



## Duplication of Benefit Policy

Boulder County, Colorado, experienced a catastrophic flood event from September 11<sup>th</sup>, 2013 through September 15<sup>th</sup>, 2013. Boulder County and the units of local government within the county formed the Boulder County Collaborative (BCC) partnership among its impacted communities with a focus on strategic coordination for long-term recovery. The City of Longmont will be the Lead Agency in administering these programs throughout the county. The Boulder County Collaborative is comprised of the following eight (8) Participating Governments (PG):

1. Boulder County
2. City of Boulder
3. Town of Jamestown
4. City of Lafayette
5. City of Longmont
6. City of Louisville
7. Town of Lyons
8. Town of Nederland

### **Purpose**

Each CDBG-DR program administered by a Participating Government is subject to the Duplication of Benefit (DOB) policy. Each CDBG-DR program will have operational procedures which contain detailed provisions identifying the documents to be provided by applicants for assistance, as well as the procedures for how these documents will be verified.

The first step of the DOB calculation for each program is to determine the amount of funds previously received or made available to assist with disaster needs related to the September 2013 flood. During the intake/application process, persons, business concerns and other entities receiving BCC CDBG-DR financial assistance will be required to disclose all sources of disaster recovery assistance received and/or anticipated to receive due to the flood impacts. The PG will verify the amount received by reviewing source documents and contacting 3<sup>rd</sup> parties when required by HUD.

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## **Authority**

The Boulder County Collaborative (BCC) has been allocated Community Development Block Grant Disaster Recovery (CDBG-DR) funds from the State of Colorado. The CDBG-DR funds have been appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2). CDBG-DR funds are for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Act of 1974.

Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5155) 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 he or she has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, CDBG DR funds issued through the BCC may not be used for any costs for which other disaster recovery assistance was previously provided for the same purpose.

The Stafford Act directs administrators of Federal assistance to ensure that no person, business, or other entity will receive duplicative assistance and imposes liability to the extent such assistance duplicates benefits available to the person for the same purpose from another source. The amount of the duplication is the amount of assistance provided in excess of need. The BCC Duplication of Benefit (DOB) policy adheres to the guidelines published in the Federal Register/Vol.76, No. 221/Wednesday, November 16, 2011.

The State of Colorado through its Colorado Department of Local Affairs (DOLA) is the HUD Grantee for the CDBG-DR funds provided to the State. The BCC has received a sub-allocation of these CDBG-DR funds from the State through its Lead Agency, the City of Longmont. The State of Colorado has provided the updated *Colorado CDBG-DR Duplication of Benefits Policies and Procedures* (October 5, 2016) with specific compliance requirements for meeting the HUD Federal Register notice 76 FR 221 (November 16, 2011). The BCC has adopted the State's DOB Policy and Procedures, and these will be implemented through the following steps.

## **DOB Process**

For each CDBG-DR program established in the Action Plan, the BCC will provide forms and procedures addressing DOB. Each procedure will require the PG to:

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1. Determine and document the total need of assistance for the eligible activity.
2. Identify all assistance received or reasonably anticipated for the project or by the applicant related to flood recovery.
  - The application for assistance will require documentation for all sources of funding received or reasonably anticipated to be received and certification that all assistance is reported.
  - Third-party verification of all sources of assistance should be received for beneficiaries of the Housing Assistance Programs and the Buyouts & Acquisitions Program. Refer to the BCC's Due Diligence Process for detailed steps for obtaining third-party verification and steps to take in the instance that verification is not able to be obtained.
  - Third-party verification is not required for the Infrastructure Program. However, if the necessary documentation to verify sources of funding is lacking, third-party verification can be utilized to verify funding received.
3. Identify assistance determined not to be duplicative for the activity because:
  - Funds were used for a different, eligible purpose
  - Funds were not available to the applicant, e.g., forced mortgage payoff, contractor fraud, etc.
  - Funds were from a private loan not guaranteed by SBA; however, Forgivable Loans are considered duplicative
  - Any other asset or line of credit available to the applicant, e.g. checking or savings accounts, stocks, etc.
4. Perform a calculation to determine the total funds received from other sources for the activity to be funded with CDBG-DR (e.g., repairs).
  - Calculate by subtracting the total assistance received from the total funds needed to complete the activity (e.g., repairs).
5. Perform a calculation determining the maximum eligible award.
  - Calculate by subtracting the assistance from other sources (duplicative assistance) from the total need for assistance for that activity.
6. Require all applicants to sign an agreement to repay any assistance provided using CDBG-DR funds when/if other funds were later received for the same purpose as the CDBG-DR funds. The PG will monitor compliance with the agreement for one year, by contacting the various agencies as noted above/and or listed in the original DOB calculation.
7. Recapture funds if necessary. If additional need is established, subsequent funds would not be considered a duplication of benefits (76 FR 221, 71062). If additional need is not demonstrated, disaster recovery funds must be recaptured to the extent they are in excess

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of the need and duplicate other assistance received by the beneficiary for the same purpose. If CDBG-DR funds or non-Federal funds were provided last and unknowingly create duplication, the method of recapturing the CDBG-DR funds the PG provided will be consistent with 2 CFR 200.403 (a) Factors Affecting Allowability of Costs. Time frames will include an annual review of DOB as noted above and the PG's normal collection policies.

The following represents the basic framework that will be utilized for DOB verification in all CDBG-DR programs. The example below is based on a scenario where the applicant requires assistance with repairs to the damaged home in the amount of \$100,000. Per program policy, there is a cap of \$50,000 for repairs. The applicant received the following flood recovery assistance: \$50,000 from insurance (\$30,000 for repairs/\$20,000 for personal property); \$11,500 from FEMA (\$10,000 for repairs/\$1,500 for temporary living); and \$2,000 from a local charity for gas and clothing. Total assistance received was \$63,500. This example has also been input into the attached BCC DOB Worksheet for Housing Assistance as a reference.

Basic framework:

1. Determine Applicant's Total Need	\$100,000
2. Identify and verify all assistance received	\$ 63,500
3. Deduct assistance determined to have a duplicative purpose (i.e., repair = \$30,000 insurance and \$10,000 FEMA)	\$ 40,000
4. Maximum eligible award (item 1 less item 3)	\$ 60,000
5. Program cap (maximum award allowed by policy)	\$ 50,000
6. Final award (lesser of items 4 and 5)	\$ 50,000

The PG will use a Duplication of Benefit Affidavit as part of the DOB determination (or have equivalent DOB Affidavit as part of the CDBG-DR application), listing all sources of assistance received for the 2013 flood, the purpose of the funds, and a Certification signature on the Affidavit to ensure compliance with DOB requirements. The PG will review the DOB worksheet with the applicant. The applicant will sign and date the worksheet at that meeting.

**Alternate Method for Boulder County Rehabilitation Program**

Boulder County implemented its CDBG-DR Rehabilitation and Access programs allowing the homeowner to contract directly with the contractor(s). Boulder County's role in the process included determining the grant award, construction oversight on behalf of the homeowner, and payments from the County to the contractors. This is an alternative approach to standard CDBG-DR rehabilitation which typically has the Grantor awarding the grant for rehabilitation, bidding

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the scope of work to the contractors, contracting with the contractors either directly or in conjunction with the homeowner, construction oversight, and payments to the contractors.

Per HUD DOB guidance, once the outstanding DOB is determined, the homeowner gives the Grantor the amount determined to be duplicative and those funds are then used to pay project costs submitted by contractor invoice. Under the Boulder County methodology, the homeowner's DOB was calculated in the same manner as the process described above; however, the homeowner was allowed to retain the DOB funds required to be provided for project costs and to use those funds to purchase materials that were used by the contractor during the project and or pay towards the first contractor invoices

Based on this alternate method, the DOB will have different eligible costs depending on whether the DOB is being reviewed to provide "credit" to off-set eligible expenditures prior to coming into the rehabilitation program or whether the DOB is being used for "project costs" after the CDBG-DR Grant was awarded to the homeowner.

The primary difference between treating the DOB as a "credit" versus "project costs" is that funds provided by FEMA, insurance, and SBA do not have the same restrictions as CDBG-DR funds. CDBG-DR funds are only eligible for necessary and reasonable costs as defined by HUD. HUD defines necessary costs as those costs directly related to: disaster impacts to the primary housing unit and attached structures; health and safety issues, and ADA. HUD defines reasonable costs as those that are of a mid-grade housing material or components.

Based on these distinctions, DOB analysis for "credits" will be determined during the award calculation. It is allowable for the homeowner to have spent these funds however needed and these expenditures can be credited against their DOB. Once a CDBG-DR award has been made however, outstanding, unspent DOB funds to be paid by the homeowner directly for rehabilitation materials or services on the project must meet HUD's definition of necessary and reasonable.

#### Example

The example below is based on a scenario where the applicant requires assistance with repairs to the damaged home in the amount of \$100,000. Per program policy, there is a cap of \$100,000 for repairs. The applicant received the following flood recovery assistance: \$50,000 from insurance (\$30,000 for repairs/\$20,000 for personal property); \$11,500 from FEMA (\$10,000 for repairs/\$1,500 for temporary rental assistance); and \$2,000 from a local charity for gas and clothing. Total assistance received was \$63,500.

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Basic framework:

1. Determine Applicant's Total Need	\$100,000
2. Identify and verify all assistance received	\$ 63,500
3. Funds spent prior to application on other eligible uses	\$ 23,500
4. Assistance determined to have a duplicative purpose (item 2 less item 3) (i.e., repair = \$30,000 insurance and \$10,000 FEMA)	\$ 40,000
5. Duplicative assistance offset by receipts for eligible expenses	\$ 15,000
6. Adjusted duplicative assistance (item 4 less item 5)	\$ 25,000
7. Maximum eligible award (item 1 less item 6)	\$ 75,000
8. Program cap (maximum award allowed by policy)	\$100,000
9. Final award (lesser of items 7 and 8)	\$ 75,000

Per this example, the homeowner needs to contribute \$25,000 of funds that have been determined to be a DOB to the project. Further, using the Boulder County methodology where the homeowner pays the funds directly into the project, the DOB paid are "project costs" and must meet HUD's requirements for necessary and reasonable.

**Third-Party Verification of Assistance Received**

This section is applicable to beneficiaries of Housing Assistance Programs and the Buyouts & Acquisition Program.

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

The PG must do its due diligence by attempting to third-party verify **all** sources of funds received by the applicant. Refer to the BCC's Due Diligence Process for detailed steps for obtaining third-party verification and steps to take in the instance that verification is not able to be obtained.

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### **SBA Hardship Determination**

This section is applicable to beneficiaries of Housing Assistance Programs and the Buyouts & Acquisition Program.

If the homeowner applied for and was offered an SBA loan but declined all or part of the loan, the amount of the loan declined may be considered a duplication of benefits per HUD's November 16, 2011 Federal Register notice (76 FR 71060). There may be an exception if the Homeowner has a hardship that would make it difficult or impossible to repay the full SBA loan. The Homeowner must document the reason they declined the loan on the AE's Homeowner SBA Hardship Documentation form. The AE, on a case by case basis will make a determination whether the household qualifies for a Hardship determination.

### **Demonstrable Hardship**

This section is applicable to beneficiaries of Housing Assistance Programs and the Buyouts & Acquisition Program.

Demonstrable hardship is defined using its two component words:

- Demonstrable-proved or shown, by objective evidence (not subjective feelings).
- Hardship-an economic impact which is burdensome or very difficult to bear, causing economic distress well beyond mere inconvenience.
- A demonstrable hardship is a substantial change in an owner's financial situation that will prohibit or severely affect their ability to provide a minimal standard of living or the basic necessities of life including food, housing, clothing and transportation without causing economic distress well beyond mere inconvenience as shown by objective evidence. A demonstrable hardship must be occurring after the 2013 flood event. The term is not necessarily a definable term of fixed and inflexible content or meaning.
- The demonstrable hardship must be of a severe, involuntary and unexpected nature. It must not be one that is generally shared by other property owners affected by the 2013 flood event or within the disaster area. Examples of a demonstrable hardships may include job loss, failure of a business, divorce, severe medical illness, injury, death of a family member or spouse, unexpected and extraordinary medical bills, disability, substantial income reduction, unusual and excessive amount of debt due to a natural disaster, etc. None of the listed examples above, individually or taken together, automatically establish a demonstrable hardship nor is the listing above exhaustive as there may be other factors relevant to the issue of demonstrable hardship in a particular case.
- The existence of a demonstrable hardship will be evaluated on a case-by- case basis after review of all of the circumstances. Whether there is a demonstrable hardship heavily depends upon the facts and circumstances.

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- Persons claiming a Demonstrable Hardship shall be required to provide evidence of such claimed Demonstrable Hardship to the AE, for a decision. A written decision shall be made including the reasons for approval or denial of the hardship and returned to the person claiming the Demonstrable Hardship.

### **Appeals**

Determination of Duplication of Benefits can be appealed. Requests for DOB appeal will be processed and reviewed by PG staff or designated official(s). Applicants who believe a DOB decision is incorrect and/or not in compliance with Program policies may appeal a negative decision in writing within 30 days of the notice of the decision. Each appeal will be reviewed against program policies and requirements, and applicable local, state, and federal law. Upon completion of the review the appeal and, if applicable, hear the applicant's presentation of their appeal, the hearing officer will make a decision and respond to the applicant within 30 days of receiving the complaint.

### **DOB Certification Requirements for Participating Governments and Lead Agencies**

Per the State DOB requirements, each Participating Government (PG) or CDBG-DR Administering Entity (AE) must have a DOB Worksheet and Certification in each awardees file. The BCC has created DOB Worksheets with certifications for Housing Assistance Programs, the Buyout & Acquisition Program, and the Infrastructure Program. These worksheets are attached to this document. Each applicant file must contain a certified worksheet from the PG/AE that lists all sources of funding received by the applicant (or for a project if infrastructure), the purpose of the funds received, and whether or not the source was used as a DOB, provided as a credit, or was for other eligible purposes.

The purpose of this worksheet is to make it clear in one document exactly what and how funds were evaluated for DOB purposes and provide certification of their completeness.

### **One-Year Compliance Review**

One year after completion of the activity receiving CDBG-DR funds or upon project close-out (if project closeout happens prior to the one-year anniversary of the completion of the activity, the PG must have the beneficiary/recipient certify whether additional funds were received for disaster-related expenses, the amount, and when funds were received and the purpose of the funds. If additional funds received are determined to be duplicative of the CDBG-DR award, then repayment of the DOB is required. Please see Recapture Policy for specific procedures. Note that this section is not applicable to eligible tenants of buyout properties paid benefits under the Uniform Relocation Assistance and Real Property Acquisition Act.

### **State of Colorado CDBG-DR Duplication of Benefits Policies and Procedures**

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Please see attached State of Colorado specific requirements for DOB implementation. The BCC defers to all State DOB requirements and where the State requirements are in conflict with any requirements listed in this document, the States requirements will supersede the BCC requirements.

### Attachments

- State of Colorado CDBG-DR Duplication of Benefits Policies and Procedures (10/5/16)
- DOB Worksheet Template with Certifications (Buyouts and Infrastructure)
- Housing Program Forms:
  - BCC Duplication of Benefits Certification
  - BCC Duplication of Benefits Affidavit
  - Consent to Release Information Form
  - SBA Hardship Form

### Policy Update Table

<b>New Version</b>	<b>Previous Version</b>	<b>Policy Update</b>	<b>Page with Change(s)</b>
Version 2: BCC 11.1.16	Version 1: COL 10.28.14	Updated policy to incorporate additional DOB guidance from the State’s Department of Local Affairs (DOLA) and incorporated the “One Year Compliance Review” process.	
Version 3: BCC 12.22.17	Version 2: BCC 11.1.16	Clarified the section “Third-Party Verification of Assistance Received” is for the Housing Assistance Programs and Buyouts Program applicants.	Pg. 4
Version 3: BCC 12.22.17	Version 2: BCC 11.1.16	Added instructions to follow the BCC Due Diligence Process for 3 <sup>rd</sup> party verification.	Pg. 5
Version 4: BCC 10.31.18	Version 3: BCC 12.22.17	Added alternate method to allow for Boulder County’s process of permitting the homeowner to hold their DOB funds and buy materials directly to be used for CDBG-DR rehab program	Pgs. 4-6
Version 4: BCC 10.31.18	Version 3: BCC 12.22.17	Clarified DOB as a “credit” versus “project cost” for the Boulder County Housing Assistance	Pg. 5

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<b>New Version</b>	<b>Previous Version</b>	<b>Policy Update</b>	<b>Page with Change(s)</b>
		Programs.	
Version 4: BCC 10.31.18	Version 3: BCC 12.22.17	Added an example for calculating DOB using the alternate method.	Pg. 6

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