other Sources

#### FEMA Individual Assistance (IA)

The subrecipient will work with the program applicant to confirm receipt of FEMA IA benefits. That information will be forwarded to DLG to calculate the maximum CDBG-DR award. Using data feeds provided by FEMA and other sources, DLG will verify the accuracy of the duplicate award amounts.

When an applicant appeals and claims that their actual FEMA payout is lower than the amount reflected in the data provided by DLG, the applicant will work with the subrecipient to provide valid documentation demonstrating that the FEMA IA amount stated in the FEMA data is incorrect. In such cases, DLG will be required to verify the information provided by the applicant with FEMA and may adjust the award amount if FEMA confirms that the information in its data set is incorrect.

FEMA IA repair, replacement, and permanent housing construction payments related to structural loss to the property are considered potentially duplicative benefits. Payments for other losses or expenses are not considered duplicative. The following special considerations shall apply to show funds are not duplicative:

- Proof that construction payments were utilized for valid temporary housing expenses more than any FEMA temporary housing benefits.
- Proof for any amounts received from insurance companies for Additional Living Expenses (ALE) are deducted from the applicant's verified claim prior to calculating the offset.
- In cases where FEMA determines that an applicant was ineligible to receive FEMA IA assistance or determines that a duplication of benefits occurred after a FEMA IA payment has been made to an applicant, FEMA may attempt to recapture funds from the applicant. If there is proof in the form of a letter from FEMA or other documentation (including a cancelled check showing a repayment to FEMA) that funds were repaid to FEMA, the repaid amount is no longer duplicative.
- The data provided by FEMA to DLG does not distinguish between payments made for structural repair and payments made for other potentially duplicative or non-duplicative purposes. Accordingly, the entire amount that may be duplicative will be included in each applicant's calculation out of an abundance of caution.
- Any fees associated with legal costs, adjuster's fees, and settlement costs are reimbursable expenses if supporting documentation is provided and clearly labeled as such.

### FEMA's Public Assistance (PA)

FEMA's Public Assistance (PA) program provides grants to the Commonwealth, local governments, federally recognized tribal governments, and certain non-profit entities to assist them with the response to and recovery from disasters. Specifically, the program provides disaster assistance for debris removal, emergency protective measures, and permanent restoration of infrastructure.

### FEMA's Hazard Mitigation Grant Program (HMGP)

FEMA's Hazard Mitigation Grant Program (HMGP) provides grants to state and local governments 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 due to natural disasters and to enable mitigation measures to be implemented during the immediate recovery from a disaster.

### FEMA National Flood Insurance Program (NFIP)

NFIP payments for structural loss (building coverage) to the property listed on the application are considered potentially duplicative benefits. Payments for other losses or expenses, including contents coverage, are not considered duplicative.

### FEMA Increased Cost of Compliance (ICC) Benefits

Increased Cost of Compliance (“ICC”) payments are intended to be used for activities such as demolition, floodproofing, and elevation. ICC payments received for the property listed on the application are considered potentially duplicative benefits.

### 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, engineering expertise, and construction management to prevent, prepare for, respond to, and/or recover from domestic incidents. USACE often has lump-sum requirements (\$250,000) for the nonfederal match and a subrecipient must demonstrate a need for additional funds and submit that information to DLG. CDBG-DR cannot pay for projects (or portions of projects) for which USACE has appropriated funds and/or is required to pay.

### Commercial Insurance

If an applicant has insurance but at the time of application to the CDBG-DR program has not filed a claim with their insurance company, the grantee should advise the applicant to file a claim immediately. Grantees must not use CDBG-DR funds to duplicate other sources of assistance, including insurance, that are available for the same purpose. A benefit is available if a person or entity receives it by acting in a "commercially reasonable manner" or has received it and has legal control over it. Commercially reasonable efforts refer to efforts that use a standard of reasonableness defined by what a similar person would do as judged by the standards of the applicable community. Commercially reasonable efforts should be consistent with good-faith business judgments. If the grantee finds the applicant did not act in a commercially reasonable manner, the subrecipient must count the full amount of insurance coverage as duplicative when determining whether the applicant may receive CDBG-DR assistance.

### Insurance and Personal Property Replacement

Insurance proceeds issued for *personal property replacement* are generally not included in a DOB analysis for home repair or voluntary acquisition programs. However, grantees must still ensure that all CDBG-DR awards meet the identified need in a necessary and reasonable manner. For example, if an applicant has used personal property funds to repair his/her roof, and then applies for a CDBG-DR rehabilitation grant, the CDBG-DR award should be based upon the need at the time of the application.

### Forced Mortgage Payoffs and DOB

As a condition of granting a mortgage, banks and lenders usually require that they be named as an “additional insured” on the homeowner’s insurance policy. In some cases, since the lender is a party to

any insurance payments related to the structure, may require a borrower to use some or all the insurance proceeds to reduce or pay off the mortgage balance before releasing funds for rebuilding. Insurance payouts used for forced mortgage payoffs are not a DOB in rehabilitation or reconstruction scenarios because they are not available to the homeowner.

### Private Flood Insurance Benefits

At the time of application, applicants must declare whether the property was covered by a policy of private flood insurance and all amounts that were received for structural loss and additional living expenses that were paid under the policy that are related to the severe storms, flooding, landslides and mudslides from disaster (DR-4595) that occurred between February and March, 2021 or the severe storms, straight-line winds, flooding and tornadoes from disaster (DR-4630). The subrecipient then verifies that the declared amounts are correct by contacting individual private flood insurance companies.

If an applicant is able to provide documentation demonstrating that the private flood insurance proceeds amount provided by the insurance company includes amounts not paid to cover structural loss and additional living expenses (if applicable), DLG will use the applicant's documentation to properly classify the private insurance payout. The documentation provided by the applicant must come from the insurance company that issued the payments.

Insurance payments or settlements for structural loss (building coverage) to the property listed on the application are considered potentially duplicative. Payments for other losses or expenses, including contents coverage, are not considered potentially duplicative. Additional living expense payments are only considered duplicative of temporary housing expenses claimed by the applicant as allowable activities.

If an applicant obtained insurance proceeds through legal action, amounts incurred for legal fees are credited to the applicant and are not considered duplicative benefits. Amounts recovered for punitive damages, contents, or other non-structural coverage are not considered duplicative benefits. The applicant's attorney must provide a written statement showing these amounts in order for the subrecipient to consider them non-duplicative.

### Windstorm Insurance Benefits

At the time of application, applicants must declare whether the property was covered by a policy of windstorm insurance issued by a Kentucky licensed insurance company and all amounts that were received for structural loss and additional living expenses that were paid under the policy are related to either disaster events related to either storm. DLG then verifies that the declared amounts are correct by contacting the insurance company or an alternative data source. If DLG is unable to verify the private

insurance proceeds paid for structural loss within thirty (30) days of making the request, DLG uses the payment amount provided by the applicant at the time of application.

If an applicant is able to provide documentation demonstrating that the insurance proceeds amount provided by a Kentucky licensed insurance company includes amounts not paid to cover structural loss and additional living expenses (if applicable), DLG will use the applicant's documentation to properly classify the insurance payout. The documentation provided by the applicant must come from the insurance company that issued the payments.

Insurance payments or settlements for structural loss (building coverage) to the property listed on the application are considered potentially duplicative. Payments for other losses or expenses, including contents coverage, are not considered potentially duplicative. Additional living expense payments are only considered duplicative of temporary housing expenses claimed by the applicant as allowable activities.

When an applicant claims an allowable activity offset for temporary housing expenses, the amount received from the private insurance company for temporary housing or Additional Living Expenses ("ALE") is deducted from the applicant's verified claim prior to calculating the offset.

If an applicant obtained insurance proceeds through legal action, amounts incurred for legal fees are credited to the applicant and are not considered duplicative benefits. Amounts recovered for punitive damages, contents, or other non-structural coverage are not considered duplicative benefits. The applicant's attorney must provide a written statement showing these amounts in order for the Program to consider them non-duplicative.

### Homeowners/Hazard Insurance Benefits

At the time of application, applicants must declare whether the property was covered by a policy of homeowners/hazard insurance and all amounts that were received for structural loss and additional living expenses that were paid under the policy that are related to the Presidentially declared disasters. The subrecipient shall verify, to the extent the information is accessible, that the declared amounts are correct by contacting individual insurance companies.

If an applicant is able to provide documentation demonstrating that the insurance proceeds amount provided by the insurance company includes amounts not paid to cover structural loss and additional living expenses (if applicable), DLG will use the applicant's documentation to properly classify the private insurance payout. The documentation provided by the applicant must come from the insurance company that issued the payments.

Insurance payments or settlements for structural loss (building coverage) to the property listed on the application are considered potentially duplicative. Payments for other losses or expenses, including contents coverage, are not considered potentially duplicative. Additional living expense payments are

only considered duplicative of temporary housing expenses claimed by the applicant as allowable activities.

If an applicant obtained insurance proceeds through legal action, amounts incurred for legal fees are credited to the applicant and are not considered duplicative benefits. Amounts recovered for punitive damages, contents, or other non-structural coverage are not considered duplicative benefits. The applicant's attorney must provide a written statement showing these amounts in order for the subrecipient to consider them non-duplicative.

In the case that an applicant has an open insurance claim and still has the potential to get additional proceeds upon completion of reconstruction, rehabilitation, elevation or construction work, the applicant will have two options. Either:

- the applicant can close the claim with their insurance company and obtain documentation stating they no longer have access to insurance funds.

or

- DLG will include all funds that are available to the applicant in the DOB calculation.

Once the project is complete on the property, the applicant can claim the funds, but shall be subject to a Subrogation Agreement (see details below) and may need to return the funds to the subrecipient or DLG if a DOB is determined.

### Philanthropic Cash Assistance

Funds received by the applicant from philanthropic organizations are based upon the payment amount provided by the applicant on the application.

Payments received from non-profits, religious institutions, charitable organizations, or other philanthropic organizations that are specifically intended for repair, reconstruction, or mitigation are considered potentially duplicative. Payments for other losses or expenses are not considered when calculating the applicant's eligible reimbursement amount. Payments for temporary housing are only considered duplicative of temporary housing expenses claimed by the applicant as allowable activities.

The following special considerations shall apply:

- When an applicant claims an allowable activity offset for temporary housing expenses, the amount received from philanthropic organizations for temporary housing is deducted from the applicant's verified claim prior to calculating the offset.
- Demolition work, repairs, and/or other work performed on behalf of an applicant by a philanthropic or charitable organization are excluded from the site assessment's inspection report [Estimated Cost of Repair (ECR)] of previous repairs and applicants will not receive credit

for such work [Work in Place (WIP)] when calculating the applicant's eligible reimbursement amount.

### Subsidized Loans

HUD has updated the policy guidance on the treatment of subsidized loans in a DOB analysis as the result of recent statutory changes. Private loans are not "assistance" and therefore are not a duplication.

The full amount of a subsidized loan available to the applicant for the same purpose as CDBG-DR assistance is assistance that must be included in the DOB calculation unless one of the exceptions provided herein applies, including the exception authorized in the Disaster Recovery Reform Act amendments to section 312 of the Stafford Act

DLG and the subrecipient must adhere to CDBG-DR supplemental appropriation requirement that provides 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.

- (i) **Subsidized Loans.** Under this policy, subsidized loans (including forgivable loans) are loans other than private loans. Both SBA and FEMA provide subsidized loans for disaster recovery. Subsidized loans may also be available from other sources. Subsidized loans are assistance that must be included in the DOB analysis unless an exception applies.
- (ii) **Exceptions When Subsidized Loans Are Not a Duplication.**
  - (a) *Short-term subsidized loans for costs later reimbursed with CDBG-DR.* **Federal Register** notices governing CDBG-DR grants generally permit grantees to reimburse costs of the grantee or subrecipient for eligible activities on or after the date of the disaster. If the subrecipient obtained a subsidized short-term loan to pay for eligible costs before CDBG-DR funds became available (for example, a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan does not create a duplication.
  - (b) *Declined or cancelled subsidized loans.* The amount of a subsidized loan that is declined or cancelled is not a DOB. To exclude declined or cancelled loan amounts from the DOB calculation, the subrecipient must document that all or a portion of the subsidized loan is cancelled or declined unless the loan qualifies under the exclusion discussed in (c) below.



- (c) *Declined SBA Loans:* Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds. The subrecipient shall not treat declined subsidized loans, including declined SBA loans, as a DOB (but are not prohibited from considering declined subsidized loans for other reasons, such as underwriting). A subrecipient's DOB policies and procedures must declare that declined loans are not DOB.

A subrecipient is only required to document declined loans if information is available (*e.g.*, the data the grantee receives from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and the subrecipient is unable to determine from that available information that the applicant declined the loan. If a subrecipient is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, a subrecipient may obtain a written certification from the applicant that they did not accept the subsidized loan by signing loan documents and did not receive the loan. The subrecipient will forward all information collected to DLG.

- (d) *Cancelled Loans:* Cancelled loans are loans (or portions of loans) that were initially accepted, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant. The cancelled loan amount is the amount that is no longer available. The loan cancellation may be due to default of the borrower, agreement by both parties to cancel the undisbursed portion of the loan, or expiration of the term for which the loan was available for disbursement.

The following documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available:

(1) A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or

(2) a legally binding agreement between the subrecipient and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts.

The documentation described above must be maintained by subrecipient. Without this documentation, any approved but undisbursed portion of a subsidized loan may be

incorrectly included as DOB and result in an incorrect calculation of the total assistance amount unless another exception applies.

For cancelled SBA loans, DLG must notify the SBA that the applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts.

- (e) The subsidized loan meets the requirements for a statutory exception under the DRRRA's amendments to the Stafford Act.* The DRRRA amendments apply only to major disasters or emergencies declared between January 1, 2016, and December 31, 2021 (DRRA Qualifying Disasters). However, the DRRRA also provides that the amendment sunsets (*i.e.*, the Stafford Act is amended to remove this provision) on the date that is 5 years after the date the DRRRA's enactment, therefore, the exception for DRRRA Qualifying disasters no longer applies after October 5, 2023.

For DRRRA Qualifying Disasters, FEMA has advised that a loan is not a prohibited duplication of benefits under section 312(b)(4)(C) of the Stafford Act, as amended by section 1210 of the DRRRA, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency.

- (iii) Treatment of Disbursed Loans That Meet the Statutory Exception Under the DRRRA Amendments.** FEMA also advised that the DRRRA amendments do not automatically require or authorize repayment of existing loan amounts. Instead, FEMA advised “whether particular federal grant funds are available for the purpose of paying down a loan provided for disaster losses is a determination reserved for the grant awarding agency, pursuant to its statutory program authorities and appropriations.”
- (iv) Treatment of Undisbursed Loans That Meet the Statutory Exception Under the DRRRA Amendments.** For subsidized loans made in response to DRRRA Qualifying Disasters, accepted but undisbursed loan amounts (e.g., accepted but undisbursed SBA loan amounts) are not considered a DOB. Grantees that received a CDBG-DR grant in response to a DRRRA Qualifying Disaster may revise awards to applicants with undisbursed subsidized loan assistance from SBA or other sources to provide additional CDBG-DR assistance. The amount of additional CDBG-DR assistance must be based on a revised DOB analysis that excludes accepted but undisbursed loan amounts from total assistance when calculating the maximum CDBG-DR award. If the grantee provides additional CDBG-DR assistance, NMHC must notify the lender and must obtain a written agreement from the applicant that the applicant will not make additional draws from the subsidized loan without the NMHC's approval. The grantee must review and approve any subsequent draws to determine

whether all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency, as required by the DRRRA.

### United States Department of Agriculture (USDA) Loans

USDA Emergency Loan Program (EM) loan amounts that were intended for home repair, elevation, or replacement are determined and verified through documentation provided by the applicant. The amount considered potentially DOB is the total amount that the applicant was awarded for home repair, elevation, or replacement. Amounts awarded due to other losses, such as damage to farm equipment or non-residential buildings that support farming activities shall not be considered DOB. The total amount awarded to the applicant for potentially duplicative activities is counted as the benefit received regardless of whether the entire awarded amount has been drawn by the applicant. Loan amounts that were cancelled or revoked are not considered duplicative.

To collect uniform electronic data and streamline the application process, subrecipients may use standardized questions/forms to collect information from applicants. However, files must also document in addition to the subrecipients' assessment of that information, and how the applicant does, or does not, qualify for CDBG-DR assistance, any and all sources of DOB that may have been available based upon the individual program design or activity.

## 10-B. DOB Review and Analysis Requirements

The duplication of benefits review will be completed by the subrecipient and verified by DLG. To prevent DOB, subrecipients will be required to implement adequate and necessary program policies and procedures that include sufficient controls. DLG's minimum expectation is that subrecipients will follow the DOB policies and procedures outlined in this chapter of the Subrecipient Manual and in the applicable program guidelines.

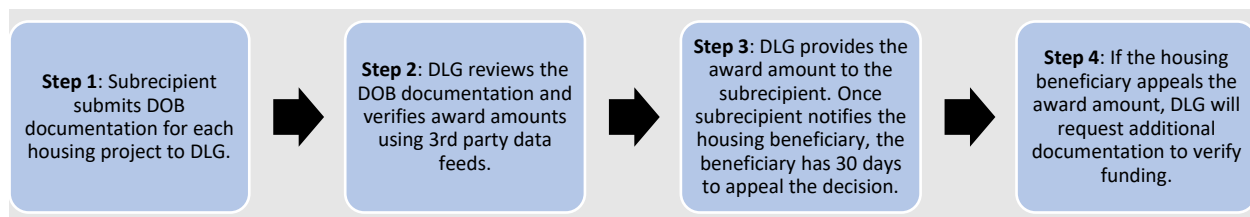
**Attachment 10-03 Subrecipient  
DOB policy**

Subrecipients will be required to submit a subrecipient DOB policy to DLG with their evidentiary materials. A model DOB policy can be found as attachment 10-03 Subrecipient DOB policy. Subrecipients are also required to complete an attestation form if discrepancies are identified that can't be verified by third party sources. The form can be found as attachment 10-08 Attestation Certificate. It only needs to be filled out when sources can not be verified.

HOUSING PROGRAMS REVIEW PROCESS: A visualization of the DOB process for housing projects is found as attachment 10-1 Housing DOB workflow.

Subrecipients will be required to coordinate with each program applicant to fill out and certify DOB forms for every household assisted. These forms are fillable excel worksheets that will be used to calculate the DOB for each project. Those worksheets are attachments to this chapter and include:

- 10-04 DLG Owner-Occupied Rehabilitation and Reconstruction DOB Form
- 10-05 DLG Single Family New Construction DOB Form



- Step 1: Subrecipients will collect information on potentially duplicative funding sources from all applicants during the application phase.
    - Applicants will be required to provide insurance provider contact information, policy coverage information and ID, claims information and amounts received and approved for all potentially duplicative sources.
    - Applicants will be required to authorize the subrecipient to contact all potentially duplicative funding sources on their behalf to verify all funding sources received and/or approved.
    - Subrecipient submits this documentation and their calculation for the grant award for each housing project to DLG.
- Attachment 10-01 Housing DOB workflow**
- Step 2: DLG reviews the DOB documentation and verifies the final eligible award amounts using 3<sup>rd</sup> party data feeds (See section 10-D for details).
    - Verification will occur through various available sources; including both data provided through 3<sup>rd</sup> party sources and information collected independently.
  - Step 3: DLG provides the award amount to the subrecipient. Once subrecipient notifies the housing beneficiary, the beneficiary has 30 days to appeal the decision. An example subrecipient award letter can be found as attachment 10-10 subrecipient award letter.
- Attachment 10-10 subrecipient award letter**
- Step 4: If the housing beneficiary appeals the award amount, the subrecipient will request additional documentation and submit it to DLG for verification.
  - Step 5: If the applicant accepts the award amount or the appeal is resolved, then the subrecipient will work to execute the grant agreement. The subrecipient will execute the Subrogation Agreement at the time of award. After an award is granted, if an approved

applicant receives any additional benefits not already verified during the duplication of benefits review process, the subrecipient must have sufficient procedures to seek a repayment of those duplicative funds, as defined in the applicant's Subrogation Agreement.

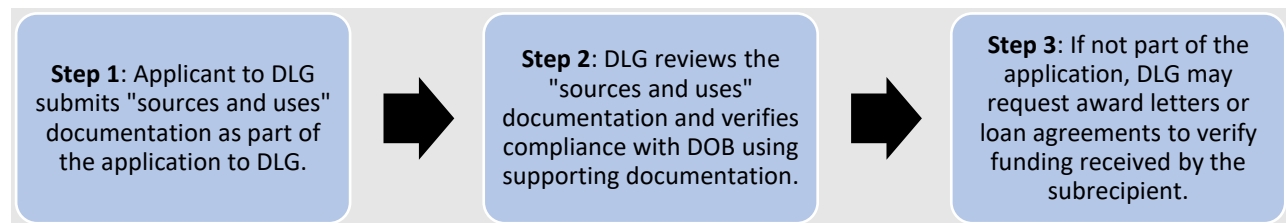
**NON-HOUSING PROGRAMS REVIEW PROCESS** (includes economic revitalization, public services, infrastructure, public facilities improvements, and planning programs). A visualization of the DOB process for non-housing projects is found as attachment 10-2 Non-housing DOB workflow.

Subrecipients will be required to fill out DOB forms for every project. These forms are fillable excel worksheets that will be used to calculate the DOB for each project. Those worksheets are attachments to this chapter and include:

- 10-06 DLG Small Business DOB Form
- 10-07 Infrastructure DOB Form

For small business and infrastructure projects, DLG needs to be assured that CDBG-DR funds will not be supplanting city or county funding already budgeted for the applied for project. Therefore, as part of the DOB project the subrecipient will need to fill out attachment 10-09 DOB non-supplanting certification.

**Attachment 10-09 DOB non-supplanting certification**



- **Step 1:** Subrecipients will collect information on potentially duplicative funding sources and develop a source and uses table to demonstrate how much funding is available and what each funding source would pay from a project's scope of work.
  - Subrecipient submits "sources and uses" documentation as part of the application to DLG.
  - Subrecipient must demonstrate that an effort was made to obtain all funding that was available to them. For example, if the subrecipient did not apply to FEMA, they will need to determine whether FEMA assistance is still available. If FEMA assistance is still available, the subrecipient should apply for FEMA funds prior to receiving CDBG-DR funds.
  - If assistance is no longer available, the subrecipient should document this change in the application to support the DOB analysis.

**Attachment 10-02 Non-housing DOB workflow**

- **Step 2:** DLG reviews the DOB documentation and verifies award amounts using supporting documentation submitted by the subrecipient. DLG may request a copy of the award determination letter or request information from awarding entities to verify this information.
- **Step 3:** DLG provides the award amount to the subrecipient. The subrecipient can appeal the award amount. See applicable program guidelines for details.
  - If the award amount is final, DLG will work with the subrecipient to execute the grant agreement.

## 10-C. Subrogation/Recapture

### Agreement To Repay

The Stafford Act requires subrecipients to ensure that applicants agree to repay all duplicative assistance to the agency providing that Federal assistance. To address any potential DOB, each applicant must also enter into an agreement with the CDBG-DR subrecipient or DLG to repay any assistance later received for the same purpose for which the CDBG-DR funds were provided. This agreement can be in the form of a subrogation agreement or similar document and must be signed by every applicant before a subrecipient or DLG disburses any CDBG-DR assistance to the applicant. An example Subrogation Agreement can be found as attachment 10-11 Subrecipient Subrogation Agreement.

A subrecipient and DLG must establish a method to monitor each applicant's compliance with the agreement for a reasonable period after project completion (*i.e.*, a time period commensurate with risk). Additionally, the Subrogation Agreement must also include the following language:

Attachment 10-11 Subrecipient  
Subrogation Agreement

*“Warning: Any person who knowingly makes a false claim or Statement to HUD may be subject to civil or criminal penalties under [18 U.S.C. 287](#), [1001](#) and [31 U.S.C. 3729](#).”*

### Recapturing a Duplicative Benefit

If a potential DOB is discovered after CDBG-DR assistance has been provided, a subrecipient or DLG must reassess the applicant's need at that time. If additional need is not demonstrated, CDBG-DR funds shall be returned or re-captured to the extent they are in excess of the remaining need and duplicates other assistance received by the applicant for the same purpose. This determination, however, may depend on what sources of assistance were last received by the applicant.

If a subrecipient fails to recapture funds from an applicant, DLG may impose corrective actions pursuant to [24 CFR 570.495](#), [24 CFR 570.910](#), and **Federal Register** notices, as applicable. It is important for subrecipient to note that the Stafford Act states that.

*“A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefit(s) available to the person for the same purpose from another source.”* If a subrecipient is unable to recapture DOB, that individual applicant will still be liable to the Commonwealth of Kentucky and the United States government. DLG is available to provide guidance to subrecipient to establish or revising the DOB policies and procedures.

### 10-D. Data Sharing Requirements

#### Data Sharing Agreement

To conduct a DOB analysis and verify whether a DOB exists, data pertaining to FEMA benefits is required. DLG has entered into a Data Sharing Agreement (DSA) with HUD for the CDBG-DR programs. The DSA enables HUD to share with the DLG the necessary data from FEMA, including personally identifiable information (PII) that is protected by the Privacy Act of 1974 (Privacy Act), as amended, 5 U.S.C. § 552a. The FEMA data covered under the DSA can be used for assessing unmet needs resulting from a Presidentially declared major disaster and to plan for the use CDBG-DR grants, including funds for electric power systems, mitigation, or resilience purposes. Additionally, DLG may use the data to assist with outreach and marketing activities to potential applicants that may be eligible for CDBG-DR assistance. The DSA prohibits any other uses of the data.

Only DLG will have authorized access to the FEMA data and will not provide access to its subrecipients. DLG will use the data feed as a verification tool when reviewing submissions by applicants. The DSA prohibits data use and access by any individual that is not identified by DLG as an Authorized User. Authorized Users can be employees, agents (including contractors or subcontractors), or subrecipients (including an agent or employee of its subrecipients) who has entered into an agreement with the DLG to comply with all requirements on the use of data contained in the Data Sharing Agreement and who has been trained and certified by DLG that they will to comply with all requirements on the use of data contained in the DSA and acknowledged that under the Privacy Act, unlawful disclosure of PII data is a misdemeanor and subject to a fine of up to \$5,000.

If DLG decides in the future to allow authorized subrecipients or contractors to have access to the FEMA data, DLG will require an Authorized User to be identified and who has authorized access to HUD data. The entity must maintain a list of Authorized Users in its files identifying who has been authorized access to HUD data, and the periodic review of continued authorization. The grantee will take the required reasonable steps to prevent data access by any individual that is not identified by the subrecipient as an Authorized User. Entities must revoke access to the HUD data for any individual no longer an Authorized User. Access by unauthorized individuals is an incident that must be reported in accordance with requirements of [Kentucky state data standards](#). Information is available at the following links:

- [Security Policies, Standards, and Procedures:  
https://technology.ky.gov/OCISO/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx](https://technology.ky.gov/OCISO/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx)

- Privacy and Security Policies: <https://www.kentucky.gov/policies/Pages/default.aspx>

DLG reserves the right to make unannounced and unscheduled inspections of any location in which the subrecipient or its Authorized Users use HUD data, including any associated computer center, to evaluate compliance with the terms of the CDBG-DR Grant Agreement and the requirements of the Privacy Act of 1974.

The authorized entity shall destroy the HUD data provided by DLG at the time of the CDBG-DR grant closeout for which the HUD data was provided. The authorized entity shall notify DLG in writing when the HUD data provided for the program or activity is destroyed. Where recordkeeping periods extend beyond CDBG-DR grant closeout, the authorized entity shall retain records for the period, if any required by DLG.

### Computer Matching Agreement

The Computer Matching Agreement (CMA) is an agreement between HUD and DLG to support DOB reviews conducted by the subrecipients for CDBG-DR grant-funded programs. The CMA governs DLG's use of the shared data to prevent DOB in the administration CDBG-DR activities, including assistance for housing, infrastructure, and business development.

It is important to note the data shared under the CMA is limited to the FEMA IHP data and does not include other common sources of assistance which may be relevant to a subrecipient's DOB review. For each program applicant, the subrecipient will use the amount of FEMA IHP assistance received to calculate the applicant's unmet need and calculate a maximum award amount that will prevent DOB.

(NOTE: DLG will access NFIP information and SBA loan data through a separate process. DLG will work with HUD to get the NFIP data from FEMA. DLG has a separate agreement for the SBA loan information.)

### Appeal to DOB Findings

The CMA requires DLG to independently verify the information produced by a matching program and to provide the applicant (person, business concern, or other entity) an opportunity to contest DLG or the subrecipient's findings. DLG and the Subrecipient may not deny, terminate, or make a final decision of any CDBG-DR assistance to an applicant, or take other adverse action against an applicant as the result of the information provided by the CMA, until an officer or employee of DLG has independently verified such information and the applicant has had an opportunity of no less than thirty (30) days from the date of the notice, per 5 U.S.C. § 552a(p)(1)(C)(ii), to contest the findings.

When required by the Privacy Act, an independent verification requires investigation and confirmation of specific information relating to an applicant that is used as a basis for an adverse action against the applicant, including where applicable investigation and confirmation of:



- (1) the amount of any asset or income involved,
- (2) applicant actually has or had access to asset or income for applicant's own use, and
- (3) the period or periods when the applicant actually had such asset or income.

### Personal Identifiable Information (PII)

Authorized Users are employees, agents (including contractors or subcontractors), or subrecipients (including an agent or employee of its subrecipients) who have entered an agreement with DLG to comply with all requirements on the use of data contained in the CMA and acknowledged that under the Privacy Act, unlawful disclosure of PII data is a misdemeanor and subject to a fine of up to \$5,000, and who have signed an enforceable agreement with DLG that when given access to the subject HUD database or file, the Authorized User will not: –

- Use or reveal any individually identifiable information furnished, acquired, retrieved, or assembled by the Authorized User or others for any purpose other than those in the CDBG-DR Grant Agreement;
- Make any disclosure or publication whereby an individual or household could be identified or the data furnished by or related to any applicant person could be identified; or
- Permit anyone other than DLG's Authorized Users to access the data.

An authorized entity will not authorize more than the number of Authorized Users determined to be necessary. DLG shall periodically request that the authorized entity update its list of Authorized Users and revoke access to individuals that are not identified as Authorized Users. DLG will prohibit access to data by any individual that is not identified by the authorized entities as an Authorized User.

As part of the CDBG-DR monitoring process, DLG will review compliance with the terms of the CMA including transactions conducted pursuant to the CMA, the use of the information obtained pursuant to the CMA, and policies, practices, and procedures related to the CMA. HUD also has the right to conduct onsite inspections to audit compliance with the CMA for the duration of the agreement or any extension of the agreement.

## **10-E. Recordkeeping**

Subrecipients will be required to appropriate document compliance with DOB requirements and include in their written policies and procedures for DOB, which is specific for each program funded with CDBG-DR assistance provided by DLG. For housing programs, subrecipients will be conducting the duplication of benefits review and it will be verified by DLG. Insufficient documentation on DOB can lead to findings, which can be difficult to resolve if records are missing, inadequate, or inaccurate to demonstrate compliance with DOB requirements.

For example, if an applicant certifies that other sources of funds were received and expended for a different purpose than the CDBG-DR funds, a subrecipient may be required to substantiate this assertion with an additional source of information (*e.g.*, physical inspections, photographs, credit card or bank statements, work estimates with sufficient detail, contractor invoices, flood inundation records, or receipts). DLG recommends that subrecipients include information to advise the public and potential applicants to retain all source documentation that details expenditures for disaster recovery needs. DLG will consult with subrecipients regarding questions about the sufficiency of DOB and provide appropriate technical assistance and guidance documentation.