



Waiver of Duplication of Benefits under the Disaster Recovery Reform Act

Waiver of Duplication

Section 312(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. § 5155) requires all Federal agencies to prevent recipients of disaster assistance from receiving such assistance for losses “to which [the recipient] has received financial assistance under any other program or from insurance or any other source.” In short, Section 312(a) prohibits the use of Federal disaster assistance to pay a person or entity twice for the same disaster loss.

Section 1210 of the Disaster Recovery Reform Act (DRRA) amends Section 312 of the Stafford Act to add a new Section 312(b)(4) (42 U.S.C. § 5155(b)(4)) authorizing the President to waive the general prohibition on duplication of benefits contained in Section 312(a) in extraordinary circumstances where: 1) the Governor of a State makes a specific request for a waiver; and 2) the President determines waiver is in the public interest and will not result in waste, fraud, or abuse. In making this determination, the President may consider the following: 1) the recommendation of the FEMA Administrator, made in consultation with the Federal agency or agencies administering a duplicative program; 2) whether the assistance to be funded is cost effective; 3) equity and good conscience; and 4) other matters of public policy the President considers appropriate.

Section 1210 of the DRRA exempts from the President’s waiver authority assistance provided pursuant to repair and replacement assistance under the Public Assistance Program (Section 406, 42 U.S.C. § 5172) and assistance provided pursuant to the Individual Assistance Program (Section 408, 42 U.S.C. § 5174). Section 1210 also prohibits the President from considering a loan as a duplication, provided that all Federal assistance is used toward a loss suffered as a result of the major disaster or emergency. These amendments are limited to disaster and emergency assistance arising from a major disaster or emergency declared between January 1, 2016 and December 31, 2021.

Section 312(a), un-amended by the DRRA, continues to prohibit a person or entity from receiving Federal disaster assistance for a loss for which they have already received insurance money or money from another program. With respect to FEMA disaster assistance, the most common duplication avoided pursuant to Section 312(a)’s mandate is the insurance coverage of an individual applying for Individual Assistance or a State, Tribe, Territory or local government, or eligible non-profit applying for Public Assistance repair and replacement assistance – neither of which are eligible for waiver under the new DRRA authority.

Loans

Section 1210 of the DRRRA also states that a loan is not a prohibited duplication of benefit under Section 312 (b)(4)(C) of the Stafford Act, as amended, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency. As such, the Section 312 waiver process (including the 45-day response period) is inapplicable where a State wants to use federal grant funds for disaster losses previously provided for through a loan. Instead, whether particular federal grant funds are available for the purpose of paying down a loan provided for disaster losses is a determination reserved for the grant awarding agency, pursuant to its statutory program authorities and appropriations.

Questions concerning the duplication of benefit provisions of Section 312 of the Stafford Act should be directed to FEMA-DRRA-Implementation-Action-Office@fema.dhs.gov.