

18 DUPLICATION OF BENEFITS

18.1 POLICY OVERVIEW

As the administrator for the United States (US) Department of Housing and Urban Development's (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funds for the State of Nebraska, the Department of Economic Development (DED) is responsible for preventing, detecting, reporting, and rectifying duplicative benefits identified under CDBG-DR programs.

The purpose of this chapter is to assist in determining the total amount of assistance to be provided to Subrecipients, Successful Applicants, and beneficiaries to determine whether any Duplication of Benefits (DOB) has occurred. A DOB occurs when:

- A Subrecipient, Successful Applicant, or beneficiary receives assistance from more than one source (e.g., insurance payments or assistance from Federal Emergency Management Agency (FEMA), State or local government, or non-profits) for a particular recovery purpose; and
- The total assistance amount from all sources exceeds the need for the particular recovery purpose.

DOB verification may be a complex compliance requirement, particularly for housing and infrastructure activities. Fundamentally, DED must prove that they have identified and accounted for any other funding a Subrecipient, Successful Applicant, or beneficiary has received for the same purpose as the CDBG-DR award, prior to the expenditure of CDBG-DR funds. The policies and procedures set forth in this chapter are administered under the supervision of DED. In all cases, all program participants must keep project records through closeout of the CDBG-DR grant plus three (3) years (see **Chapter 17: Recordkeeping and Data Management** for additional details). In the case of a secondary disaster that hits the same area after closeout, **Section 18.1.1: Multiple Disasters** will apply.

18.1.1 MULTIPLE DISASTERS

DED recognizes the possibility that future disasters may occur and impact Subrecipients, Successful Applicants, and beneficiaries who have not fully recovered from DR-4420. If a second disaster occurs in the same area as a previous disaster, the second disaster may destroy work funded and completed in response to the first disaster. The second disaster may also damage or destroy receipts and other documentation of how Subrecipients, Successful Applicants, and beneficiaries expended assistance provided after the first disaster. If this situation arises, DED will comply with HUD's policy in the Federal Register Notice issued June 20, 2019 (see 84 FR 28836) for managing policy revisions as appropriate.

Successful Applicants, beneficiaries, and Subrecipients are not required to maintain documentation related to the use of Federal, State, and local assistance for DR-4420 beyond when a Subrecipient or DED closes out a project. Note that Subrecipients will sit on different sides

of this requirement based on the program; as described in Section 18.5: DOB Verification Procedures, in some cases (e.g., Housing Programs), the Subrecipient will conduct DOB checks on beneficiaries and will be subsequently responsible for maintaining records, where for others (e.g., Infrastructure Match Program), DED will maintain documentation related to the DOB check on Subrecipients.

All documentation should be reviewed and uploaded into DED's system of record and the Subrecipient's electronic records (see also Chapter 17: Recordkeeping and Data Management). If documentation cannot be provided, future DED programs may accept a self-certification regarding how the Subrecipient, beneficiary, or Successful Applicant used previous assistance. Beneficiaries, Subrecipients, and Successful Applicants will be advised of the criminal and civil penalties that apply in cases of false claims and fraud.

DED will determine that the Subrecipient, beneficiary, or Successful Applicant's total need is consistent with data available about the nature of damage caused by multiple disasters.

18.2 DUPLICATION OF BENEFITS POLICY

Many Federal and State agencies are involved in responding to major disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). The Stafford Act is designed, in part, to achieve greater coordination and responsiveness between Federal disaster preparedness and relief programs. Accordingly, the Stafford Act includes a provision addressing DOB that applies to all Federal agencies administering financial assistance for emergency response and long-term recovery. CDBG-DR awards are subject to these requirements.

Eligible Subrecipients, Successful Applicants, and beneficiaries may have previously received assistance from other sources. Under the requirements of Section 312 of the Stafford Act (42 USC § 5155), Grantees (i.e., DED) determining the amount of assistance that can be granted must consider aid previously received by entities receiving funds through the CDBG-DR program, including Subrecipients, beneficiaries, or Successful Applicants. The Federal Register Notice from June 20, 2019 (see 84 FR 28836) further provides that CDBG-DR funding may only be supplied to the extent that it does not duplicate funding provided to a Subrecipient, Successful Applicant, or beneficiary for the same purpose.

Section 312(a) requires the Federal government to assure that no person receiving Federal financial assistance receives funds for any part of a loss already paid by insurance or any other source. Section 312(c) makes any person receiving duplicative assistance liable to the Federal government for the duplicative amount and states that "the agency which provided the duplicative assistance shall collect [it] from the Recipient [i.e., Grantee] when the head of such agency considers it to be in the best interest of the Federal government".¹ Additionally, Section 312(b) of the Stafford Act permits the payment of assistance to someone who is or may be entitled to future

¹ 42 USC § 5155(c).

payments from insurance or another source “if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.”²

The Stafford Act requirements are reinforced by other requirements on the use of CDBG-DR funds. Public Laws governing each of the allocations require the HUD Secretary to certify in advance of making grant awards that the Grantee (DED) has established adequate procedures to prevent any DOB. To support the Secretary’s certification, the Grantee (DED) must certify that they have “established adequate procedures to prevent any DOB as defined by Section 312 of the Stafford Act.”³

Additionally, the Appropriations Act, regulations, and cost principles within the uniform administrative requirements (2 CFR Part 200) are applicable to all CDBG-DR Grantees and Subrecipients. These require that costs 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.”⁴

18.2.1 EXAMPLE OF DOB CALCULATION (HOUSING)

The following are sources of funding assistance provided for structural housing damage and loss that may be considered a DOB:

- Federal Emergency Management Agency (FEMA) IA;
- National Flood Insurance Program (NFIP);
- Private insurance;
- Small Business Administration (SBA); and
- Any other funding source available to the homeowner for the same purpose as a CDBG-DR award that may duplicate assistance (i.e., charities or non-profits).

Funds received from any source, including FEMA, flood insurance, and hazard insurance, that were used to cover repair to the homeowner’s home will reduce the amount of disaster assistance if the evidence of expenditures at least equals the amount of assistance provided from the source(s). Documentation must be provided demonstrating the cost and type of repair conducted. An example of a DOB calculation is provided below in **Table 1**.

² 42 USC § 5155(b).

³ 83 FR 5844 at 5847.

⁴ 2 CFR § 200.404.

Table 1: Example Award Calculation

DOB Steps	Dollar Amount
1) Eligible Repair Costs	\$95,000
2) FEMA Assistance for Structural Repairs	\$20,000
3) Private Insurance for Structural Repairs	\$35,000
4) Total Duplication of Benefits (sum of 2 and 3)	\$55,000
5) Maximum Eligible Award (1 less 4)	\$40,000

18.2.2 FEMA AND USACE FUNDS

The statutory order of assistance for CDBG-DR appropriations provides that CDBG-DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or United States Army Corps of Engineers (USACE). DED will verify whether FEMA or USACE funds are available for program activities before awarding CDBG-DR assistance for costs of carrying out the same activity. If FEMA or USACE funds are available, the Subrecipient, Successful Applicant, or beneficiary must seek assistance from those sources before receiving CDBG-DR assistance. If FEMA or USACE can reimburse the Subrecipient, Successful Applicant, or beneficiary’s costs for the activity, they cannot receive CDBG-DR assistance for those costs as it would be a DOB.

18.3 SUBSIDIZED LOANS AND EXCEPTIONS

Subsidized loans (including forgivable loans) are loans other than private loans in the context of the Federal Register Notice published on June 20, 2019 (see 84 FR 28836). Both the SBA and FEMA provide subsidized loans for disaster recovery. Subsidized loans may also be available from other government sources. DED does not anticipate program participants to have open subsidized loans for the projects that CDBG-DR funds will be used for, but any subsidized loans must be declared in the DOB review process.

In certain situations, homeowners and businesses may receive CDBG-DR assistance after declining SBA loan(s) assistance. DED and/or Subrecipients (see **Section 18.4: Roles and Responsibilities** for clarification of when this applies to DED or Subrecipients) must demonstrate why providing CDBG-DR funds to Successful Applicants or beneficiaries is necessary and reasonable and analyze the circumstances under which the SBA assistance was declined.

Beneficiaries and Successful Applicants do not need to apply for SBA assistance before applying for and receiving CDBG-DR assistance, but HUD encourages them to. Accepting SBA assistance that was already offered is also not required for CDBG-DR funding. At a minimum, DED and/or Subrecipients (see **Section 18.4: Roles and Responsibilities** for clarification of when this applies to DED or Subrecipients) must collect the following:

- Identify the circumstances under which the beneficiary or Successful Applicant declined SBA assistance;
- Establish why CDBG-DR assistance is appropriate for the beneficiary or Successful Applicant; and
- Determine, generally through underwriting, the amount of CDBG-DR assistance necessary and reasonable to assist the beneficiary or Successful Applicant in achieving recovery.

For loans received, the full amount of a subsidized loan available to the beneficiary or Successful 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. of the Federal Register Notice published on June 20, 2019 (see 84 FR 28836) applies. 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. Exceptions include:

- Reimbursement of beneficiary or Successful Applicant expenses for eligible activities on or after the date of the disaster;
- Declined or canceled subsidized loans; and
- Subsidized loans that meet the statutory exception of DRRA amendments to the Stafford Act.

Program activities funded through allocations in response to DR-4420 are subject to the provisions of the DRRA amendments and may use exception iii of Section V.B.2 of the Federal Register Notice published on June 20, 2019 (see 84 FR 28836). Pursuant to section 1210 of the DRRA, a loan made in response to damage arising from a major disaster declared between 2016 and 2021 is not a prohibited DOB provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency. This means that any portion of an SBA loan that was drawn by a beneficiary or Successful Applicant can be eliminated as a DOB if the beneficiary or Successful Applicant can prove that the funds were applied to cover a loss suffered as a result of DR-4420. However, this exclusion must be applied before October 5, 2023.⁵

All Subrecipients conducting DOB checks must use and implement DED's procedures to document the use of SBA funds drawn for a disaster-related purpose. DED developed and implemented a procedure to document the same for directly administered activities.

⁵ See 84 FR 28836 at 28842. The 2019 DOB Notice supersedes the 2011 DOB Notice for any new activities submitted to HUD in an action plan or action plan amendment on or after June 25, 2019, and for existing activities, to the extent that DED amends its action plan to change its treatment of loans in accordance with the 2019 DOB Notice.

- **Declined loans are not considered DOB.** Declined loans should be determined from the SBA data feed and, in absence of this data, self-certification from the beneficiary or Successful Applicant;
- **Canceled loans that were accepted and never drawn are not considered DOB.** Canceled loans that were never drawn may be documented through the SBA data feed demonstrating the \$0 draw and the expiration of the loan term, written communication from the lender, or a legally binding agreement between DED and the Successful Applicant or the Subrecipient and the beneficiary; and
- **Accepted but undisbursed loan amounts (e.g., accepted but undisbursed SBA loan amounts) are not considered a DOB but are subject to further requirements.** Documentation required for proof of cancellation of loans may be either written communication from the lender or a legally binding agreement between DED and the Successful Applicant or the Subrecipient and the beneficiary.

For directly administered activities, DED develops a written agreement binding the Subrecipient or Successful Applicant to refrain from pursuing future draws against SBA loans. DED also develops and implements a procedure to notify the lender that (1) additional CDBG-DR assistance is being provided to the Subrecipient or Successful Applicant and (2) the Subrecipient or Successful Applicant has agreed not to take any action to reinstate the loan or payments.

18.4 ROLES AND RESPONSIBILITIES

DED and its Subrecipients will be the primary entities responsible for conducting DOB checks. Additionally, all individuals and entities applying to receive assistance through the CDBG-DR program (e.g., beneficiaries, Applicants, Successful Applicants) must provide the necessary information to support DOB checks.

Responsibility	For funds administered by Subrecipients	For funds administered directly by DED
DED	DED will review DOB checks conducted by Subrecipients and will conduct DOB checks of Subrecipients.	DED will be responsible for DOB verification processes (e.g., of Successful Applicants and Subrecipients). A reference to a DOB check of a Subrecipient or Successful Applicant is associated with DED as the entity responsible for verification.
Subrecipients	Subrecipients will be responsible for DOB checks of beneficiaries . A reference to a DOB check of a beneficiary is associated with a Subrecipient as the entity responsible for verification.	N/A

For clarification on procedures, including any program-specific requirements, see **Section 18.5: DOB Verification Procedures**.

18.4.1 DED RESPONSIBILITIES

DED maintains overall responsibility for ensuring that no duplicative benefits are provided through the CDBG-DR program and serves as the lead for coordinating with State and Federal partners to obtain the necessary data to support DOB checks. To this effect, DED will serve the following functions to support DOB checks:

- DED will lead and establish a process⁶ to coordinate information gathering from FEMA and SBA in order to determine if Subrecipients, Successful Applicants, and/or beneficiaries have applied for or received funding from these two agencies.
- DED will coordinate information sharing with Subrecipients to support DOB checks through information collected from State and Federal entities.

⁶ A best practice related to DOB analysis is for the Grantee to coordinate with FEMA and SBA via an MOU to establish a process to obtain data related to the assistance these agencies have provided, through DED who acts as a liaison to ensure all documentation is accurately received. However, if Federal agencies fail to provide or share necessary information and data for this purpose in a timely manner, DED will develop an alternative set of requirements for Subrecipients.

- **For funds administered by Subrecipients**, DED will review DOB checks conducted by Subrecipients to verify that there is no duplicative benefit.
- **For funds administered directly by the State to Subrecipients and Successful Applicants:**
 - DED will lead DOB checks and
 - DED will demonstrate why providing CDBG-DR funds is necessary and reasonable and/or analyze the circumstances under which other assistance was declined.

18.4.2 SUBRECIPIENT RESPONSIBILITIES

For funds administered by Subrecipients, Subrecipients are responsible for conducting DOB checks for their beneficiaries. This includes the following:

- Lead DOB checks.
- Demonstrate why providing CDBG-DR funds to beneficiaries is necessary and reasonable and/or analyze the circumstances under which other assistance was declined.
- Obtain documentation directly from beneficiaries to determine if they received insurance benefits or other resources and how those funds were used to ensure there are no DOB issues.
- Review data and information provided by DED (if applicable) to complete DOB checks (i.e., FEMA and SBA data).
- Report DOB checks to DED for review and rectify any errors identified by DED.

In accordance with the Stafford Act, all projects—both those DED administers directly and those the Subrecipient administers—must perform due diligence to identify potentially duplicative sources of funding, analyze whether the source is duplicative, and include duplicative sources in an assessment that is deducted from the project's need-based award determination.

18.5 DOB VERIFICATION PROCEDURES

The DOB verification procedures differ based on the program type and the entity responsible for administering the program. The following sections identify the DOB verification procedures for the following programs:

- Affordable Housing Construction Program, including associated subprograms: CDBG-DR LIHTC Gap Financing, Small/Non-LIHTC Rental Production, and Homeownership Production;
- Infrastructure Match Program; and

- Housing Resiliency Planning Program.

In order to maintain accurate assessments of applicants' unmet needs, DED will require that Subrecipients review recovery needs according to the structure of the associated program, as described in the sections below.

Generally, DOB review is carried out at the time of application for funding, tracked during implementation, and reconciled prior to closeout.

STEP 1: DED and Subrecipients complete DOB verification (see below) to validate the total funds received by Subrecipients, Successful Applicants, and beneficiaries.

For all programs administered directly by DED, all approved Subrecipients and Successful Applicants receive the DOB letter from DED. For all programs administered by Subrecipients, the Subrecipient will ensure beneficiaries receive and understand DOB requirements (see **DOB Letter**). This requirement on the part of Subrecipients will be set forth in the Subrecipient Agreement (SRA).

Subrecipients, Successful Applicants, and beneficiaries requesting CDBG-DR funds for disaster recovery assistance must submit the following forms (as applicable by program) for all proposed activities prior to approval as a part of DOB verification:

- Subrogation Agreement (see **CDBG-DR DOB Subrogation Agreement**);
- DOB Certification/Affidavit (Infrastructure) (see **CDBG-DR Duplication of Benefits Certification/Affidavit (Infrastructure)**);
- DOB Certification/Affidavit for Successful Applicants acting as developers in all Housing Programs (Housing) (see **CDBG-DR Duplication of Benefits Certification/Affidavit for Developer (Housing)**);
- DOB Certification/Affidavit for Homebuyers in Homeownership Production Program (HPP) (see **CDBG-DR Duplication of Benefits Certification/Affidavit for Individual Homebuyer (Housing - HPP)**); and
- DOB Certification/Affidavit for Successful Applicants implementing the Housing Resiliency Planning Program (HRPP) (see **CDBG-DR Duplication of Benefits Certification/Affidavit for Housing Resiliency Planning Program (Planning - HRPP)**).

The abovementioned DOB Certification/Affidavit forms include two levels of attestation. Signatures *certifying* the Applicant-provided information as accurate are required at the time of application for CDBG-DR funding, or as otherwise requested by DED. Notarization is optional at the time of application. Once notarized, the certification of information within the form functionally

converts the DOB Certification to a DOB *Affidavit*.⁷ Under all programs, a completed DOB Affidavit is required prior to program launch.

DED will publish these DOB forms at: <https://opportunity.nebraska.gov/cdbg-dr/>.

- **For programs administered by Subrecipients**, the Subrecipient is responsible for the dissemination and collection of the forms from beneficiaries. The Subrecipient submits an electronic copy of the completed forms to DED. If required documents are not submitted or are incomplete, a request to proceed with the activity cannot be processed until the required documentation is received and approved. The Subrecipient is responsible for determining if the beneficiary received any financial assistance from the beneficiary's insurance company or from any other source and include documentation in the beneficiary's file.
- **For programs administered directly by DED**, DED is responsible for dissemination and collection of the forms.

STEP 2: DED staff use the submitted information from Step 1 to review FEMA and SBA databases or use FOIA to determine if the Subrecipient, Successful Applicant, or beneficiary has received any financial assistance from either of these two agencies. DED staff certify the review results to the 1) Subrecipient for the beneficiary or 2) Subrecipient or Successful Applicant's file for directly administered programs. To contact FEMA concerning FOIA requests, call 202-646-3323 or contact the agency electronically at fema-foia@dhs.gov. To contact SBA concerning FOIA requests, call 202-401-8203 or contact the agency by email at foia@sba.gov.

If potential DOB is identified, DED will conduct a full review of assistance dollar amounts received, the purpose of the assistance (e.g., repairs, personal property, rent, etc.), and how dollar amounts were used, as part of the underwriting process.

18.5.1 AFFORDABLE HOUSING CONSTRUCTION PROGRAM

The Affordable Housing Construction Program (AHCP) and associated subprograms (see *AHCP Program Guide* for additional details) are required to verify DOB for all payments to increase affordable housing supply in flood-impacted areas. DED does not expect any DOB for projects under the AHCP program. However, DED is required to conduct DOB checks for all subprograms to verify that Successful Applicants and, as applicable, beneficiaries have not received a duplicative benefit.⁸ DED shall conduct the following steps during the program application process to review potential developers:

⁷ An affidavit is a written declaration under oath ([Neb. Rev. Stat. §25-1241](#)).

⁸ In the event DED awards AHCP assistance to a Subrecipient, DOB policies apply. Local governments applying for HPP would be subject to DOB requirements if awarded CDBG-DR funding.

1. Determine Affordable Housing Construction Program activity eligibility.
2. Review DOB Certification/Affidavit for sources of assistance for the same purpose as the Affordable Housing Construction Program. DED does not expect any DOB to be found.
3. Verify potentially duplicative assistance by ensuring documentation is complete and shows total award amounts. If necessary, sources of potential duplicative assistance shall be verified by contacting the source of assistance or accessing data through a data-sharing agreement, memorandum of understanding (MOU), or a DED alternative as described under **Section 18.4.1: DED Responsibilities**, if necessary.
4. Calculate the total assistance determined to be duplicative. The maximum eligible award amount is the total need less assistance determined to be duplicative.
5. The maximum award for the Affordable Housing Construction Program is \$2,000,000 and is not to exceed \$150,000 per housing unit constructed. The \$150,000 per unit cap includes all hard and soft construction costs.

The DOB evaluation is a formally distinct review driven by CDBG-DR specific requirements. However, in all cases DED will complete underwriting reviews of all development projects and require buyer specific underwriting reviews when providing direct assistance under the HPP. The broader underwriting approach is similar to a DOB review. It ensures that the CDBG-DR assistance provided is no more than necessary after taking into account all available sources of financing or funding, whether or not those are sources that would be specifically included in a DOB review.

DED will lead these checks for Subrecipients and Successful Applicants. Subrecipients will lead these checks for individual beneficiaries, which DED will then verify.

The DOB Affidavit for the Housing Programs must be submitted by the Subrecipient or Successful Applicant to DED prior to construction beginning on the project.

Under the Affordable Housing Construction Program subprogram, Homeownership Production Program (HPP), homeowner beneficiaries will require a HPP Homebuyer Agreement, or other such instrument used under the Program. The homebuyer must also submit the DOB Affidavit to the Subrecipient or Successful Applicant for submission to DED. If the Affidavit has not been submitted within 90 days of the execution of the HPP Homebuyer Agreement, the homeowner's application may move into an inactive status.

In addition to the DOB check conducted at the beginning of the program, assistance for the Housing Programs will be reassessed when the project is completed to verify that the beneficiary or Successful Applicant has not received a duplicative benefit for the same project during the course of the project. Further details regarding reassessment are provided below under **Section 18.6: Reassessment of DOB**.

18.5.1.1 Homeownership Production Program, Beneficiary Verification

In the case of HPP,⁹ the Successful Applicant shall conduct the following steps during the application process for potential homeowners who will, as part of their purchase, be provided with direct homebuyer assistance (e.g., down payment and closing cost assistance):

1. Calculate the beneficiary's total need for direct buyer assistance.
2. Review DOB Certification/Affidavit signed by the beneficiary for sources of assistance for the same purpose as HPP's included buyer assistance. DED does not expect any DOB to be found.
3. Verify potentially duplicative assistance by ensuring documentation is complete and shows total award amounts. If necessary, sources of potential duplicative assistance shall be verified by contacting the source of assistance or accessing data through a data-sharing agreement, memorandum of understanding (MOU), or a DED alternative as described under **Section 18.4.1: DED Responsibilities**, if necessary.
4. Calculate the total assistance determined to be duplicative. The maximum eligible award amount is the total need less assistance determined to be duplicative.

18.5.2 INFRASTRUCTURE MATCH PROGRAM

DED must verify DOB for all Infrastructure Match Program projects that eligible Subrecipients submit during the detailed eligibility review described in the **Infrastructure Match Program Guide**. Eligible Subrecipients or Applicants may have previously received assistance from other sources. Under the requirements of Section 312 of the Stafford Act (42 USC 5155), DED must consider certain aid received by Subrecipients or Applicants in determining the amount of assistance that can be granted. The Federal Register Notice dated June 20, 2019 (see 84 FR 28836) further provides that CDBG-DR funding may only be supplied to the extent that it does not duplicate funding provided to a beneficiary for the same purpose.

To determine the DOB of a project, DED will take the following steps:

1. Review eligible projects submitted by the Applicants to confirm the local match for FEMA PA or HMGP projects.
2. Determine the local match share of the FEMA PA or HMGP project.

⁹ Due to program design, DOB will not occur for end beneficiaries of the other AHCP programs (LIHTC Gap Financing Program and Small/Non-LIHTC Rental Production Program), so they do not need to go through the DOB verification process.

3. Review DOB Certification/Affidavit form to determine if the eligible Subrecipient or beneficiary received funds for the same purpose as FEMA PA and HMGP match.
4. Verify potentially duplicative assistance by ensuring documentation is complete and shows total award amounts. If necessary, sources of potential duplicative assistance shall be verified by contacting the source of assistance or accessing data through a data-sharing agreement or memorandum of understanding, or a DED alternative as described under Section 18.4.1: DED Responsibilities, if necessary.
5. Calculate the total assistance determined to be duplicative. The maximum eligible award amount is the total need less assistance determined to be duplicative.

For the Infrastructure Match Program, DED will review applications submitted by eligible Subrecipients to determine project eligibility and need. DED will review the Project Worksheet at the end of the project to verify the total amount of FEMA funds received by the PA and HMGP Applicant.

The maximum award for the Infrastructure Match Program is \$10,000,000. As described above, DED will reassess total needs at the end of the project to verify that there is no duplicative benefit associated with CDBG-DR funds. Further details regarding reassessment are provided below under **Section 18.6: Reassessment of DOB**.

18.5.3 HOUSING RESILIENCY PLANNING PROGRAM

DED must verify DOB for all Applicants to the Housing Resiliency Planning Program. The Certification/Affidavit described below, plus any other documentation that refers to other funding sources, will be collected during the application process, as described in the **Housing Resiliency Planning Program Guide**. To determine the DOB of a project, DED takes the following steps:

1. Review submitted applications to determine the Housing Resiliency Planning Program activity eligibility and need.
2. Review DOB Certification/Affidavit form to determine if the eligible Subrecipient received funds for the same purpose as the Housing Resiliency Planning Program.
3. Verify potentially duplicative assistance by ensuring documentation is complete and shows total award amounts. If necessary, sources of potential duplicative assistance shall be verified by contacting the source of assistance or accessing data through a data-sharing agreement, MOU, or a DED alternative as described under **Section 18.4.1: DED Responsibilities**, if necessary.
4. Calculate the total assistance determined to be duplicative. The maximum eligible award amount is the total need less assistance determined to be duplicative.

While the DOB check for the Housing Resiliency Planning Program is required pursuant to the federal statutes described in **Section 18.2: Duplication of Benefits Policy**, DED generally expects that there will not be any DOB under the Housing Resiliency Planning Program.

18.6 REASSESSMENT OF DOB

As described above, DED and its Subrecipients may need to reassess DOB at certain stages of project implementation. During the reassessment process, Subrecipients and DED must collect all necessary documents needed to complete an updated DOB calculation to update the program's assessment of the Subrecipient, Successful Applicant, or beneficiary's DOB (see ***Updated Duplication of Benefits Calculation Form***).

Any change in the total unmet need should be reflected in the award from the program. These files are reviewed by DED during monitoring visits using the applicable Monitoring Checklist to ensure DOB compliance.

18.7 SUBRECIPIENT REQUIREMENTS

As described under ***Section 18.5: DOB Verification Procedures***, the DED DOB review process includes a series of forms to assist Subrecipients and program staff in determining the amount of financial assistance that may be available to eligible disaster recovery beneficiaries and to ensure beneficiaries do not receive duplicative benefits.

Subrecipients are required to maintain original completed forms and support documentation in contract or beneficiary files. An electronic copy of completed forms and support documentation is submitted to the DED Program Manager assigned to the SRA. **Subrecipients are required to follow DED's procedures for DOB and complete associated forms.** A Subrecipient may elect to develop their own policies and procedures to manage DOB; however, these must be approved by DED prior to program launch.

If a DOB is discovered after the award is provided, based upon reported insurance benefits or other reported funding sources—and unless exempted in writing by DED—the Subrecipient must recapture the monetary amount of duplicative benefits provided and return the duplicative amount to DED (see ***Section 18.8: Recapture***).¹⁰ Subrecipients are required to maintain all corresponding financial transactions related to the refund(s) in the contract or beneficiary files and submit an electronic copy of the completed documents and supporting documentation to the DED Program Manager assigned to the SRA.

DED shall withhold payment on any project or suspend activities if a duplicative benefit issue is not resolved to DED's satisfaction. DED shall not complete the SRA closeout processing until all identified DOB issues are resolved.

¹⁰ In limited circumstances, DED reserves the right to coordinate directly with the Subrecipient to identify an alternative approach to collect duplicative funds.

18.8 Award Reconciliation

Generally, financial assistance received from another source that is provided for the same purpose as the CDBG-DR funds is considered DOB. To prevent the payment of DOB to Subrecipients, Successful Applicants, and beneficiaries, program controls include, but are not limited to:

- Certification that Subrecipients, Successful Applicants, and beneficiaries have notified the State of all potential DOB;
- Verification of specific DOB through various available sources; and
- Enforcement of certification to the fullest extent of the law.

Prior to award closeout, DED and its Subrecipients shall complete an award reconciliation, which includes a final verification of all benefits received by the Subrecipient, Successful Applicant, and/or beneficiary. Note that Subrecipients will conduct the reconciliation for beneficiaries for whom they're administering funds, and DED will verify reconciliation. As part of the process, DED and its Subrecipients confirm all factors comprising the award calculation:

$$\text{Total Project Cost} - \text{DOB} = \text{Award}$$

For example, for a project through the Affordable Housing Construction Program, total project costs constitute:

$$\begin{aligned} & \text{Allowable Activities (work already completed)} \\ & + \text{Estimated Cost of Construction (construction still needed)} \\ & + \text{Estimate Cost of Elevation for Homes in a flood zone} \\ & = \text{Total Project Costs.} \end{aligned}$$

The initial award is based on the information set forth in the scope of work (SOW) and DOBs that were available at that time. As additional information becomes available about these factors, the award can change. If the SOW has changed or other factors resulted in DOB throughout the duration of the project, it may affect the amount of the award. If the Subrecipient, Successful Applicant, or beneficiary has received award payments that exceed this final award calculation, they may be required to return funds.

18.9 RECAPTURE

18.9.1 IDENTIFICATION OF POTENTIAL DOB

When potential DOB is identified, DED shall coordinate with the Subrecipient (if applicable) to perform the following steps:

1. Re-evaluate need and document remaining DOB.

2. Check the documentation in the file (re-evaluation of need, ensure all agreements in place, etc.).
3. Send a Repayment Letter (further described below) to the beneficiary, Subrecipient, or Successful Applicant requesting reimbursement.
4. Conduct debt collection procedures.
5. Track and return all funds recovered as a result of this policy to the State's CDBG-DR account or US Treasury in the event that the State's CDBG-DR Grant has been closed out.

If a duplication is discovered after DED or a Subrecipient has provided assistance, the duplicative funds shall be recaptured to the extent that they are in excess of the need and duplicate other assistance received for the same purpose. Subrecipients are responsible for the recapture of funds when a DOB occurs in a program they directly administer, which must be conducted in compliance with this chapter.

18.9.2 METHOD OF RECAPTURING FUNDS

As described in **Section 18.5: DOB Verification Procedures**, and **Section 18.7: Subrecipient Requirements**, funds may be recaptured if a duplicative benefit is identified during the assessment and reassessment processes.

The recapture method and timeframe must be consistent with the requirements established by 2 CFR Part 200 or other applicable cost principles, any relevant guidance or handbook issued by HUD, and the Stafford Act, which requires that duplicative assistance be collected in accordance with 31 USC Chapter 37, relating to claims for debt collection. DED may withhold payment on any project or suspend activities if a DOB issue is not resolved in a timely manner. DED does not complete the SRA or contract closeout process until all identified DOB issues are resolved.

Funds canceled and recaptured from CDBG-DR Subrecipients, Successful Applicants, or beneficiaries shall be redistributed by returning funds to DED for use in other CDBG-DR program activities. In advance of the recapture process, DED and the Subrecipient perform a complete reconciliation of the files for the amount that the Subrecipient, Successful Applicant, or beneficiary has identified as having been overpaid. This will include:

1. Documenting the amount and basis for the repayment in a written letter to the Subrecipient, beneficiary, or Successful Applicant, as well as procedures for repaying the funds (the "Repayment Letter").
2. Assigning the Subrecipient, beneficiary, or Successful Applicant a DED representative to provide guidance and assistance throughout the repayment process.
3. Affording the Subrecipient, beneficiary, or Successful Applicant the opportunity to submit a written appeal of the repayment determination if they disagree with the amount owed or the basis for repayment.

The Subrecipient is responsible for supporting these steps for the programs they administer.

18.9.3 APPEALS

If a Subrecipient, beneficiary, or Successful Applicant does not agree with the amount owed or the basis for repayment, they must submit a written appeal within 20 calendar days from the date of the Repayment Letter to the Subrecipient and DED via email or in writing. If the letter is provided to the Subrecipient, the Subrecipient is responsible for providing the letter to DED to make a determination.

DED reviews the written appeal and issues a final written determination of its decision. Appeals may be denied or granted in whole or in part. Nothing in the appeal determination shall obviate the Subrecipient, beneficiary, or Successful Applicant from complying with all applicable program requirements. For instance, if the Subrecipient, beneficiary, or Successful Applicant successfully appeals a DOB amount, they are still fully obligated to complete their project.

DED only reviews facts and information already included in a Subrecipient, beneficiary, or Successful Applicant's file. If a Subrecipient, beneficiary, or Successful Applicant wants to submit more information, they must include it in a written appeal. Recapture appeals shall only be reheard after the initial hearing if new material information is received by DED or a new CDBG-DR program policy is enacted that impacts the Subrecipient, beneficiary, or Successful Applicant's appeal status.

If a Subrecipient, beneficiary, or Successful Applicant fails to file an appeal to DED within the time allotted, the inaction shall be deemed an acceptance of the determination; there will be no further right to contest or appeal the amount to be repaid.

If a Subrecipient's, beneficiary's, or Successful Applicant's appeal is denied or there is a failure on their part to appeal within the allotted timeframe, the Subrecipient, beneficiary, or Successful Applicant shall be moved to the repayment phase (see **Section 18.9.4: Repayment Phase**) to begin repayment.

Once a Subrecipient, beneficiary, or Successful Applicant has received their Repayment Letter and the appeal period has passed, their file shall be moved to the Repayment Phase (see **Section 18.9.4: Repayment Phase**).

For additional information regarding the appeals procedures, see the CDBG-DR webpage: <https://opportunity.nebraska.gov/cdbq-dr/>.

18.9.4 REPAYMENT PHASE

Once the repayment is determined, the DED Program Manager or a representative from the Subrecipient shall assist the Subrecipient, beneficiary, or Successful Applicant with the steps necessary to repay their funds in a timely manner. All repayments shall be repaid in full as one lump sum amount or broken down into a payment plan agreed upon by DED and the Subrecipient (if applicable). DED and the Subrecipient (if applicable) analyzes any Subrecipient, beneficiary,

or Successful Applicant claims of financial hardship and may make accommodations to facilitate repayment. Final determinations regarding such accommodations will be provided by DED.

DED and its Subrecipients shall monitor repayments to ensure Subrecipients, beneficiaries, and Successful Applicants are performing in accordance with the terms of repayment, and DED may take additional, cost-reasonable measures as necessary to collect the repayment amount, including instituting a collection proceeding. DED, in its sole discretion, shall institute measures necessary to effectuate repayment from individual program beneficiaries to the extent that amounts are collectible.

TOOLKIT LIST

The following documents for **Chapter 18: Duplication of Benefits** are available on the Toolkit section of DED's website:

- CDBG-DR Duplication of Benefits Certification/Affidavit (Infrastructure)
- CDBG-DR Duplication of Benefits Certification/Affidavit for Individual Homebuyer (Housing - HPP)
- CDBG-DR Duplication of Benefits Certification/Affidavit for Developer (Housing)
- CDBG-DR Duplication of Benefits Certification/Affidavit for Housing Resiliency Planning Program (Planning - HRPP)
- CDBG-DR Subrogation Agreement
- DOB Letter
- Updated Duplication of Benefits Calculation Form

CHAPTER 18 ADDENDUM: DATA COORDINATION

18A.1 STANDAR OPERATING PROCEDURE (SOP) OVERVIEW

As the administrator for the United States (US) Department of Housing and Urban Development's (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funds for the State of Nebraska, the Department of Economic Development (DED) is responsible for preventing, detecting, reporting, and rectifying duplicative benefits identified under CDBG-DR programs.

This ***Duplication of Benefits Data Coordination SOP*** outlines a general process for DED to identify individuals whose duplication of benefits (DOB) needs to be verified by reaching out to federal agencies (i.e., FEMA, SBA, insurance), collecting data, and reporting back to the Subrecipient. It is written to support the overarching ***Chapter 18: Duplication of Benefits***, which articulates the full DOB policy and procedures in place to assist DED and its Subrecipients in determining the total amount of assistance to be provided to Subrecipients, Successful Applicants, and beneficiaries to determine whether any DOB has occurred.

18A.2 DUPLICATION OF BENEFITS VERIFICATION AND DATA COORDINATION PROCEDURE

The DOB verification procedures differ based on the program type and the entity responsible for administering the program. DED will coordinate data collection from federal agencies to verify the DOB reported by Subrecipients, Successful Applicants, and beneficiaries. A title search will also be done on privately owned land associated with any project. Specific agencies with which DED will coordinate information collection are indicated below in ***Table 1***.

Table 1: Duplication of Benefits Verification and Data Coordination Policy

CDBG-DR Program		DOB Verification Required	Data Coordination Partners
Infrastructure Match Program		DOB verification required for the Infrastructure Match Program includes a review of projects submitted, local match share, DOB Affidavit form, verification of potential duplicative assistance, calculation of the total assistance determined to be duplicative, and review of project worksheet.	DED will coordinate with NEMA to verify data through EMMIE and related reporting systems.
Affordable Housing Construction Program	CDBG-DR LIHTC Gap Financing	DOB verification required for the Affordable Housing Construction Program includes a review of activity eligibility and need, calculation of total need for assistance, review of DOB Affidavit form, verifying potentially duplicative assistance, calculation of the total assistance determined to be duplicative, and reviewing maximum award cap.	DED will coordinate with FEMA, SBA, and NIFA to verify data for housing-related DOB.
	Small/Non-LIHTC Rental Production		
	Homeownership Production		
Housing Resiliency Planning Program		DOB verification required for the Housing Resiliency Planning Program includes a review of submitted applications to determine activity eligibility and need, review of DOB Affidavit form, verification of potentially duplicative assistance, and calculation of total assistance determined to be duplicative.	N/A

18A.3 DATA COORDINATION PARTNERS

18A.3.1 FEMA

The Federal Emergency Management Agency (FEMA) provides disaster assistance based on damage estimates and recovery unmet needs. DED coordinates with FEMA through NEMA. DED will work with NEMA to collect data on Applicants, Successful Applicants, and Subrecipients through FEMA’s Emergency Management Mission Integrated Environment (EMMIE) system and related systems or through a FOIA request.

18A.3.2 SBA

The U.S. Small Business Administration (SBA) provides low-interest disaster loans to businesses of all sizes, private non-profit organizations, homeowners, and renters. SBA disaster loans can be used to repair or replace real estate, personal property, machinery and equipment, and inventory and business assets damaged or destroyed in a declared disaster. In some cases, SBA can refinance all or part of a previous mortgage when the applicant does not have credit available elsewhere, has suffered substantial disaster damage not covered by insurance, and intends to repair the damage. HUD encourages but does not require CDBG-DR applicants to apply for SBA assistance as a prerequisite to receiving CDBG-DR assistance.

DED will determine if the Subrecipient, Successful Applicant, or beneficiary has received financial assistance from SBA by searching the [SBA database](#) or through a FOIA request. DED will provide written notification to lenders when it is confirmed that a full loan amount will not be needed.

18A.4 INSURANCE

Disaster assistance may come in the form of insurance proceeds. The Stafford Act prohibits any person, business, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source.

18A.4.1 NFIP

The National Flood Insurance Program (NFIP) provides insurance to help reduce the socio-economic impact of floods. NFIP is managed by the FEMA and is delivered to the public by a network of more than 50 insurance companies and the NFIP Direct.

DED will determine if the Subrecipient, Successful Applicant, or beneficiary has received financial assistance from the NFIP by searching the [NFIP database](#) or through a FOIA request

18A.4.2 PRIVATE INSURANCE

Private insurance is a financial mechanism meant to help disaster victims. All private insurance settlement amounts for loss to structures are considered in the award calculation. Private insurance payments for contents or other expenses are not considered.

18A.5 VERIFICATION AND DATA COORDINATION PROCEDURES

18A.5.1 DED ADMINISTERED PROGRAMS

For funds administered directly by the State to Subrecipients and Successful Applicants, DED will lead DOB checks for any programs with the potential to create DOB scenarios. DED will demonstrate why providing CDBG-DR funds is necessary and reasonable and/or analyze the circumstances under which other assistance was declined.

To conduct the DOB review process, DED will use the best, most recent available data from FEMA, SBA, insurers, and any other sources of local, state, and federal funding to prevent DOB. DED will complete the following steps:

1. DED identifies an Applicant that needs to undergo DOB data verification.
2. DED will identify the Applicant's total need.
3. DED will identify the total assistance available to the Applicant identified on submitted DOB forms.
4. DED will exclude any amounts that are not duplicative with CDBG-DR funding from the DOB analysis.
5. DED will use the submitted information to review the following (as applicable to the program):
 - a. FEMA databases:
 - i. DED will submit a data request to NEMA to retrieve FEMA data.
 - ii. DED will search the FEMA database or use FOIA to determine if the Applicant has received any financial assistance from FEMA.
 1. To contact FEMA concerning FOIA requests, call 202-646-3323 or contact the agency electronically at fema-foia@dhs.gov.
 - b. SBA:
 - i. DED will search the SBA database or use FOIA to determine if the Applicant has received any financial assistance from SBA.
 1. To contact SBA concerning FOIA requests, call 202-401-8203 or contact the agency by email at foia@sba.gov.
 - c. National Flood Insurance Program:

- i. DED will review [NFIP external datasets](#) to determine if any additional funding has been received by the Applicant.
6. DED verifies the amount of assistance received from the above sources and the purpose of the assistance (repairs, personal property, rent, etc.), and gathers the required documentation.
7. DED staff certify the review results to the 1) Subrecipient for the beneficiary or 2) Subrecipient or Successful Applicant's file for directly administered programs. If potential DOB is identified, DED will conduct a full review of assistance dollar amounts received, the purpose of the assistance (repairs, personal property, rent, etc.), and how dollar amounts were used, as part of the underwriting process.

18A.6 SUBRECIPIENT ADMINISTERED PROGRAMS

For all programs administered by Subrecipients, the Subrecipient will ensure beneficiaries receive and understand DOB requirements. DED will review DOB checks conducted by Subrecipients and will conduct DOB checks of Subrecipients to verify that there is no duplicative benefit. Subrecipients will be responsible for DOB checks of **beneficiaries**.

For funds administered by Subrecipients, Subrecipients are responsible for gathering DOB documentation from beneficiaries, conducting DOB checks, and sharing findings with DED. DED is responsible for reviewing and coordinating data collection from the agencies listed above and sharing their results with the Subrecipient. Subrecipients should take the following steps to verify DOB:

1. Demonstrate why providing CDBG-DR funds to beneficiaries is necessary and reasonable and/or analyze the circumstances under which other assistance was declined.
2. Obtain documentation directly from beneficiaries to determine if they received insurance benefits or other resources and how those funds were used to ensure there are no DOB issues.
3. Review data and information provided by DED (if applicable) to complete DOB checks (i.e., FEMA and SBA data).
4. Report DOB checks to DED for review.
5. Rectify any errors identified by DED.

18A.7 LENDER NOTIFICATION PROCEDURES

In the unlikely event that a beneficiary has an open subsidized loan for the same purposes as CDBG-DR grant funds, a letter must be provided to the lender stating that further funds will not be drawn. For all programs administered by Subrecipients, once a Subrecipient verifies an award and it is determined that a full loan amount will not be needed, DED will take the following steps:

1. DED will review verification from the Subrecipient demonstrating that the full loan amount will not be needed.
2. DED will provide a formal letter to the lender notifying the lender that the full loan amount is no longer needed and its use constitutes a DOB.
3. DED will provide a letter to the Subrecipient informing the Subrecipient that the lender has been notified that the full loan amount is no longer needed and the award amount is being reduced.

18A.8 REPORTING

Note that DED will track the above communications and associated documentation in DED's system of record, AmpliFund, as per **Chapter 17: Recordkeeping and Data Management**.