



Duplication of Benefits and the DRRRA Loan Exception

BACKGROUND AND PURPOSE

On June 20, 2019, the U.S. Department of Housing and Urban Development (HUD) published a Federal Register notice at 84 FR 28836. That notice describes the requirements to prevent a duplication of benefits (DOB) applicable to Community Development Block Grant disaster recovery (CDBG-DR) grantees and implements section 1210 of the Disaster Recovery and Reform Act of 2018 (DRRA). This DRRA provision temporarily amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. § 5155). For DRRA Qualifying Disasters (i.e., disasters declared between January 1, 2016 and December 31, 2021) only, FEMA advised in a [Fact Sheet](#) that a loan is not a prohibited DOB under section 312(b)(4)(C) of the Stafford Act, as amended by section 1210 of the DRRA, if all federal assistance is used toward a loss suffered as a result of a major disaster or emergency. This DRRA amendment sunsets on October 5, 2023.

FREQUENTLY ASKED QUESTIONS (FAQS)

Q1: Which disasters are DRRRA Qualifying Disasters and covered by the DRRRA loan exception?

A1: Only disasters declared between January 1, 2016 and December 31, 2021 are covered by the DRRRA provision that excludes loans from treatment as a DOB.

Q2. Can a CDBG-DR grantee provide subsidized loans to homeowners to resolve existing duplication of benefits liabilities?

A2: No, a subsidized loan cannot resolve existing noncompliance, even if the disaster is a DRRRA Qualifying Disaster.

Example: The cost to repair a disaster-damaged roof is \$5,000. The grantee completes a DOB check and determines that the applicant has not received any other sources to pay for the roof. The grantee provides a grant of \$5,000 in CDBG-DR funds to repair the roof. Later, the applicant's homeowner's insurance company makes a \$2,000 payment. This results in a \$2,000 duplication of benefits (assistance that exceeds the need for the same purpose). Before the grantee can collect the duplicative insurance payment, the applicant spends the insurance proceeds to replace a disaster-damaged car that was not covered by the homeowner's insurance policy. The grantee cannot make a subsidized loan to the homeowner in the amount of \$2,000 to help the homeowner repay the duplicative assistance over time.



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FREQUENTLY ASKED QUESTIONS (FAQS)

Q3. For DRRRA Qualified Disasters, if a routine DOB check at the point of application reveals that a grant of CDBG-DR funds to the applicant would duplicate another source of assistance, and the applicant no longer has the other source of funds on hand, can the grantee provide CDBG-DR assistance as a subsidized loan for the activity without causing a DOB?

A3: Yes, if the following conditions are met: 1.) the grantee makes a final subsidized loan award for a DRRRA qualified disaster before October 5, 2023; 2.) the grantee determines that all federal assistance is used toward a loss suffered as a result of a major disaster or emergency; and 3.) the subsidized loan is a bona fide loan (i.e., not a form of assistance that is really a grant).

Because of the DRRRA amendment, a grantee can provide a subsidized loan (e.g., a forgivable loan or a loan with an interest that is lower than market rate) using CDBG-DR funds to address a loss suffered because of a major disaster or emergency for DRRRA Qualifying Disasters when the grantee could not assist the activity with another form of assistance due to a duplication.

A bona fide loan could involve a forgivable loan structure in which a borrower signs a promissory note and loan agreement that set out enforceable loan terms and principal and interest repayment schedules that reflect the homeowner's ability to repay based on appropriate underwriting and pledged security, and an agreement that the lender (i.e. the CDBG-DR grantee) will forgive the loan principal over time, contingent on the applicant's agreement to continue to live in the house for a period of time that reflects a benefit relative to the amount of the loan.

Example: A 20-year loan of \$20,000 might merit forgiveness of 20% of the principal each year that the applicant remains in the home, resulting in 100% forgiveness at the end of 5 years. In this example, the subsidized loan is not a duplication for DRRRA-covered disasters as long as all federal assistance was used for a loss suffered as a result of a major disaster or emergency (84 FR 28842), and the loan documents with the homeowner were signed before October 5, 2023.



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FREQUENTLY ASKED QUESTIONS (FAQS)

Q4. What are the key requirements for a CDBG-DR grantee to consider when offering subsidized loans to homeowners?

A4: If a grantee offers subsidized loans to homeowners, the grantee must amend its action plan, and document (through program policies and procedures and loan documents) that the loan is a bona fide loan (not a grant that is called a loan) so that it meets the DRRRA loan exception.

While no single factor is controlling, HUD will look for key indicators that subsidized loan assistance is a bona fide loan. These may include some or all of the following: if the loan is forgivable, forgiveness is not a forgone conclusion; the borrower made an unconditional promise to pay a fixed sum on demand or at a fixed maturity date that is in the reasonably foreseeable future; the holder has the right to enforce the payment of principal and interest (e.g., report to credit bureaus and enforce in a court of law); a note or other evidence of indebtedness exists; interest is charged; there is a fixed schedule for repayments; security or collateral is requested to ensure payment; whether there is any written loan agreement; whether the borrower was solvent at the time of the loan; whether the borrower could repay the loan under its terms. For forgivable loans, the forgiveness period does not necessarily have to be the same as a loan repayment period. For example, the grantee may determine that a borrower could reasonably repay the loan over a period of 20 or 30 years, but set a forgiveness period of 5 years, or another reasonable period.

Q5: How will the sunset of the DRRRA loan exception on October 5, 2023, impact how a CDBG-DR grantee treats subsidized loans in its DOB analysis?

A5: Absent statutory changes, the DRRRA amendment will sunset on October 5, 2023 (84 FR 28841). This means that on October 5, 2023, the Stafford Act is amended by deleting the language pertaining to loans in Section 312(b)(4) that was added by the DRRRA. If a grantee offers subsidized loans or if the beneficiary received a subsidized loan from another source (e.g., Small Business Administration (SBA)), only those households that have entered into an agreement for assistance (signed by the homeowner and the lender, e.g., grantee, SBA, etc.) before October 5, 2023, are not a DOB under the DRRRA loan exception. Please note that it is permissible for the activity funded by the CDBG-DR subsidized loan to occur after October 5, 2023, and for a grantee to make progress payments. However, the DRRRA only applies to loan assistance that is awarded (i.e., terms of the award/agreement must be settled, signed by all parties, and final) before the DRRRA sunsets.

If an applicant's unmet needs change and the applicant seeks additional assistance after the sunset of the DRRRA, the DRRRA loan exception would not apply to any loan assistance made after October 5, 2023. HUD has provided more complex examples in Appendix A to these FAQs to illustrate how this may work in practice.



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FREQUENTLY ASKED QUESTIONS (FAQS)

Q6: For disasters occurring in 2022 or later, and for any disaster after the sunset of the DRRA on October 5, 2023, can a CDBG-DR grantee reimburse the costs paid by a subsidized loan (e.g., SBA loan)?

A6: Without the DRRA loan exception, most subsidized loans duplicate CDBG-DR funds for the same purpose (there are limited exceptions for declined, cancelled, or subsidized short-term loans to pay for eligible costs before CDBG-DR funds became available). Therefore, HUD's time-limited policy in the 2019 DOB Notice (84 FR 28836) to permit reimbursement of pre-application costs of homeowners and businesses paid with proceeds of subsidized loans does not apply to DRRA Qualifying Disasters after the DRRA loan exception sunsets.

Additionally, for disasters that are not DRRA Qualifying disasters, i.e., disasters occurring before 2016 or in 2022 or later, grantees receiving CDBG-DR funds cannot reimburse the pre-application costs of homeowners or businesses paid by subsidized loans, including SBA loans. For these disasters, grantees must follow the requirements described in their applicable Federal Register notice and treat a subsidized loan as "assistance" in the DOB analysis.

OTHER DRRA-RELATED QUESTIONS

Q7: Are subsidized loans that are made or guaranteed under federally-funded, state-funded, or locally-funded programs to respond to the COVID-19 disaster covered by the DRRA loan exception (e.g., the Paycheck Protection Program (PPP), Economic Injury Disaster Loans (EIDL), State and Local Fiscal Recovery Funds (SLFRF), loans made with CDBG-CV funds, funds made available under the HOME-American Rescue Plan, etc.)?

A7: Yes. When CDBG-DR funds are provided in response to a DRRA qualified disaster, and the applicant received a subsidized loan in response to COVID-19 (loan documents signed) before the DRRA sunsets on October 5, 2023, the subsidized loan meet the DRRA loan exception if all federal assistance is used toward a loss suffered as a result of the major disaster.

However, under the terms of the DRRA amendments to the Stafford Act, if any part of the federal loan and other Federal assistance is used for a purpose other than COVID-19 disaster and other disaster losses, the exception does not apply, and the subsidized loan still duplicates other sources provided for the same purpose.

Generally, it is unlikely that a subsidized loan awarded to respond to the COVID-19 disaster would duplicate CDBG-DR assistance. Responding to impacts from COVID-19 is typically provided for a different purpose than CDBG-DR funding and the availability of these loans is likely to have passed by the time the DRRA amendment sunsets. If a CDBG-DR grantee has additional questions, the grantee should contact its CPD Representative or CPD Specialist for help.



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FREQUENTLY ASKED QUESTIONS (FAQS)

Q8: How can CDBG-DR grantees verify that federal assistance was used for a disaster-related purpose and meets the DRRRA loan exception?

A8: Grantees can review receipts, inspections, bank statements, or other reasonable sources of documentation that are determined acceptable by a grantee. Grantees can also use self-certifications with additional back-up documentation to verify how the assistance was used. The grantee should document in its applicant file that it completed this verification.



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APPENDIX A: EXAMPLES OF DOB AND CDBG-DR AWARD CALCULATIONS

Example 1:

Jane's home is damaged by a fire in a DRRRA Qualifying Disaster in 2020. A burning tree fell on her car and totaled the car. She inherited her mother's home, but since there is no mortgage, the home is uninsured. Jane is an LMI homeowner, and homeowner's insurance was not in her budget. She has no savings to assist in recovery. She received \$5,000 from FEMA to rehabilitate the damage to her home, but before she received a letter from FEMA specifying the purpose of the assistance, she uses the FEMA \$5,000 to replace her totaled car so that she can commute to her job. She used the FEMA funds before applying for CDBG-DR assistance. The total estimate to repair her home at the time she applied for CDBG-DR is \$20,000.

When she first applies to CDBG-DR, the grantee completes a DOB analysis and awards Jane \$15,000 in CDBG-DR grant funds plus \$5,000 in a CDBG-DR subsidized loan that is repayable over 10 years, but forgivable in 3 years if Jane remains in the home for that 3-year period. This award is made September 20, 2023. Then on October 15, 2023, Jane's contractor communicates to her that the cost to complete the work will increase by \$10,000 because of previously undiscovered structural fire damage in the attic. Jane's unmet need increases to \$30,000.

At the time Jane seeks additional assistance to cover the additional costs, Jane has received \$5,000 from FEMA, \$5,000 in a CDBG-DR subsidized loan, and \$15,000 in a CDBG-DR grant. The CDBG-DR grantee can provide Jane with the remaining \$10,000 to account for the increase in unmet need because the CDBG-DR subsidized loan met the DRRRA loan exception at the time it was provided. Subsidized loans that meet an exception should not be considered as assistance or included in the DOB analysis (84 FR 28841).



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EXAMPLE 1 CONTINUED

<p>(1) Identify total need at a point in time:</p> <p><i>\$20,000 initial estimate to rehabilitation home + \$10,000 newly discovered damage.</i></p>	<p style="text-align: right;">\$30,000</p>
<p>(2) Identify total financial assistance available:</p> <p><i>\$5,000 from FEMA for rehabilitation of the home.</i></p> <p><i>\$15,000 CDBG-DR grant</i></p> <p><i>[\$5,000 CDBG-DR loan is not “assistance” because the DRRRA loan exception applies since the loan was made before October 5, 2023]</i></p>	<p style="text-align: right;">\$20,000</p>
<p>(3) Identify the Amount of Total Assistance to Exclude as Non-Duplicative (Amounts used for a different purpose, or same purpose, different allowable use):</p> <p><i>\$5,000 of FEMA funds expended to replace totaled car damaged by the disaster</i></p>	<p style="text-align: right;">\$0</p> <p><i>Total exclusions of \$0 because the use for the car was not an eligible use by FEMA.</i></p>
<p>(4) Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions)</p>	<p style="text-align: right;">\$20,000</p> <p><i>Full amount of FEMA and initial CDBG-DR award is a DOB.</i></p>
<p>(5) Calculate Maximum Award (Total Need Minus Total DOB Amount)</p>	<p style="text-align: right;">\$10,000 in grant funds</p>
<p>(6) Apply Program Cap:</p> <p><i>Assume in this case the program cap is \$200,000</i></p>	<p style="text-align: right;">N/A</p> <p><i>The max CDBG-DR award is less than the program cap of \$200,000.</i></p>
<p>(7) Final Award on August 15, 2023</p>	<p style="text-align: right;">\$10,000</p> <p><i>This \$10,000 is an additional CDBG-DR grant (beyond what was previously awarded as \$15,000 grant and \$5,000 subsidized loan with CDBG-DR funds)</i></p> <p><i>[NOTE: The CDBG-DR grantee in this example must make sure that all federal assistance is used for loss related to a major disaster or emergency, or the DRRRA loan exception does not apply to the loan. For that reason, the CDBG-DR grantee holds all CDBG-DR funds for disbursement as needed to pay the contractor.]</i></p>



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APPENDIX A: EXAMPLES OF DOB AND CDBG-DR AWARD CALCULATIONS

Example 2:

Wind damage from a storm occurs September 25, 2021. Sam applies for CDBG-DR assistance on July 1, 2023. When Sam applies for CDBG-DR assistance, Sam has received \$5,000 from insurance for loss of contents, \$30,000 from insurance for damage to the home, \$15,000 from FEMA for rehabilitation of the home, and \$25,000 from SBA for rehabilitation. Before seeking CDBG-DR funds, Sam expends \$65,000 towards rehabilitation of disaster damage and tree removal, and the estimated cost to complete rehabilitation is \$100,000. Sam also seeks \$25,000 to reimburse eligible costs that were initially paid with SBA loan proceeds.

The CDBG-DR grantee completes Sam's DOB analysis on July 15, 2023, and makes a CDBG-DR award on August 15, 2023, of \$120,000 (which is less than the unmet need because of a \$5,000 DOB). The contractor begins work on September 15, 2023. While completing the initial work on the home, the contractor discovers that the foundation of the home is unstable. Rehabilitation is paused while the contractor assesses the cost to stabilize the foundation. On October 10, 2023, the contractor informs the CDBG-DR grantee that the estimated cost to complete the rehabilitation increases to \$130,000.

At the point when the homeowner/applicant requests additional assistance and a reassessment of need is required, the homeowner has entered into a contract for the \$100,000 rehabilitation but has not paid the contractor any funds. The \$100,000 in CDBG-DR awarded for rehabilitation is still available to pay the contractor. The CDBG-DR grantee has notified the SBA that it will pay the homeowner \$20,000 to reimburse costs paid by the SBA loan proceeds, and the grantee has issued a joint payment to the SBA and the homeowner/applicant, which the applicant has signed over to the SBA to repay the SBA loan principal (joint payment is required by the DOB notice when costs paid with SBA loans are reimbursed with CDBG-DR funds).

The CDBG-DR grantee can provide Sam with the remaining \$30,000 to account for the increase in unmet need because the CDBG-DR subsidized loan met the DRRRA loan exception at the time it was provided. Subsidized loans that meet an exception should not be considered as assistance or included in the DOB analysis (84 FR 28841).



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EXAMPLE 2 CONTINUED

<p>(1) Identify total need at a point in time:</p> <p><i>\$130,000 revised estimate to finish rehabilitating a home damaged by a 2021 disaster (these are rehabilitation costs remaining after the grantee expends \$65,000 towards rehabilitation and tree removal).</i></p> <p><i>Sam also has an unmet need for reimbursement of \$5,000 in costs paid with SBA funds used for rehabilitation before application, since these costs were not previously reimbursed.</i></p>	<p style="text-align: center;">\$135,000</p> <p><i>Total need = \$130,000 in rehabilitation not yet completed at the point in time that need was assessed + \$5,000 in reimbursement for costs of CDBG-DR eligible activities paid with an SBA loan received in response to a DRRRA Qualifying Disaster that has not been reimbursed.</i></p>
<p>(2) Identify total financial assistance available:</p> <p><i>\$5,000 from insurance for loss of contents.</i></p> <p><i>\$30,000 from insurance for damage to the home.</i></p> <p><i>\$15,000 from FEMA for rehabilitation of the home.</i></p> <p><i>\$100,000 from CDBG-DR award made August 15, 2023 for rehabilitation that has not occurred.</i></p> <p><i>\$20,000 from CDBG-DR award made August 15, 2023 for reimbursement of eligible rehabilitation costs that already occurred (these were initially paid with an SBA loan)</i></p>	<p style="text-align: center;">\$170,000</p> <p><i>[NOTE: The treatment of the SBA loan does not change. That loan is still not included in total financial assistance, because it was made before October 5, 2023, for a DRRRA qualifying disaster, and the homeowner demonstrated that all Federal funds received have or will be used for a disaster-related loss. (Grantee must follow the requirements in section V.B.3. of HUD’s June 2019 DOB Notice before reimbursing costs paid with SBA loans for DRRRA Qualifying Disasters).]</i></p>
<p>(3) Identify the Amount of Total Assistance to Exclude as Non-Duplicative (Amounts used for a different purpose, or same purpose, different allowable use):</p> <p><i>Homeowner can document:</i></p> <p><i>\$5,000 for insurance for loss of contents can be excluded because it is for a different purpose than CDBG-DR.</i></p> <p><i>\$25,000 of the \$30,000 received from insurance can be excluded as a different allowable use because \$5,000 was used to remove a tree, and \$20,000 was expended for partial rehabilitation (\$5,000 of insurance remains and cannot be excluded)</i></p> <p><i>\$15,000 from FEMA for rehabilitation can be excluded for a different allowable use.</i></p> <p><i>\$20,000 of CDBG DR assistance was provided to reimburse eligible costs of rehabilitation completed before application with a subsidized loan.</i></p>	<p style="text-align: center;">\$65,000</p> <p><i>Exclude \$5,000 for different purpose (insurance payment for contents) and \$60,000 used for the same purpose, different allowable use (\$35,000 partial rehabilitation completed with insurance and FEMA assistance, \$5,000 for tree removal, \$20,000 for reimbursing costs of rehabilitation paid with a subsidized loan).</i></p>



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EXAMPLE 2 CONTINUED

(4) Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions)	<p>\$105,000</p> <p><i>Calculated as \$170,000 in total assistance minus \$65,000 for non-duplicative exclusions.</i></p>
(5) Calculate Maximum Award (Total Need Minus Total DOB Amount)	<p>\$30,000</p> <p><i>Calculate maximum award by subtracting the DOB amount of \$105,000 from the total need of \$135,000.</i></p>
(6) Apply Program Cap: <i>Assume in this case the program cap is \$200,000</i>	<p>N/A</p> <p><i>The max CDBG-DR award is less than the program cap of \$200,000.</i></p>
(7) Final Additional Award	<p>\$30,000</p> <p><i>Homeowner can complete the remaining \$130,000 rehabilitation work by combining the \$30,000 in additional CDBG-DR funds with the \$100,000 in CDBG-DR awarded on August 15, 2023.</i></p>