

North Dakota Waiver Request for P.L. 112-55 Grantees

Part A. *General Waivers & Alternative Requirements—Applicable to ALL Grantees.*

1. Waive overall benefit from 70 percent to allow 50 percent low/mod overall.

Justification:

The 2011 disaster affected 44 counties in North Dakota and caused in excess of 1.4 billion dollars in damage to community structures, businesses, housing occupied by persons and families of varying incomes, and infrastructure.

2. Waive the Consolidated Plan and consistency with it until plan priorities are updated.

Justification:

The effects of the 2011 disaster altered North Dakota's priorities for meeting housing, employment, and infrastructure needs. This requirement should be waived until North Dakota updates the Plan.

3. Waive Annual Action Plan and use of the Integrated Disbursement & Information System (IDIS). Replace with Action Plan for Disaster Recovery using Disaster Recovery Grant Reporting (DRGR) system.

Justification:

Developing an Action Plan for Disaster Recovery and using the DRGR system will allow rapid implementation of disaster recovery grant programs and ensure conformance with provisions of the Appropriations Act.

4. Waive the traditional certification requirements for the documentation of urgent need. Instead, allow each grantee to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee.

Justification:

This alternative documentation requirement will allow North Dakota to develop and implement programs to more quickly fund activities designed to address an urgent need. Examples of such activities include funding homeowner rehabilitation for families over 80 percent of the area median income, and providing assistance to businesses affected by the floods, and unable to document the creation and/or retention of low-income jobs.

- 5. Waive public hearings if they are not feasible and streamline citizen participation to allow “reasonable” notice (e.g. 7 day posting of proposed Action Plan on internet).**

Justification:

Modifying the regular program requirements will preserve reasonable citizen participation while expediting the recovery process and ensuring that disaster recovery funds are awarded in a timely manner.

- 6. Waive the Consolidated Plan Annual Performance Report (CAPER) in IDIS. Replace with quarterly reports in DRGR.**

Justification:

As North Dakota will be using the DRGR system to record obligations and to make draws from the line of credit, use of the system for quarterly reporting is most efficient. Furthermore, quarterly reporting is consistent with the administration of prior year CDBG disaster recovery grants.

- 7. Waive provisions necessary to allow: (1) homeownership assistance to persons whose incomes are up to 120 percent of median income (supports mixed income housing), (2) new construction of housing, and (3) downpayment assistance for up to 100 percent of the downpayment.**

Justification:

The broadening of Section 105(a)(24) of the 1974 Act, and a waiver of Section 105(a) is necessary following the 2011 disasters in which large numbers of affordable housing units were damaged or destroyed. As a result of the 2011 disaster, over 10,000 housing units in the forty four disaster counties in North Dakota were affected. These modifications will also allow North Dakota to implement mixed-income housing recovery programs.

- 8. Waiver to allow incentive payments to encourage households to relocate in a suitable housing development or an area promoted by the community’s comprehensive recovery plan.**

Justification:

As a result of the 2011 flooding, North Dakota faces significant hardship as a majority of the homes damaged were located in or near the 100 year floodplain. To encourage these homeowners to relocate to a lower-risk area, North Dakota may provide an incentive payment to affected households.

- 9. Limited waiver to allow emergency grant payments for up to twenty months.**

Justification:

In the 44 disaster designated counties in North Dakota, the time required for a household to complete the rebuilding process will likely extend beyond three months, during which mortgage payments

may be due but the home is inhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period.

10. Limited waiver to allow the rehabilitation or reconstruction of public buildings used for the general conduct of government.

Justification:

The 44 disaster counties in North Dakota have limited funds available, and many vital public buildings [e.g. City Hall] suffered significant damage from the 2011 disaster. Repairing these facilities and resuming normal operations as soon as possible will aid in the long-term recovery of the region.

11. Limited waiver of anti-pirating to allow a business to return to any labor market within the same State that the business was located in before the disaster.

Justification:

Overall, North Dakota has not lost jobs since the 2011 disaster. However, this waiver may be necessary for some communities to reestablish and rebuild its employment base.

12. Waive provisions of the URA (concerning one-for-one replacement of housing, acquisition and implementing regulations of an arm's length voluntary purchase, financial assistance to a displaced tenant, and a moving expense and "dislocation" allowance).

Justification:

Some of the 44 counties in North Dakota plan to engage in voluntary acquisition and relocation activities. The above waivers are necessary to effectively assist displaced persons in a timely and efficient manner. Specifically, waivers regarding:

- one for one replacement is necessary because the requirement, as it stands, discourages grantees from converting or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified time frame;
- an arm's length voluntary purchase is necessary to quickly carry out voluntary purchases and avoid windfall payments;
- financial assistance to a displaced tenant is necessary because a failure to suspend the one-size-fits-all requirements could impede the most effective use of disaster recovery funding; and
- moving expenses and dislocation allowances are necessary because failure to suspend and provide alternative requirements in this case would require grantees to offer allowances that do not reflect current local labor and transportation costs.

13. Waive provisions necessary to allow North Dakota to determine disposition of program income.

Justification:

Prior to 2002, program income earned on disaster recovery grants was considered program income in accordance with the rules of the regular State CDBG program. As a result, the funds lost their disaster recovery identity, and thereby lost use of the waivers and streamlined alternative requirements. Therefore, North Dakota requests the program income waiver so that if necessary, it may maintain the use of its other waivers and alternative requirements, and be consistent with prior CDBG disaster recovery grants awarded in 2008 and 2010.

14. Waive provisions necessary to allow North Dakota to determine the national objective for certain economic development activities by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job.

Justification:

North Dakota requests this proposed documentation because, if necessary, it would be simpler and quicker for participating lenders to administer, easier to verify, and would not misrepresent the amount of low and moderate-income benefit provided.

15. Waive the public benefit standards for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects).

Justification:

This waiver is necessary because the public benefit dollar thresholds were set more than a decade ago and, under the current conditions, will likely impede recovery by limiting the amount of assistance North Dakota can provide to a critical activity.

16. Waive pre-agreement costs, to the extent it applies. Replace with HUD permission for the grantee to reimburse eligible costs incurred back to the incident date.

Justification:

Despite limited budgets, the 44 counties in North Dakota have spent significant funds on critical disaster recovery needs since the 2011 disaster. These activities have played a crucial role in recovery.

17. Waive provisions necessary to allow North Dakota to implement voluntary flood buyouts to help communities affected by flooding to move in whole or in part out of a floodplain.

Justification:

Although buyouts can be more expensive in the short-term than rehabilitation or reconstruction, they provide the best solution for moving homes and businesses out of harm's way. Based on the most recent damage assessment, North Dakota anticipates the need to allocate a portion of the available funds to buyouts.

18. Waive 24 CFR 570.494 requiring timely distribution of funds.

Justification:

Due to the significant destruction caused by the 2011 disaster, total loss is estimated to exceed 1.4 billion dollars. This waiver is necessary so that North Dakota can design and implement its programs to best achieve a stable and long-term recovery. Failure to suspend this requirement could lead to an incomplete and ineffective recovery.

19. Waive standard certifications. Replace with a disaster recovery set.

Justification:

This waiver is necessary to ensure that North Dakota meets the requirements of the 2011 Appropriations Act, and the forthcoming Federal Register notice (containing or referencing the applicable program requirements).

Part B. *Waivers & Alternative Requirements—Applicable to State Grantees ONLY.*

20. Waive requirement to distribute all funds to local governments. Replace with permission for the State to carry out activities directly. Do conforming changes below:

- Allow use of subrecipients. Reference entitlement regulations.
- Waive recordkeeping requirement. Replace with a conforming change.
- Waive change of use of real property requirement. Replace with a conforming change.
- Waive State review and handling of noncompliance. Replace with a conforming change.

Justification:

The 2011 disaster affected a large portion of the state, and a state agency is best able to orchestrate a coordinated and streamlined disaster response. By carrying out activities directly, it can distribute assistance via one (or several programs) to applicants located in communities across the entire state. Furthermore, the State of North Dakota believes that in using statutory language similar to that used for prior CDBG supplemental appropriations, Congress signaled its intent that the state grantees under this appropriation also be able to carry out activities directly.

21. Waive consultation with non-entitlement local governments. Replace with consultation with all disaster-affected governments including entitlements.

Justification:

The effects of the 2011 disaster were not limited to non-entitlement areas, and therefore, the State of North Dakota must consult with all disaster-affected governments to determine need and allocate funds accordingly.

22. Waive prohibition on funding entitlement communities and Indian tribes. Replace with permission to do so.

Justification:

The effects of the 2011 disaster were not limited to non-entitlement areas, and therefore, the State of North Dakota must allocate funds according to need.

23. Replace the State CDBG planning related requirements of 570.483(b)(5) and (c)(3) with the entitlement CDBG presumption at 24 CFR 570.208(d)(4).

Justification:

In the annual entitlement program, stand-alone planning activities are presumed to meet a national objective because they are likely to include non-project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. The State of North Dakota believes that the use of this presumption is necessary to help the State develop an area-wide or comprehensive planning activity to guide overall redevelopment.

State and Agency: North Dakota Department of Commerce, Division of Community Services

Name and title of authorized requestor: Paul T. Govig, Director, Division of Community Services

Signature of authorized requestor: _____

Date: _____