

Duplication of Benefits under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

§312, 42 U.S.C. § 5155



Disaster Recovery CDBG Administration Training

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Duplication of Benefits
Bottom Line:
You can't
recover twice
for the same
loss.

Overview: What lies at the heart of the prohibition against Duplication of Benefits?

- Recipient of federal disaster relief cannot recover more than the amount of loss – in other words, no double recovery at taxpayers' expense
- Disaster assistance may come in the form of donations, insurance proceeds, volunteer work, or grants.
- With multiple entities providing assistance, it is possible for different sources to allocate funds to repair or replace the same portion of the same project. This action may constitute a duplication of benefits provided by other sources.



Federal Assistance When Disaster Strikes

Robert T. Stafford Disaster Relief and Emergency Assistance Act Public Law 93-288, as amended [42 U.S.C. § 5121 et seq.]

- Primary statutory authority permitting HUD & other federal agencies to assist State & local governments with their response and recovery responsibilities following major disasters and emergencies.
- Provides special measures for the purpose of “aid, assistance, emergency services, and the reconstruction and rehabilitation of devastated areas. . .”



Federal Assistance When Disaster Strikes

Robert T. Stafford Disaster Relief and Emergency Assistance Act Public Law 93-288, [42 U.S.C. § 5121 et seq.]

- Governor may request presidential declaration after determining state and local resources are overwhelmed. President then declares major disaster or emergency. Stafford Act, § 401 [42 U.S.C. 5170].
- **Presidential declaration triggers certain federal assistance for recovery and rehabilitation, & Stafford Act rules governing use of assistance.**
 - Triggers disaster-specific programs & regular agency programs that localities can apply towards disaster recovery
 - Requires Governor's certification that State will meet cost share requirements.
 - Requires compliance with other Stafford Act provisions: insurance, nondiscrimination, duplication of benefits, etc.



Duplication of Benefits
Bottom Line:
Nobody can recover twice for the same loss.

Stafford Act Prohibits Duplication of Benefits § 312 [42 U.S.C. § 5155]

- Duplication of Benefits is double recovery for the same disaster recovery cost.
- What are the consequence of receiving duplicated benefits?

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.

The agency providing assistance can collect duplicated assistance like any other debt collection. § 312 (c).



Stafford Act Prohibits Duplication of Benefits § 312 [42 U.S.C. § 5155]

**Duplication of
Benefits
Bottom Line:
Nobody can
recover twice
for the same
loss.**

- Purposes of Duplication of Benefits provision:
 - Guard against fraud and ineligible uses of taxpayers' funds
 - Designate Federal government as secondary source of recovery available after exhausting other forms of available disaster assistance



Duplication of Benefits
Bottom Line:
Nobody can
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loss.

Primary Issues Grantees Should Consider

- 1) What other sources fall within the scope of the Duplication of Benefits prohibition?
- 2) What benefits are *available*?
- 3) What does it mean to *duplicate* funds for the same purpose?
- 4) What is the significance of *to the person*?
- 5) What other requirements dovetail with DOB?
- 6) What are some best practices and common pitfalls?



What other sources are within the scope of the DOB prohibition?

- Stafford Act directs agencies to ensure that a person or entity does not receive assistance for part of a loss that is covered under any other program or from insurance or *any other source*
 - CAUTION! applies to both public and private assistance, such as SBA Disaster relief loans, private insurance, private cash or grants designated for the same purpose as Federal disaster funds.
 - → NOT cash donations & grants for unspecified purpose such as “relief efforts” or “disaster relief.”
 - Ex. Total post-disaster housing rehabilitation needs equal \$50,000. Homeowner receives \$50,000 from private insurance for structural damage. Any State-administered HUD funding received by homeowner for rehab = duplication of benefits.



What
benefits are
available
within the
meaning of
the DOB
prohibition?

- Person or entity receiving disaster assistance has legal control of assistance from another source
 - Ex. Following a disaster, a bank/mortgage holder (not the homeowner) has legal control of insurance proceeds on real property. The mortgage requires that insurance proceeds be applied to reduce lien balance. These insurance proceeds are not deducted from uncompensated physical loss – they do not reduce assistance eligibility. Homeowner may still have disaster assistance eligibility that is NOT reduced by amount of insurance.
 - Ex. Following a disaster, homeowner applying for disaster assistance *chooses* to apply insurance proceeds to reduce existing mortgage, or *requests that the lender demand payment*, insurance proceeds reduce the amount of disaster assistance eligibility to avoid duplication of benefits.



What benefits are available within the meaning of the DOB prohibition?

- Person or entity receiving disaster assistance must act in a commercially reasonable manner to seek out available assistance
 - Federal agency providing disaster relief funds can seek reimbursement for any duplicative relief a person or entity *could have received* if he or she had acted in a commercially reasonable manner.
 - DOB prohibition does NOT require beneficiaries to pursue course of action to obtain insurance benefits which disregards competing considerations that any other insured would reasonably take into account.
 - Ex. Beneficiary can receive a lump sum insurance settlement based on estimated cost of repairs to avoid transaction costs associated with replacement cost reimbursement. any additional benefits that theoretically might have been received using another option do not reduce eligibility for assistance.



What does it mean to *duplicate* funds for the same purpose?

Multiple Sources of Recovery Permissible

- The Stafford Act provides that receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided. Partial benefits from one source do not preclude later federal assistance for remaining *unmet* disaster needs.
- What is an unmet disaster need? An eligible disaster cost not covered by another source.
- Ex. Beneficiary receives maximum award under housing assistance program funded by FEMA, but true cost of repair or replacement of damaged home is greater than assistance provided, including insurance. Victim is eligible to receive additional CDBG assistance.



What does it mean to *duplicate* funds for the same purpose?

Stafford Act Permits Combining Assistance to Meet All Recovery Needs

Ex. FEMA provides \$500 for debris removal. Actual debris removal cost = \$850. FEMA assistance does not preclude person, business, or other entity from later receiving \$350 from CDBG disaster assistance money to cover unmet cost of removing remaining disaster debris.

Both costs are for debris removal, but do not *duplicate* funds for the same purpose – the total assistance did not exceed total need.

Note: consider purpose from the perspective of the person receiving assistance – not the purpose of the program in general. What need the the funds fulfill in the hands of the recipient?



What does it mean to *duplicate* funds for the same purpose?

Stafford Act Permits Combining Assistance to Meet All Recovery Needs

- Beneficiary cannot be paid in full for the same need twice.

Ex. Total interim housing costs = \$10,000. Person receives \$10,000 from an Federal source for the purpose of interim housing and \$9,000 from another source for interim housing. This is *duplicative* assistance for the same purpose – interim housing.

Assistance is duplicative when two sources exceed need for the same recovery item. Assistance is NOT duplicative when two sources contribute to the same need, but the total assistance did not exceed total need.



What is the significance of the Stafford Act's prohibition on duplicative benefits available *to the person*?

NO Blanket Exclusions from Duplication of Benefits Calculations

- Disaster victims liable to the United States to the extent that assistance duplicates benefits available *to the person* for the same purpose from another sources.
- Reference “to the person” requires a fact-specific inquiry into assistance received by each individual disaster victim.
 - State must ask: does this person have additional unmet needs, or would additional payments duplicate funds already made for the same loss?



What is the significance of the Stafford Act's prohibition on duplicative benefits available to the person?

No Blanket Exclusions from Duplication of Benefits Calculations

- Even when a State attempts to design disaster relief programs to avoid all potential DOB issues, the State cannot deem any recipients categorically exempt from DOB calculations. The State must perform case-by-case examinations of available benefits.
- True even when there is a combination of funding sources designed to meet different recovery needs.

Relevant DOB inquiry – did assistance to this individual exceed this individual's total disaster needs?



Beyond the Stafford Act: OMB Circular A-87

Only Necessary and Reasonable Costs Permitted

- OMB Circular A-87 establishes principles and standards to use when determining appropriate costs for Federal awards carried out through State and local governments
- Any cost attributed to grant must be “necessary and reasonable for proper and efficient performance and administration of Federal awards.”
- Applies to both State’s costs in administering the program, and ultimate purpose of award
- Requires State to exercise due diligence in implementing program – meaning State must conduct an individualized review of beneficiary and his or her intended use of assistance funds.



Best Practices

Design Best Practices to Meet Community Recovery Needs, But Make a DOB Plan

- HUD permits States to determine the best method for avoiding or identifying potential DOB issues.
 - State grantee's methodology controls, so long as it is not plainly inconsistent with statutory requirements. This gives maximum feasible deference to State program administration. 24 C.F.R. § 570.480(c).
- Best Practice: require all contractors, subrecipients, and program administrators responsible for intake and program applications to establish all aid applied for and previously received as part of eligibility determination. Establish a policy for re-examining benefits, such as insurance proceeds, received later.



Best Practices

Duplication of Benefits Plan

- Best Practice: Develop affidavit in the form of a checklist that all applicants must complete.
 - List all disaster assistance programs available, require applicants to identify all sources sought or received
 - Include insurance, loans, grants, and other funds
 - Inform applicants of prohibited duplication of benefits
 - Require applicants to permit inquiry into other assistance received – sign Privacy Act permissions
 - Where possible, seek documentation of disaster needs



Best Practices

Duplication of Benefits Plan

- Pitfall to avoid: Collecting distributed funds is more difficult than avoiding DOB at the outset
 - Calculate unmet needs by looking at what disaster survivor needs – actual costs vs. estimated costs, comparable post-disaster equivalent vs. pre-disaster value.
 - Ask for assistance and support as necessary to avoid problems; develop a DOB policy
 - Include DOB calculations in scope of competitive bids for contractors



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