

CHAPTER 15

DUPLICATION OF BENEFITS

Please note, this is not a CDBG Program GAM Chapter. Chapter 15 relates to CDBG-Disaster Recovery programs having specific duplication of benefits requirements as appropriate.

INTRODUCTION

Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with Section 312, MEDC shall ensure that each program and activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met. As per the Duplication of Benefits Policy, MEDC and its subrecipients are subject to the requirements in Federal Register notices explaining the duplication of benefit requirement (84 FR 28836 and 84 FR 28848, published June 20, 2019, or other applicable notices).

In general the State of Michigan (MEDC) **will follow the uniform process and procedures** which are contained in the June 20, 2019 Federal Register. The policies and procedures are driven by a fact specific inquiry into assistance received by each applicant as defined in the respective programs under the section of eligible applicants. DOB is not required for CDBG and this is a new chapter created specifically for CDBG-DR funds.

SECTION 1 – OVERVIEW

Federal law prohibits any person, business concern, or other entity from receiving Federal funds for any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source. A duplication of benefits (DOB) occurs when:

- a beneficiary receives assistance, and
- the assistance is from multiple sources, and
- the assistance amount exceeds the need for a particular recovery purpose

Total need is calculated based on need estimates at a point in time. For rehabilitation, reconstruction or new construction activities, the total need will be determined from construction cost estimates. Construction cost estimates will be developed by professionals and building code officials.

For special economic development activities, total need shall be guided and determined standard underwriting guidelines contained in 24 CFR part 570, Appendix A. The assessment of total need will consider in-kind donations, non-cash contributions such as donations of professional services, utilization of construction equipment or construction of building materials.

Total need for infrastructure related activities will determine total assistance which again, will be determined by professionals such as an engineer. Total need will incorporate other Federal assistance and or grants, amounts pledged by the local government or amounts received through the State of Michigan. The project will need to document if no local funds are being pledged. Generally local governments will need to show at a minimum 10% of the total cost of the infrastructure activities will be paid through local funding sources.

In determining total assistance cash awards, insurance proceeds, grants and loans received through Federal, State and Not for Profit organizations, FEMA, SBA, State Disaster Relief and private loans will be taken into consideration and will be subtracted from the total need determination to indicate the potential amount of CDBG-DR assistance. All applicants are expected to seek insurance or other assistance which they are legally entitled under existing programs.

Note that insurance proceeds received for a different purpose such as contents in a building to be rehabilitated will not be counted as long as it can be reasonably determined the amounts for external and internal insurance payout amounts. Where it can not be reasonably determined what payments were made for internal or external damage the entire amount of the insurance proceeds will be determined as duplicative.

SECTION 2 – SOURCES AND USES

IDENTIFICATION OF POTENTIALLY DUPLICATIVE SOURCES OF FUNDING

In a disaster environment, the most commonly found funding, outside of CDBG-DR for public facilities, infrastructure, and multifamily housing are:

- Private insurance
- National Flood Insurance (NFIP)
- FEMA Public Assistance
- FEMA Public Assistance – 406 Mitigation
- FEMA HMGP
- Environmental Protection Agency (EPA)
- Federal Highway Administration (FHWA)
- Army Corps of Engineers (USACE) – use of CDBG-DR funds capped at \$250,000 for USACE funded projects
- State Disaster Relief Grants
- Local funds (supplantation of funds is prohibited)

USES OF CDBG-DR FUNDS

There are two ways in which CDBG-DR funding can be used to address unmet needs for public facilities, infrastructure, multifamily housing, and planning:

1. CDBG-DR funding can be provided directly to a project after other sources of funding have been identified and an unmet need remains. The project and activities to be funded must be CDBG-DR eligible and meet a national objective. HCDA Sec 105 (a)(2), HDCA Sec 105 (a)(4)
2. CDBG-DR funding can be used as the “local match” for other Federal programs, specifically FEMA, EPA, and FHWA that require the state, local jurisdiction or nonprofit subrecipient to provide a portion of the funding. It is typically between 10% and 25% of the total project cost. (HCDA Sec 105(a)(9))

Applications for assistance will contain all pertinent questions in order to determine if benefits and the type of benefits were received. Unmet need can be reassessed if necessary during the determination of unmet need. These situations may include increased costs of construction materials, subsequent disasters, vandalism and contractor fraud. The amount may be reduced if funding from the Army Corps of Engineers, FEMA or other agencies has additional monies available. Professional inspections will be performed to verify unmet need as well as any revisions to cost estimates.

Treatment of Insurance Proceeds

All applicants are expected to seek insurance or other assistance for which they are legally entitled. Insurance proceeds received for a different purpose such as contents in a building to be rehabilitated will not be counted as long as use of payout amounts for contents versus structure can be determined and documented. *Use of FEMA Project Worksheets (PWs)*
For projects where MEDC, the local unit of government, or a subrecipient is paying the non-federal cost share with CDBG-DR funds, a project worksheet will be created by FEMA that will provide detail on the project, costs, insurance proceeds, and a duplication of benefits analysis. For these projects, the entity utilizing CDBG-DR funds for the local cost share must:

1. Ensure that the project is CDBG-DR eligible (no funding for buildings of general government)
2. Ensure that the project meets a national objective
3. DO NOT get ahead of FEMA on payments. Pay ONLY the eligible percent of an invoice which FEMA has already approved and/or paid.

Calculation of Award

1. Identification of scope and type of project, eligibility for CDBG-DR funding and national objective.
2. Determine a cost estimate (remaining unmet need) for the project. This will be completed by a professional, in most cases a licensed engineer.
3. Determination of other funding sources which are being utilized for the project. This would include any insurance proceeds, Federal, State or Local governmental funds or other subsidized loan or grant funds. (Note: if an investment of non-CDBG-DR funds has already been used in the project, determine the source and amount and secure documentation of costs/payments.)
4. Subtract the amount of other funding sources available for use by the project from the cost estimate of remaining unmet need.
5. Subtract the amount of any additional funds which are anticipated to become available.
6. After all subtractions have been completed the total amount of unmet need and the amount of CDBG-DR funding needed (subject to any program caps) will have been determined,

SECTION 3 – DOB PROCESS**REHABILITATION/ NEW CONSTRUCTION PROCESS**

1. Identification of total need. This will be determined specifically on the type of project being funded but at a minimum will be determined by a professional code inspector, engineer or other licensed practitioner
2. Total amount of assistance is identified. This includes adding all of the assistance received through cash awards, insurance proceeds, grant proceeds from State, Federal and Local governments, grants and loans from non profit organizations, FEMA, SBA State Disaster relief and private loans. This information will be taken from the application and documentation of each will be requested and placed in each individual file. Note that the total amount of assistance may be capped at a maximum amount depending on the design of the program.
3. Subtract exclusions from total assistance
4. Subtract the amount of assistance received from the various sources
5. The amount remaining is the maximum CDBG-DR award.

INFRASTRUCTURE PROCESS

1. Identification of scope and type of project
2. Determination of a cost estimate for the project. This will be completed by a professional, in most cases a licensed engineer.
3. Determination of other funding sources which are being utilized for the project. This would include any other Federal, State or Local governmental funds.
4. Will include a determination if any other State, Federal or local resources can be utilized for this project
5. Determine the amount of local “match” for the project. MEDC will utilize a minimum of 10% of the total cost. A community can waive the 10% cost if they can show that local funds are not available for a match.
6. Subtract the amount of other funding sources being utilized for the project from the cost estimate.
7. Subtract the amount of any additional funds which became available through an examination of additional funds
8. Subtract the amount of local match
9. After all subtractions have been completed the total amount of unmet need is eligible for CDBG-DR funds.

PLANNING PROCESS

1. Identification of total need.
2. Total amount of assistance is identified. This includes adding all of the assistance received through local funds, grant proceeds from State, Federal and Local governments, grants and loans from non profit organizations, FEMA.
3. Subtract exclusions from total assistance
4. Subtract the amount of assistance received from the various sources
5. The amount remaining is the maximum CDBG-DR award.

SECTION 4 – MONITORING DOB NONCOMPLIANCE AND RECAPTURE

Subrecipients must have policies and procedures that includes recapturing funds when a duplication of benefits has occurred and the funds have been disbursed.

SUBROGATION

During the closeout process a DOB analysis will be conducted for every project. If the DOB increased from the time of application or an amount was incorrectly identified, the difference in funds will need to be paid back to the CDBG-DR Program.

The applicant will be sent a request for the return of the funds. If the applicant does not respond within 30 days, a final letter (including a monetary amount for the default) stating the applicant has 10 days to respond or they will be sent to legal and/or monitoring staff. At that time if there is no response a referral will be made to the monitoring team and legal staff for enforcement of the note and notification of non-compliance, for further coordination between the two groups.

NONCOMPLIANCE

If the program is informed of an applicant's noncompliance, the applicant will be sent a request for the return of the funds. If the applicant does not respond within 30 days, a final letter (including a monetary amount for the default) stating the applicant has 10 days to respond or they will be sent to legal and/or monitoring staff. At that time if there is no response a referral will be made to the monitoring team and legal staff for enforcement of the note and notification of non-compliance, for further coordination between the two groups.

CHAPTER 16 FORMS

- 15-A Duplication of Benefits Calculation
- 15-B Subrogation Agreement
- 15-C Duplication of Benefits
- 15-D Sample Duplication of Benefits Calculation
- 15-E Sample Subrogation Agreement