

# Procedures for Prevention of Duplication of Benefits



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# 1 Policy and Procedures for Prevention of Duplication of Benefits (DOB)

Community Development Block Grant disaster recovery (CDBG-DR) grants are one of multiple Federal sources which assist disaster recovery. These sources of Federal assistance often can be used for the same purposes by grantees, subrecipients and disaster survivors. For this reason, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5207) (Stafford Act) and CDBG-DR appropriations acts require HUD and its grantees to coordinate with other Federal agencies that provide disaster assistance to prevent the duplication of benefits (DOB). The Stafford Act’s prohibition on DOB aims to ensure that federal assistance serves only to “supplement insurance and other forms of disaster assistance.” (42 U.S.C. 5170).

Arkansas’s CDBG-DR grant is also subject to February 9, 2018, notice (83 FR 5860) and the 2019 DOB Notice (84 FR 28836). Supplemental appropriations statutes often reinforce and supplement these authorities.

## 2 Duplication of Benefits (DOB) Policy

CDBG-DR grantees must prevent DOB when carrying out eligible activities. A duplication occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need. The amount of the DOB is the amount received in excess of the total need for the same purpose. When total need for eligible activities is more than total assistance for the same purpose, the difference between these amounts is an “unmet need.” Grantees must limit their assistance to unmet needs for eligible activities to prevent a DOB. When reimbursement is permitted by the CDBG-DR grant requirements, unmet needs can include amounts needed for reimbursement.

## 3 Applicable Law

Section 312 of the Stafford Act and CDBG-DR appropriations acts require that CDBG-DR grantees prevent DOB when administering grants. Federal Register notices governing CDBG-DR awards impose these DOB requirements on grantees. The “necessary and reasonable” cost principles in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in subpart E of 2 CFR part 200 (the Cost Principles) similarly prohibit grantees from charging to the grant a cost paid by another source.

## 4 Stafford Act

The Stafford Act is the primary legal authority establishing the framework for the Federal government to provide disaster and emergency assistance.

Section 312 of the Stafford Act directs Federal agencies that provide disaster assistance to assure that people, businesses, or other entities do not receive financial assistance that duplicates any part of their disaster loss covered by insurance or another source (42 U.S.C. 5155(a)). That section also makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)).

The Stafford Act also provides that when assistance covers only a part of the recipient's disaster needs, additional assistance to cover needs not met by other sources will not cause a DOB (42 U.S.C. 5155(b)(3)). CDBG-DR assistance may only pay for eligible activities to address unmet needs. This notice advises grantees on the calculation of unmet needs through a duplication of benefits analysis.

On October 5, 2018, the DOB provision in section 312 of the Stafford Act was amended by section 1210 of the DRRRA. The 2019 DOB Notice (84 FR 28836) describes corresponding changes in HUD's policies and grant requirements. Those changes are discussed in detail in section V.B.2. and V.B.3. of the 2019 DOB Notice.

## 5 Necessary and Reasonable Requirements

The Cost Principles applicable to all CDBG-DR grantees and their subrecipients require that costs are necessary and reasonable. The Cost Principles are made applicable to States by 24 CFR 570.489(p) and to local governments through 24 CFR 570.502. State grantees are also subject to 24 CFR 570.489(d), which requires that states shall have fiscal and administrative requirements to ensure that grant funds are used "for reasonable and necessary costs of operating programs."

Under the Cost Principles, a cost assigned to a grant "is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost" (2 CFR 200.404).

ADFA will consider factors described at 2 CFR 200.404(a) through (e) when determining

which types and amounts of cost items are necessary and reasonable.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- c) Market prices for comparable goods or services for the geographic area.
- d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.
- e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

Based on these factors, HUD generally presumes that if a cost has been paid by another source, charging it to the Federal award violates the necessary and reasonable standard unless grant requirements permit reimbursement.

## 6 Duplication of Benefits Calculation Procedure

The Stafford Act requires a specific inquiry into assistance received by each applicant. The 2019 DOB Notice (84 FR 28836) refers to the subject of a DOB review as an “applicant” or “CDBG-DR applicant” and uses the term “applicant” to include individuals, businesses, households, or other entities that apply to the State grantee or a subrecipient for CDBG-DR assistance, as well as entities that use CDBG-DR assistance for an activity without submitting an application (e.g., ADFA, other state or local departments or agencies, or local governments).

ADFA is prohibited from making a blanket determination that CDBG-DR assistance under one of its programs or activities does not duplicate another category or source of

assistance. ADFA must conduct an individualized review of each applicant to determine that the amount of assistance will not cause a DOB by exceeding the unmet needs of that applicant. A review specific to each applicant is necessary because assistance available to each applicant varies widely based on individual insurance coverage, eligibility for various sources of assistance, and other factors.

When ADFA has a subrecipient local government who is making sub-grants to homeowners, businesses, property owners, or households for recovery purposes, ADFA will require the subrecipient to follow the procedures of Section 2, below, in its dealings with sub-grantees, to ensure that there is no duplication of benefits.

This procedure establishes the primary considerations that must be part of a DOB analysis when providing CDBG-DR assistance, and a framework for analyzing need and avoiding DOB when calculating awards. ADFA has developed these policies and procedures to be consistent with the requirements of the notice.

## 7 Assessing Applicant Need

ADFA must determine an applicant’s total need. Total need is calculated based on need estimates at a point in time; total need is the current need. However, if the action plan permits CDBG-DR assistance to reimburse costs of CDBG-DR eligible activities undertaken by the applicant before submitting an application the total need also includes these costs. Generally, total need is calculated without regard to the grantee’s program-specific caps on the amount of assistance.

For rehabilitation, reconstruction, or new construction activities, the need is relatively easy to determine from construction cost estimates.

For recovery programs of the grantee that do not entail physical rebuilding, such as special economic development activities to provide an affected business with working capital, the total need will be determined by the requirements or parameters of the program or activity.

For special economic development activities, total need should be guided by standard underwriting guidelines (some CDBG-DR grants require grantees and subrecipients to comply with the underwriting guidelines in Appendix A to 24 CFR part 570 when assisting a for- profit entity as part of a special economic development project).

The grantee’s assessment of total need must consider in-kind donations of materials or services that are known to the grantee at the time it calculates need and makes the award. In-kind donations are non-cash contributions, such as donations of professional services, use of construction equipment, or contributions of building materials. In-kind donations are not “financial assistance” that creates a DOB under the Stafford Act, but they do reduce the amount of CDBG-DR assistance for unmet need because the donated goods or services reduce activity costs.

## 8 Identify Total Assistance

To calculate DOB, ADFA is required to identify “total assistance.” Total assistance includes all reasonably identifiable financial assistance available to an applicant.

## 9 Types of Resources Included in Total Assistance

Total assistance includes resources such as cash awards, insurance proceeds, grants, and loans received by or available to each CDBG-DR applicant, including awards under local, state or federal programs, and from private or nonprofit charity organizations. At a minimum, the grantee’s efforts to identify total assistance must include a review to determine whether the applicant received FEMA, SBA, insurance, and any other major forms of assistance (e.g., State disaster assistance programs) generally available to applicants.

Total assistance does not include personal assets such as money in a checking or savings account (excluding insurance proceeds or disaster assistance deposited into the applicant’s account); retirement accounts; credit cards and lines of credit; in-kind donations (although these non-cash contributions known to the grantee reduce total need); and private loans.

A private loan is a loan that is not provided by or guaranteed by a governmental entity, and that requires the CDBG-DR applicant (the borrower) to repay the full amount of the loan (principal and interest) under typical commercial lending terms, e.g., the loan is not forgivable. For DOB calculations, private loans are not financial assistance and need not be considered in the DOB calculation, regardless of whether the borrower is a person or entity.

By contrast, subsidized loans for the same purpose are to be included in the DOB calculation unless an exception applies.

## 10 Availability of Resources Included in Total Assistance

Total assistance includes available assistance. Assistance is available if an applicant: (1) Would have received it by acting in a reasonable manner, or in other words, by taking the same practical steps toward funding recovery as would disaster survivors faced with the same situation but not eligible to receive CDBG-DR assistance; or (2) has received the assistance and has legal control over it. Available assistance includes reasonably anticipated assistance that has been awarded and accepted but has not yet been received. For example, if a local government seeks CDBG-DR assistance to fund part of a project that also has been awarded FEMA Hazard Mitigation Grant Program (HMGP) assistance, the entire HMGP award must be included in the calculation of total assistance even if FEMA obligates the first award increment for the project, but subsequent increments remain unfunded until certain project milestones

are met.

Applicants for CDBG-DR assistance are expected to seek insurance or other assistance to which they are legally entitled under existing policies and contracts, and to behave reasonably when negotiating payments to which they may be entitled. For example, it may be reasonable for an applicant to elect to receive an immediate lump sum insurance settlement based on estimated cost of rehabilitation instead of waiting for a longer period of time for the insurance company to calculate reimbursement based on actual replacement costs, even if the reimbursement based on actual costs would exceed the lump sum insurance settlement.

HUD generally considers assistance to be available if it is awarded to the applicant but is administered by another party instead of being directly deposited with the applicant. For example, if an entity administering homeowner rehabilitation assistance pays a contractor directly to complete the rehabilitation, the assistance is still considered available to the applicant.

By contrast, funds that are not available to an applicant must be excluded from the final CDBG-DR award calculation. For example, insurance or rehabilitation assistance received by a previous owner of a disaster damaged housing unit is not available to a current owner that acquired the unit by sale or transfer (including a current owner that inherited the unit as a result of the death of the previous owner) unless the current owner is a co-recipient of that assistance.

Funds are not available to an applicant if the applicant does not have legal control of the funds when they are received. For example, if a homeowner's mortgage requires insurance proceeds to be applied to reduce the unpaid mortgage principal, then the lender/ mortgage holder (not the homeowner) has legal control over those funds. The homeowner is legally obligated to use insurance proceeds for the purpose of reducing the unpaid mortgage principal and does not have a choice in using them for any other purpose, such as to rehabilitate the house. Under these circumstances, insurance proceeds do not reduce CDBG-DR rehabilitation assistance eligibility.

Alternatively, if a lender requires use of insurance for rehabilitation, or a disaster-affected homeowner chooses to apply insurance proceeds received for damage to the building to reduce an unpaid mortgage principal, these insurance proceeds are treated as a DOB and reduce the amount of CDBG-DR funds the grantee may provide for rehabilitation.

Potential DOB Sources include:

- Other HUD funds, including CDBG and CDBG-DR
- Federal Emergency Management Agency (FEMA) Public Assistance (PA) or Individual Assistance (IA) funds
- United States Forest Service (USFS) funds
- U.S. Army Corps of Engineers (USACE) funds
- U.S. Department of Transportation (DOT) funds
- Federal Economic Development Agency funds

- Small Business Administration (SBA) loans (NOTE: the 2019 DOB Notice states that declined or cancelled loans are no longer considered a DOB)
- National Flood Insurance Program (NFIP) funds
- Private insurance funds
- Local and state funds
- Other federal program funds
- Private and nonprofit organization funds

## 11 Exclude Non-Duplicative Amounts

Once a grantee has determined the total need and the total assistance, it determines which sources it must exclude as non-duplicative for the DOB calculation. Grantees must exclude amounts that are: (1) Provided for a different purpose; or (2) provided for the same purpose (eligible activity), but for a different, allowable use (cost). Below, each of these categories is explained in greater detail.

## 12 Funds for a Different Purpose

Any assistance provided for a different purpose than the CDBG-DR eligible activity, or a general, non-specific purpose (e.g., “disaster relief/ recovery”) and not used for the same purpose must be excluded from total assistance when calculating the amount of the DOB.

Insurance proceeds for damage or destruction of a building are for the same purpose as CDBG-DR assistance to rehabilitate or reconstruct that building. On the other hand, grantees may exclude, as non-duplicative, insurance provided for a different purpose (e.g., insurance proceeds for loss of contents and personal property, or insurance proceeds for loss of buildings (such as a detached garage) that the grantee has determined it will not assist with CDBG-DR funds). However, a grantee may treat all insurance proceeds as duplicative if it is impractical to identify the portion of insurance proceeds that are non-duplicative because they are for a different purpose than the CDBG-DR assistance.

Similarly, CDBG-DR assistance paid to a homeowner as a housing incentive for the purpose of inducing the homeowner to sell the home to the grantee (e.g., in conjunction with a buyout) are for a different purpose than funds provided for interim housing (e.g., temporary assistance for rental housing during a period when a household is unable to reside in its home). In such a case, interim housing assistance may be excluded from the final DOB calculation as non-duplicative of funds paid for the housing incentive.

## 13 Funds for Same Purpose, Different Allowable Use

Assistance provided for the same purpose as the CDBG-DR purpose (the CDBG-DR eligible activity) must be excluded when calculating the amount of the DOB if the applicant can document that actual specific use of the assistance was an allowable use of that assistance and was different than the use (cost) of the CDBG-DR assistance (e.g., the purpose is housing rehabilitation, the use of the other assistance was roof replacement and the use of the CDBG-DR assistance is rehabilitation of the interior of the house). Grantees are advised to consult with HUD to determine what documentation is appropriate in this circumstance. As a starting point, grantees should consider whether the source of the assistance requires beneficiaries to maintain documentation of how the assistance was used.

Whether the use of the non-CDBG-DR assistance is an allowable use depends on the rules imposed by the source that provided the assistance. For example, assume that a CDBG-DR grantee is administering a homeowner rehabilitation program and an applicant to the program can document that he/ she previously received and used FEMA funds for interim housing costs (i.e., rent). If FEMA permitted the applicant to use its assistance for the general purpose of meeting any housing need, the CDBG-DR grantee can exclude the FEMA assistance used for interim housing as non-duplicative of the CDBG-DR assistance for rehabilitation.

If, on the other hand, FEMA limited the use of FEMA funds to housing rehabilitation, then the full amount of the FEMA assistance must be considered for the specific purpose of housing rehabilitation and cannot be excluded if the applicant used those funds for interim housing. If interim housing is not an allowable use, the amount of the FEMA housing rehabilitation assistance used for interim housing is considered a DOB. If ADFA thinks the actual use of the FEMA assistance may be allowable, ADFA will contact FEMA for clarification.

Assistance provided for the purpose of housing rehabilitation, including assistance provided for temporary or minor rehabilitation, is for the same purpose as CDBG-DR rehabilitation assistance. However, the grantee can exclude assistance used for different costs of the rehabilitation, which are a different allowable use (rehabilitation costs not assisted with CDBG-DR). For example, if the other assistance is used for minor or temporary rehabilitation which enabled the applicant family to live in their home instead of moving to temporary housing until rehabilitation can be completed, the grantee can undertake remaining work necessary to complete rehabilitation. The grantee’s assessment of total need at the time of application may include the costs of replacing temporary materials with permanent construction and of completing mold remediation by removing drywall installed with other assistance. These types of costs to modify partially completed rehabilitation that the grantee determines are necessary to comply with the requirements of CDBG-DR assistance do not duplicate other assistance used for the partial rehabilitation.

ADFA will contact HUD for further guidance in cases when it is unclear whether non-CDBG-DR assistance for the same general purpose can be excluded from the DOB calculation because it was used for a different allowable use.

## 14 Identify DOB Amount and Calculate the Total CDBG-DR Award

The total DOB is calculated by subtracting non-duplicative exclusions from total assistance. Therefore, to calculate the total maximum amount of the CDBG-DR award, ADFA will:

- (1) Identify total need; (2) identify total assistance; (3) subtract exclusions from total assistance to determine the amount of the DOB; and (4) subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG-DR award.

Three considerations may change the maximum amount of the CDBG-DR award.

First, ADFA may impose a program cap that limits the amount of assistance an applicant or sub applicant is eligible to receive, which may reduce the potential CDBG-DR assistance available to the applicant.

Second, ADFA may increase the amount of an award if the applicant agrees to repay duplicative assistance it receives in the future (unless prohibited by a statutory order of assistance. Section 312(b) of the Stafford Act permits a grantee to provide CDBG-DR assistance to an applicant who is or may be entitled to receive assistance that would be duplicative if: (1) The applicant has not received the other assistance at the time the CDBG-DR grantee makes its award; and (2) the applicant agrees to repay the CDBG-DR grantee for any duplicative assistance once it is received. The agreement to repay from future funds may enable a faster recovery in cases when other sources of assistance are delayed (e.g., due to insurance litigation). HUD requires all grantees to enter agreements with applicants that require applicants to repay duplicative assistance before receiving CDBG-DR assistance, as discussed later in this section.

Third, the applicant’s CDBG-DR award may increase if a reassessment shows that the applicant has additional unmet need, as discussed in the 2019 DOB Notice.

|  |                              |           |            |
|--|------------------------------|-----------|------------|
| 1. Identify Applicant’s Total Need Calculated at a Point in Time |                              | \$        |            |
| 2. Identify Total Assistance Available:                          |                              |           |            |
|  |                              | Potential | Actual DOB |
| a. Other HUD funds, including CDBG or CDBG-DR                    |                              |           |            |
| b. FEMA PA or IA Funds   | Interim Housing (e.g., rent) | \$        | \$         |

|    |   |    |    |
|----|---|----|----|
|    | Permanent Housing<br>(e.g.,<br>repair/rehabilitation<br>) | \$ | \$ |
| c. | USFS Funds  | \$ | \$ |
| d. | USACE funds   | \$ | \$ |
| e. | US DOT funds  |    |    |
| f. | Federal Economic Development Agency funds                 |    |    |
| g. | SBA loans   |    |    |
| h. | National Flood Insurance Program (NFIP) funds             | \$ | \$ |
| i. | Private insurance funds                                   | \$ | \$ |
| j. | Local and state funds                                     | \$ | \$ |
| k. | Other federal program funds                               |    |    |
| l. | Private and nonprofit organization funds                  |    |    |

|   |        |    |    |
|---|--------|----|----|
|   | Totals | \$ | \$ |
| (3) Identify the Amount to Exclude as Non-Duplicative (Amounts used for a different purpose, or same purpose, different allowable uses) |        |    | \$ |
| (4) Identify Total DOB Amount (Item 1 less Item 3)  |        |    | \$ |
| (5) Calculate Maximum Award (Total Need Minus Total DOB Amount)   |        |    | \$ |
| (5) Program Cap (if applicable)   | \$     |    |    |
| (6) Final Award (lesser of Items 4 and 5)   |        |    | \$ |

A completed DOB worksheet will be placed in each applicant’s file, and should be in each subrecipients file. DOB worksheets such as the one below will be dated and signed by staff, or the ADFA Federal Housing Programs Division, as well as by the ADFA Compliance Officer doing the QA/QC check.

### 15 Third-Party Verification of Assistance Received

All sources of funding received must be verified for amount of assistance received and purpose of the assistance. Third-party verification is defined as acquiring documentation from a third- party source (i.e., a source other than the applicant) that verifies the amount received from the funding source. For example, insurance third-party verification is generally a form that is sent to the insurance company that the applicant has listed as their insurance provider at the time of the disaster. The form should include the policy number, the date of the flood, the amount of assistance the applicant claimed to have received, and a section where the third-party verifier can confirm the amount or provide the correct amount. This step should be followed even when the applicant reports no assistance received from primary sources such as FEMA, SBA, and any named insurance firm on the application.

ADFA will do its due diligence by attempting to third-party verify all sources of funds received by the applicant. If no third-party verification can be obtained by ADFA, then complete a note to the file explaining why the third- party verification was not possible to receive. After attempting to get a third- party verification with no response, a BCC Affidavit of Funds Received may be signed by the applicant as a last resort.

### 16 Data Sharing Agreements

On July 15, 2019, the Arkansas Development Finance Authority requested through the Arkansas Department of Emergency Management (ADEM) that FEMA provide ADFA with information relating to application for disaster assistance that FEMA provided for FEMA-4441-DR-AR. This

information was provided pursuant to 44 CFR 206.110(j)(1)(ii) and the “routine use” provision of the Privacy Act of 1974, 5 U.S.C. 552a. ADFA requested disclosure of this information under routine use (H) (3) of DHS/FEMA-008, Disaster Recovery Assistance Files, 78 Fed. Reg. 25,282 (Apr. 30, 2013).

This information was provided to ADFA on July 23, 2019, by ADEM, with a note that since everyone that needed the information is a state employee, that a signed agreement with FEMA was not necessary.

Due to the relatively low number of activities expected to be carried out through the various CDBG-DR activities proposed in this Action Plan, ADFA intends to build off of existing interservice partnerships to perform duplication of benefits checks, including obtaining SBA loan data. In addition, the Arkansas Insurance Department is in the process of finalizing an interservice agreement with FEMA with which to collect this information. ADFA will also work to secure data from the National Flood Insurance Program (NFIP). This will be used to determine if applicants seeking disaster recovery funding assistance have received other federal funding for the same purpose.

## 17 Reassess Unmet Need When Necessary

Although long-term recovery is a process, disaster recovery needs are calculated at points in time. As a result, a subsequent change in an applicant’s circumstances can affect that applicant’s remaining unmet need, meaning the need that was not met by CDBG-DR and other sources of assistance. Oftentimes, unmet need does not become apparent until after CDBG-DR assistance has been provided. Examples may include: A subsequent disaster that causes further damage to a partially rehabilitated home or business; an increase in the cost of construction materials; vandalism; contractor fraud; or theft of materials. Unmet need may also change if other resources become available to pay for costs of the activity (such as FEMA or USACE), and reduce the need for CDBG-DR.

To the extent that an original disaster recovery need was not fully met or was exacerbated by factors beyond the control of the applicant, the grantee may provide additional CDBG-DR funds to meet the increased unmet need. The most recent available data will be used to ensure compliance.

ADFA must be able to identify and document additional unmet need, for example, by completing a professional inspection to verify the revised estimate of costs to rehabilitate or reconstruct damaged property.

# 18 Special Considerations

## 18.1 Programmatic Considerations

The potential for DOB arises most frequently under homeowner rehabilitation programs but is not limited solely to that type of activity. The following examples do not form an exhaustive list of all CDBG-DR funded programs or activities. They are included to illustrate instances when duplicative assistance can occur when assisting other recovery activities:

## 18.2 Assistance for Infrastructure

State grantees may assist state or local government entities by providing funding to restore infrastructure (public facilities and improvements) after a disaster. CDBG-DR funds used directly by state and local governments for public facilities and improvements or other purposes are also subject to the DOB requirements of the Stafford Act. For example, a wastewater treatment facility owned by a local government may need to be rehabilitated. In this instance, total assistance, for a DOB analysis, would not only include any other federal assistance available to rehabilitate the facility, but it must also include any local funds that are available for this activity. And if local funds were previously designated or planned for the activity, but are no longer available, the grantee should document that the local government recipient does not have funds set aside for the activity in any capital improvement plan (or similar document showing planned use of funds).

## 18.3 Payments made under the Uniform Relocation Assistance and Real Property Acquisition Act (URA)

ADFA may provide a displaced person (as defined under 24 CFR 570.606) with rental assistance payments under the URA. To comply with CDBG-DR DOB requirements, before issuance of rental assistance payments required by the URA, grantees must complete a DOB analysis. For example, a CDBG-DR grantee must check FEMA assistance data to determine that FEMA did not provide rental assistance payments during the same time period (under the URA or as part of a FEMA Individual Assistance Award). The URA also prohibits payments for the same “purpose and effect” as another payment to a displaced person (49 CFR 24.3).

## 18.4 Subsidized Loans

84 FRN 28841 updates 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 (see above for a discussion of private loans).

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 in section V.B.2. applies, including the exception in V.B.2(iii) authorized in the DRRRA amendments to section 312 of the Stafford Act (which applies to disasters occurring between January 1, 2016 and December 31, 2021, until the amendment sunsets October 5, 2023). A subsidized loan is available when it is accepted, meaning that the borrower has signed a note or other loan document that allows the lender to advance loan proceeds.

CDBG-DR supplemental appropriation acts typically provide 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 (or similar prohibitions) in CDBG-DR appropriations acts applies to loans even if the loans would not be treated as a DOB under the exceptions in V.B.2. below.

For 84 FRN 28841, 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.

**18.5 Exceptions When Subsidized Loans Are Not a Duplication**

**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 grantee or 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.

**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 grantee must document that all or a portion of the subsidized loan is cancelled or declined unless the loan qualifies under the exclusion discussed in (iii) below.

**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 CDBG-DR supplemental appropriation for 2017 disasters 3 provides “the Secretary and any grantee. . . shall not take into consideration or reduce the amount provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major declared disasters that occurred in 2014, 2015,

2016, and 2017 from the Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b)).”

ADFA 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). If a grantee’s DOB policies and procedures treat declined loans as a DOB, the grantee must update its policies and procedures.

ADFA is only required to document declined loans if information available to ADFA (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 grantee is unable to determine from that available information that the applicant declined the loan. If ADFA is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, the grantee must obtain a written certification from the applicant that the applicant did not accept the subsidized loan by signing loan documents and did not receive the loan.

**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: (a) A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or (b) a legally binding agreement between the CDBG-DR grantee (or local government or subrecipient administering the CDBG-DR assistance) 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 the grantee. Without this documentation, any approved but undisbursed portion of a subsidized loan must be included in the grantee’s calculation of the total assistance amount unless another exception applies.

For cancelled SBA loans, ADFA 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.

**The subsidized loan meets the requirements for a statutory exception under the DRRAs amendments to the Stafford Act**

The DRRAs amendments apply only to major disasters or emergencies declared between

January 1, 2016, and December 31, 2021 (DRRA Qualifying Disasters). However, the DRRA 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 DRRA's enactment, therefore, the exception for DRRA Qualifying disasters no longer applies after October 5, 2023. Grantees shall continue to treat loans accepted in response to disasters declared in 2015 as a duplication of benefits, unless another exception applies.

For DRRA 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 DRRA, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency.

**Treatment of Disbursed Loans That Meet the Statutory Exception Under the DRRA Amendments**

FEMA also advised that the DRRA 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.” HUD requirements on the reimbursement of costs paid with subsidized loans is provided in section V.B.3, below.

**Treatment of Undisbursed Loans That Meet the Statutory Exception Under the DRRA Amendments**

For subsidized loans made in response to DRRA 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 DRRA 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, ADFA 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 ADFA’s approval. ADFA 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 DRRA.

If providing additional assistance in the amount of undisbursed loans would be inconsistent with ADFA’s approved CDBG-DR action plan, ADFA must amend its action plan.

**Use of CDBG-DR for Reimbursement of Costs Paid by Subsidized Loans Following DRRA Qualifying Disasters**

As a general rule, CDBG-DR grant funds are available only to pay for new activities.

However, most Federal Register notices governing CDBG-DR grants permit payment of costs dating back to the date of the disaster that led to the CDBG-DR grant award. These Federal Register notices require grantees to adhere to reimbursement requirements previously established by HUD when reimbursing applicants' costs. Reimbursement is not permitted if payment of the cost with CDBG-DR funds will cause a DOB because an exception does not apply or violate the requirement that CDBG-DR funds shall not be used for activities reimbursable by, or for which funds are made available by, FEMA or the USACE.

84 FRN 28842 establishes a new policy for grantees that received CDBG-DR grants made in response to DRRRA Qualifying Disasters. Subject to conditions of 84 FRN 28842, grantees that received CDBG-DR grants in response to DRRRA Qualifying Disasters may grant CDBG-DR funds to reimburse individuals and businesses (other than ADFA or subrecipients) for some costs of CDBG-DR eligible activities that were paid with subsidized loans. The conditions for payment of these costs are:

- i. ADFA must document in the applicant's file that all federal assistance (including CDBG-DR and subsidized loan assistance) is used toward a loss suffered as a result of the major disaster or emergency. If the subsidized loan is used to carry out a CDBG-DR eligible activity that addresses a loss suffered as a result of a major disaster or emergency, HUD considers reimbursement of eligible costs paid with that loan to be used toward a loss suffered as a result of the major disaster or emergency. Under the terms of the DRRRA amendments to the Stafford Act, if a federal loan is used for a purpose other than disaster losses, the subsidized loan still duplicates other sources provided for the same purpose.
- ii. ADFA must meet all grant requirements for reimbursement of costs, which are imposed by Federal Register notices that govern CDBG-DR grants.
- iii. If ADFA has already received the application and completed an initial DOB analysis, ADFA must complete a revised DOB analysis that updates the applicant's unmet needs and assistance from all sources, and excludes subsidized loans used for disaster losses and other nonduplicative assistance from the total assistance to calculate the revised DOB amount.
- iv. ADFA must document that the reimbursed cost was for an activity that was a CDBG-DR eligible activity on the effective date of 84 FRN 28843, such as housing rehabilitation costs paid with SBA loan proceeds, or for an activity that is otherwise eligible pursuant to a waiver provided by the Department.

Grantees are prohibited from reimbursing costs that are not otherwise eligible for CDBG-DR assistance, such as compensation for personal property loss or late fees. Payment of interest is not generally an eligible activity, but if permitted by an applicable Federal Register notice granting a waiver, grantees may pay interest due at the time of reimbursement for eligible activities (e.g., interest incurred by the applicant for the portion of an SBA loan used for a CDBG-DR eligible activity).

- v. Statutes or loan documents governing subsidized loans may

- require the lender to receive payments that reimburse costs paid with subsidized loans. The reimbursement award to the applicant must require the applicant to comply with any requirements in the loan documents that the applicant use amounts received for reimbursement to repay the loan's outstanding principal and interest. When a grantee reimburses costs paid by SBA loans, SBA has determined that it is required to receive the payment. ADFA must notify the SBA of the reimbursement and issue a joint payment to the SBA and the applicant.
- vi. Grantees must advise applicants (either collectively or individually) that submitting an application for CDBG- DR reimbursement assistance does not relieve the applicant of a duty to make payments on a subsidized loan, and that until a subsidized loan is satisfied in full, failure to make principal and interest payments when due could result in a referral to collection agencies, reporting to credit bureaus, or other significant consequences.
  - vii. ADFA must document compliance with environmental requirements at 24 CFR part 58 prior to reimbursement for a CDBG-DR eligible activity. Grantees are required to consult with the State Historic Preservation Officer, Fish and Wildlife Service and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act (16 U.S.C. 1536) when designing a reimbursement program.
  - viii. CDBG-DR funds are provided principally to benefit low- and moderate-income persons. Therefore, as a condition of reimbursing costs paid with SBA loans, ADFA must submit a substantial action plan amendment to HUD describing the activity and must meet the following requirements:
    - a. The needs analysis in the action plan must include an updated unmet housing needs assessment to reflect the remaining total number of housing units with damage
    - b. ADFA's action plan must identify the number of eligible households yet to be served who have applied to ADFA's CDBG-DR housing assistance programs and identify how ADFA shall address all remaining unmet needs of its applicants for housing assistance;
    - c. ADFA shall reimburse costs paid with subsidized loans for all low- and moderate-income applicants before reimbursing applicants with incomes greater than 80 percent of area median income (AMI) but less than or equal to 120 percent AMI;
    - d. The total aggregate amount ADFA designates for reimbursement of costs paid with subsidized loans to applicants with incomes over 80 percent AMI shall not reduce the overall low- and moderate-income benefit applicable to the grant.
    - e. ADFA shall only grant CDBG-DR funds to reimburse costs paid with subsidized loans for applicants with incomes that exceed 120

percent of AMI when ADFA requests, and HUD approves, a hardship exception for the applicants.

Before requesting a hardship exception, ADFA must specify in its action plan the criteria it will use to define a hardship for applicants with incomes that exceed 120 percent AMI and establish a policy that provides full or partial reimbursement to alleviate the hardship. ADFA's hardship criteria must include the following elements: (1) A demonstration of the applicant's financial necessity for full or partial reimbursement of costs paid with subsidized loans; (2) a definition of financial necessity that is sufficient to distinguish between applicants with significant need for full or partial reimbursement to enable the applicant to pay for basic household or business expenses, and applicants who are not eligible for a hardship exception because they seek reimbursement for reasons other than financial necessity; and (3) a requirement that the amount of the full or partial reimbursement shall not exceed the amount needed to address the applicant's financial necessity. ADFA must also develop policies and procedures that identify the information ADFA will use to make the determination of financial necessity.

HUD will consider requests for hardship exceptions for applicants based on HUD's determination that ADFA's hardship criteria in its action plan comply with 84 FRN 28843, and the hardship exception requests are consistent with ADFA's hardship criteria as provided for in its action plan. Hardship exceptions shall only be authorized until October 5, 2023, for applicants that received assistance in response to disasters declared between January 1, 2016, and December 31, 2021, consistent with the DRRRA.

- ix. Before October 5, 2023, HUD will evaluate the impact of policies provided in 84 FRN 28843 using data provided by its grantees. To conduct this evaluation, one year from the approval of the substantial action plan amendment required in paragraph (viii) above, ADFA shall submit to HUD an assessment and supporting data that provides: (1) The total amount of CDBG-DR funds used for the reimbursement of SBA and other subsidized loans; (2) the total number of households and the number of low-to moderate- income households that have been reimbursed; and (3) the SBA loan number and the FEMA Registrant ID of each individual household that was reimbursed for its SBA loan costs. HUD will also coordinate with FEMA on reports required by section 1210(a)(5) of Public Law 115-254, which will report on efforts to improve coordination between Federal agencies and clarify the sequence of delivery of disaster assistance to individuals.

Any future grantee request for a waiver of the overall benefit requirement applicable to a CDBG-DR grant will be evaluated by HUD in light of the amount of assistance ADFA has or plans to use to reimburse applicants with incomes in excess of 80 percent AMI for costs paid by SBA and other subsidized loans.

## 19 Order of Assistance

CDBG-DR appropriations acts generally include a statutory order of assistance for Federal agencies.

Although the language may vary among appropriations, the statutory order of assistance typically provides that CDBG-DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or the USACE. This means that grantees must verify whether FEMA or USACE funds are available for an activity (i.e. the application period is open) or the costs are reimbursable by FEMA or USACE (i.e., ADFA will receive FEMA or USACE assistance to reimburse the costs of the activity) before awarding CDBG-DR assistance for costs of carrying out the same activity. If FEMA or USACE are accepting applications for the activity, the applicant must seek assistance from those sources before receiving CDBG-DR assistance. If the applicant's costs for the activity will be reimbursed by FEMA or the USACE , ADFA cannot provide the CDBG-DR assistance for those costs. In the event that FEMA or USACE assistance is awarded after the CDBG-DR to pay the same costs, it is the CDBG-DR grantee's responsibility to recapture CDBG-DR assistance that duplicates assistance from FEMA or the USACE .

Under the Stafford Act, a federal agency that provides duplicative assistance must collect that assistance. For CDBG-DR grants, the CDBG-DR grantee must collect duplicative assistance it provides.

FEMA regulations at 44 CFR 206.191 set forth a delivery sequence that establishes which source of assistance is duplicative for certain programs. CDBG-DR assistance is not listed in FEMA's sequence, but as a practical matter, CDBG-DR assistance duplicates other sources received before the CDBG-DR for the same purpose and portion of need. Any amount received from other sources before the CDBG-DR assistance that is determined to be duplicative must be collected by ADFA. The mandatory agreement to repay (discussed below) can be used to prevent duplication by assistance that is available, but not yet received. If the duplicative assistance is received after CDBG-DR, ADFA must collect the DOB or contact HUD if it has questions about whether another Federal agency is responsible for collecting the duplication.

## 20 Recordkeeping

ADFA must document compliance with DOB requirements, and will be careful to sufficiently document the DOB analysis for activities the state is carrying out directly. 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.

When documenting its DOB analysis, ADFA cannot rely on certification alone for proof of other sources of funds for the same purpose (unless authorized by 84 FRN 28845, see above). Any certification by an applicant or subapplicant must be based on supporting evidence that will be kept available for inspection by HUD. For example, if an applicant or applicant to a subrecipient certifies that other sources of funds were received and expended for a different purpose than the CDBG-DR funds, ADFA must substantiate this assertion with an additional source of information

(e.g., physical inspections, credit card statements, work estimates, contractor invoices, flood inundation records, or receipts). For these reasons, HUD recommends that as soon as possible after a disaster, ADFA and other agencies to advise the public and potential applicants to retain all receipts that document expenditures for recovery needs. ADFA will contact its CPD representative with questions about the sufficiency of documentation.

## 21 Agreement to Repay & Monitoring for DOB

The Stafford Act requires grantees 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 a signed agreement with the CDBG-DR grantee 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 ADFA disburses any CDBG-DR assistance to the applicant.

## 22 Subrogation Agreement

All respective CDBG-DR awardees may be required to enter into a “Subrogation Agreement” to repay any assistance later received for the same purpose as the CDBG-DR funds. The agreement must also include the following language: “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.”

The CDBG-DR grantee and subgrantee are responsible for identifying a method to monitor compliance with subrogation agreements. The subgrantee must maintain up-to-date records regarding subrogation agreements. A subgrantee must notify the State regarding any changes to such agreements for a reasonable period of time, the duration of the contract between the State and the subgrantee.

The contract will read as follows:

*In consideration of ‘Applicant’ receipt of funds or the commitment by the Grantee to evaluate Applicant’ application for the receipt of funds (collectively, the “Grant Proceeds”) under the Community Development Block Grant – Disaster Recovery Program (the “Program”) administered by the Grantee, Applicant hereby assigns to the Grantee all of Applicant’ future rights to reimbursement and all payments received from any grant, subsidized loan, or insurance policies of any type or coverage or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency (“FEMA”) or the Small Business Administration (“SBA”) (singularly, a “Disaster Program” and collectively, the “Disaster Programs”) that was the basis of the calculation of any grant funds obtained from presidentially declared disasters in the State of Arkansas in 2019 to the extent of Grant Proceeds paid or to be paid to Applicant under the Program and that are*

determined in the sole discretion of ADFA to be a duplication of benefits (“DOB”) as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA or the SBA or any other source, and whether or not such amounts are a DOB, shall be referred to herein as “Proceeds,” and any Proceeds that are a DOB shall be referred to herein as “DOB Proceeds.” Upon receiving any Proceeds not listed on the Duplication of Benefits Certification form, Applicant agrees to immediately notify the Grantee who will notify ADFA of such additional amounts, who will determine in its sole discretion if such additional amounts constitute a DOB. If some or all of the Proceeds are determined to be a DOB, the portion that is a DOB shall be paid to the Grantee, to be retained and/or disbursed as provided in this Agreement.

Applicant agrees to assist and cooperate with the Grantee elect to pursue any of the claims Applicant has against the insurers for reimbursement of DOB Proceeds under any such policies. Applicant’s assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Applicant’s name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing record and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by the Grantee. Applicant further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Applicant would be entitled to under any applicable Disaster Program.

If requested by the Grantee, Applicant agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the Grantee, to the extent of the Grant Proceeds paid to Applicant under the Program, the Policies, any amounts received under the Disaster Programs that are DOB Proceeds and/or any rights thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the Grantee to consummate and make effective the purposes of this Agreement.

Applicant explicitly allows the Grantee to request of any company with which Applicant held insurance policies, or FEMA or the SBA or any other entity from which Applicant has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the Grantee to monitor/enforce its interest in the rights assigned to it under this Agreement and give Applicant’s consent to such company to release said information to the Grantee.

If Applicant (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, Applicant agrees to promptly pay such amounts to the Grantee, if Applicant received Grant Proceeds under the Program in an amount greater than the amount Applicant would have received if such DOB Proceeds had been considered in the calculation of Applicant’s award.

*In the event that the Applicant receives or is scheduled to receive any Proceeds not listed on its Duplication of Benefits form (“Subsequent Proceeds”), Applicant shall pay such Subsequent Proceeds directly to the Grantee, and ADFA will determine the amount, if any, of such Subsequent Proceeds that are DOB Proceeds (“Subsequent DOB Proceeds”). Subsequent Proceeds in excess of Subsequent DOB Proceeds shall be returned to the Applicant. Subsequent DOB Proceeds shall be disbursed as follows:*

- 1. If the Applicant has received full payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be remitted to the Grantee.*
- 2. If the Applicant has received no payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be used by the Grantee to reduce payments of the Grant Proceeds to the Applicant, and all Subsequent DOB Proceeds shall be returned to the Applicant.*
- 3. If the Applicant has received a portion of the Grant Proceeds, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order: (A) Subsequent DOB Proceeds shall first be used to reduce the remaining payments of the Grant Proceeds, and Subsequent DOB Proceeds in such amount shall be returned to the Applicant; and (B) any remaining Subsequent DOB Proceeds shall be remitted to the Grantee.*
- 4. If the Grantee makes the determination that the Applicant does not qualify to participate in the Program or the Applicant determines not to participate in the Program, the Subsequent DOB Proceeds shall be returned to the Applicant, and this Agreement shall terminate.*

*Once the Grantee has recovered an amount equal to the Grant Proceeds paid to Applicant, the Grantee will reassign to Applicant any rights assigned to the Grantee pursuant to this Agreement.*

*Applicant represents that all statements and representations made by Applicant regarding Proceeds received by Applicant shall be true and correct to the best of their knowledge.*

*The person executing this Agreement on behalf of the Applicant hereby represents that he\she understands that*

*making a materially false/misleading written statement to obtain the Grant Proceeds can result in the applicant facing debarment from receiving future funding, administrative recoveries of funds, civil lawsuits and criminal prosecution. In any proceeding to enforce this Agreement, the Grantee shall be entitled to recover all costs of enforcement, including actual attorney's fees.*

## 23 Monitoring

The process for identifying and then monitoring for DOB begins with the review of each grant application— whether it is for a specific project or an individual beneficiary of disaster recovery CDBG funds. An applicant must provide detailed information about other sources of funds that

were received—or that may be received— related to the activity for which CDBG-DR funds are being requested. The ADFA Grants Division or contracted program management staff review and verify the other funds to determine if they are for the same activity and exceed the need for recovery assistance. Once CDBG-DR funds are awarded (minus any determined to be a DOB), applicants are required to notify the ADFA Grants Division of the receipt of any additional funds received for the same activity. Program staff review individual pay requests and project amendments to determine if other funds have been received that represent a DOB. In the event that additional funds are determined to be a DOB, funds will be withheld from future pay requests, and the approved project budget will be amended. In the event that all funds have been expended and a DOB is identified, the applicant will be required to repay the funds to ADFA for return to the U.S. Treasury.

Except as provided in the paragraph below, monitoring of competitive grants and state direct grants for compliance with this policy shall be included as part of regular on-site monitoring visits. Primary responsibility for monitoring compliance with this policy lies with the Grants Management Division.

ADFA is required to establish a method to monitor each applicant’s compliance with the Subrogation Agreement for a reasonable period after project completion (i.e., a time period commensurate with risk). The ADFA Grants Division will monitor compliance with the Subrogation Agreement for one year following the completion of the activity for which funds were awarded. All CDBG-DR activities will be monitored using the On-site Monitoring Checklist, which includes monitoring for duplication of benefits, at least once a year per fiscal year before project close-out, more often if deemed necessary by initial risk analysis, per the Monitoring Plan.

In addition, one year from the approval of an action plan amendment that addresses the treatment of subsidized loans, ADFA is required to provide HUD with the following information:

- Total amount of funds used for reimbursement of SBA and other subsidized loans;
- Total number of households and LMI households reimbursed; and
- SBA loan number and FEMA ID for each individual household that was reimbursed for its SBA loan costs.

In each agreement between ADFA, or a subrecipient, and a beneficiary, two clauses are included, a Duplication of Benefits Clause and a Subrogation Clause. The Duplication of Benefits Clause requires the beneficiary to disclose all sources of possible duplicative assistance to ADFA and must include the following language, “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. The Subrogation Clause requires any person who receives further assistance to repay that assistance, if the amount of assistance exceed the funding required for the project.

## 24 Recapture Procedures for Collecting a Duplication

### 24.1 Review

If a potential DOB is discovered after CDBG-DR assistance has been provided, ADFA must reassess the applicant’s need at that time. If additional need is not demonstrated, CDBG-DR funds shall be recaptured to the extent they are in excess of the remaining need and duplicate 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.

### 24.2 Notification of Collection

If ADFA determines the applicant did not meet contract or program eligibility requirements, or if there has been a duplication of benefits, it will use its best efforts to recapture the funds. In such an event, ADFA’s procedure will include, at a minimum, the following steps:

1. ADFA will document the reason(s) for recapture.
2. ADFA will send a written notice to the applicant, including the reason(s) for recapture and the amount to be recaptured. The notice will call for a response within 30 days, which may be one of the following:
  - a. Full repayment;
  - b. Partial repayment with a request for an installment plan for repaying the full amount; or
  - c. An appeal of the recapture determination, contesting repayment.
3. If the applicant appeals, the applicant will provide information or documentation supporting its appeal within 30 days. ADFA will consider the information and make a final determination.
4. If the applicant fails to respond to the written notice, continues to contest a recapture determination after appeal, or otherwise fails to make payment within 30 days of a final determination by ADFA, ADFA may refer the matter to the State Attorney General’s office for further proceedings.

### 24.3 CDBG-DR Duplication Receipt Process

- Incoming checks are directed to be sent to ADFA PO Box
- Fiscal Division opens PO Box mail, logs incoming checks and forwards CDBG-DR checks to Business Finance Division
- Business Finance forwards the checks to Grants Division Compliance Officer or Administrative Specialist to post into IDIS and the CDBG-DR system of record
- ADFA Grants Division forwards checks and IDIS receipt reports to Fiscal division.
- Fiscal Division posts the deposit into AASIS state accounting system, accounting ledger and forwards deposit back to ADFA Grants Division
- Fiscal Division completes deposit with the treasury and files receipt once acknowledgment is received from the State Treasury.

### 24.4 Corrective Actions for Failure to Recapture DOB

If a grantee fails to recapture funds from an applicant, HUD may impose corrective actions pursuant to 24 CFR 570.495, 24 CFR 570.910, and Federal Register notices, as applicable. Also, HUD reminds grantees 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 benefits available to the person for the same purpose from another source.” If ADFA does not recapture the duplicative assistance, that individual applicant will still be liable to the United States government.

ADFA staff will be responsible for:

| Responsible Party   | Task   | Contact Information  |
|---|--|--|
| Overview of DOB Procedures for CDBG-DR                    |  |  |
| All Applicants  | Sign Consent to Release Form, DOB Certification and sign Agreement   | ADFA Grant Coordinator   |
| ADFA Federal Housing Program Manager and designated staff | Reviews Applications, Utilize third-party verification system, Complete DOB Worksheet, adjust payments, if needed. | Lori Brockway, ADFA Federal Housing Programs Manager<br>501-682-3339 |
| ADFA Federal Housing Program Manager and designated staff | Q/C all files prior to sending a letter of approval.   | Lori Brockway, ADFA Federal Housing Programs Manager<br>501-682-3339 |