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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5696-N-12]

**Additional Waivers and Alternative Requirements for Grantees
in Receipt of Community Development Block Grant Disaster Recovery Funds
Under the Disaster Relief Appropriations Act, 2013**

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice provides an additional waiver and alternative requirements for Minot, North Dakota, a Community Development Block Grant (CDBG) disaster recovery grantee in receipt of funds under Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112–55) and the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2). Minot, ND initially received disaster assistance under Pub. L. 112–55 and was provided with additional assistance through Pub. L. 113-2 (together, the supplemental Acts). The waiver in this Notice specific to Minot, ND applies to both its 112–55 funds and 113–2 funds as described herein. To date, the Department has allocated nearly \$15.5 billion under the supplemental Acts to assist recovery in the most impacted and distressed areas identified in major disaster declarations in calendar years 2011, 2012 and 2013.

DATES: Effective Date: **October 14, 2014.**

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the

"800" number, these telephone numbers are not toll-free.) E-mail inquiries may be sent to disaster_recovery@hud.gov.

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I. Background

Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011) makes available up to \$400 million, to remain available until expended, in CDBG funds 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 Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act) in 2011.

Additionally, the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013) made available \$16 billion (reduced to \$15.18 billion after sequestration)¹ in Community Development Block Grant (CDBG) funds 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

¹ On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG-DR grants under the Pub. L. 113-2 to \$15.18 billion.

Stafford Act, due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

To describe these allocations and the accompanying requirements, the Department published multiple **Federal Register** notices: March 5, 2013 (78 FR 14329), April 19, 2013 (78 FR 23578), May 29, 2013 (78 FR 32262), August 2, 2013 (78 FR 46999), November 18, 2013 (78 FR 69104), March 27, 2014 (78 FR 17173), June 3, 2014 (79 FR 31964), and July 11, 2014 (79 FR 40133). For Minot, North Dakota, allocations and requirements under Public Law 112-55 can be found in the Notice published April 16, 2012 (77 FR 22583). These are referred to collectively in this Notice as the “Prior Notices.” The requirements of the Prior Notices continue to apply, except as modified by this Notice.²

As the supplemental Acts require funds to be awarded directly to a State, or unit of general local government (hereinafter, local government), at the discretion of the Secretary, the term “grantee” refers to any jurisdiction that has received a direct award from HUD under the supplemental Acts.

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The supplemental Acts authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in

² Links to the Prior Notices, the text of the supplemental Acts, and additional guidance prepared by the Department for CDBG–DR grants, are available on HUD’s Web site under the Office of Community Planning and Development, Disaster Recovery Assistance: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi. The same information is also available on HUD’s OneCPD Web site: <https://www.onecpd.info/cdbg-dr/>.

connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of Title I of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

This Notice modifies requirements of the Prior Notices. The waivers and alternative requirements in this Notice apply to Minot, North Dakota, as identified herein. For the waiver and alternative requirements described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of Title I of the HCD Act. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the supplemental Acts, waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

1. General note. Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are those governing the funds appropriated under Public Law 112-55 and Public Law 113-2 and already published in the **Federal Register**.

2. Waiver of Section 414 of the Stafford Act and alternative requirements. (City of Minot, North Dakota, only).

Section 414 of the Stafford Act provides that that no person otherwise eligible for a replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), may be denied eligibility for that payment as a result of being unable because of a major disaster as determined by the President to meet the

occupancy requirements set by the URA. Accordingly, residential occupants displaced from their homes as a result of the 2011 floods in Minot, North Dakota, would be eligible for relocation assistance upon implementation of a rehabilitation program affecting homes that had been previously vacated.

The city of Minot has requested a waiver of section 414 of the Stafford Act, as amended, for its Small Rental Rehabilitation and Reconstruction Program (SRRRP). This Notice grants the city's request and provides alternative requirements consistent with the purpose of the supplemental Acts.

Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d), which is found among the regulations implementing the URA), is waived to the extent that it would apply to the CDBG disaster recovery-funded program SRRRP initiated by the city of Minot under approved Action Plans for Disaster Recovery for its grants under Public Law 113-2 and Public Law 112-55 provided that the program or affiliated projects were not planned, approved, or otherwise underway prior to the disaster.

The Department has surveyed other federal agencies' administration of Section 414 and found varying strategies for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. Under the supplemental Acts, HUD has the authority to waive Section 414 and impose alternative requirements. The Department has, in specific circumstances, previously granted a waiver and provided alternative requirements of Section 414 to CDBG-DR grantees, including the Gulf States impacted by disasters in 2005 and 2008 (see 72 FR 48804).

The severe flood of 2011 substantially damaged Minot's affordable rental housing stock resulting in increased housing burden among the city's renters. According to the city,

approximately one quarter of the city's rental units were damaged by the flood. Nearly half of Minot's rental households are now cost-burdened for housing, a portion that has increased in part because of disaster-related damage to available affordable housing. The city hopes to restore rental housing units by using CDBG-DR funds to rehabilitate those units that were damaged by the flood. The SRRRP will commence more than three years after the flood, and many of the residential occupants occupying the housing units at the time of the disaster have since obtained permanent housing elsewhere. The Department has determined that without a statutory waiver and the establishment of alternative requirements for the application of Section 414, the city's SRRRP is unlikely to achieve its goals of contributing to the restoration of the city's affordable housing stock because former residential occupants that left the properties long ago could be eligible to receive replacement housing payments under the URA because of Section 414, reducing amounts that would otherwise be directed toward SRRRP activities.

Due to the specific circumstances of Minot's recovery process, the Department is providing a statutory waiver and establishing alternative requirements in the application of Section 414 of the Stafford Act. For the program covered by this waiver (SRRRP), the city must adhere to the requirements specified in this Notice. In addition to the following requirements, the Department strongly encourages the city to offer low and moderate income former residential occupants preferred status in the residential application process once rehabilitation is complete.

1. For residential occupants that have vacated housing units damaged by the flood, prior to provision of funds for SRRRP activities, the city of Minot must:

a. Establish a publicly available re-housing plan for the program and ensure that it is provided in accessible formats, as necessary, to ensure effective communication with persons

with disabilities and those who are limited English proficient. This plan must include, at minimum, the following:

i. A regularly updated registry of the units and/or complexes to be rehabilitated with CDBG-DR funds and those persons eligible for residence so that displaced households and other interested residential occupants may apply to live in these units;

ii. Contact information and a description of any applicable application process, including any deadlines;

iii. A description of other services to be made available, including, at minimum, outreach efforts to eligible persons, housing counseling providing information about available housing resources, and placement services for former and prospective residential occupants;

iv. Operating procedures requiring the city to collect from property owners the contact information of former residential occupants to inform them of the availability of units rehabilitated under the program.

b. In order to contact residential occupants that were displaced from their homes due to the flood, the city must require owners to meet with the city to fill out the site occupant record which will provide information on the residential occupants that occupied the structure at the time of the flood. This information is to be in the agreement to provide assistance to property owners participating in the SRRRP. The city must ask the owner for the residential occupants' latest contact information, and the city must make a good faith effort to contact the residential occupants. The city should also make utilize newspaper and other public media advertisements to locate displaced households.

c. The city must, where necessary, refer former residential occupants to housing counseling programs.

2. In its request, the city has committed to ensure that all units restored with CDBG-DR funds meet the affordability requirements defined by HUD's HOME Program Rents for a period of five years, as described in the SRRRP's published program information.

Justification for Waiver

The Department's basis for this waiver and alternative requirements are unique to the city of Minot as documented in its request to the Department. The Department has considered the city's request and determined that good cause exists and that the waiver and alternative requirements are not inconsistent with the overall purposes of Title I of the HCD Act.

1. The 2011 flood caused unprecedented destruction in the city of Minot. Twenty to 30 percent of the rental housing stock was damaged, which was concentrated in an area of the city that had the highest percentage of affordable housing. The destruction has contributed to an increase in housing cost burden for nearly half of all rental households. Based on information from the city's 2012 Assessment, there are 837 fewer affordable homes in Minot today than there were in 2010, a shortage contributing to the widespread lack of affordable housing in the city.

2. The SRRRP will commence three years after the units in question were rendered uninhabitable. According to the city, 2,328 households were displaced as a result of the flood, 2,062 were provided with temporary housing, but only 20 households continue to reside in temporary housing units which are assisted through other programs with other forms of assistance.

3. In the absence of this waiver, any assistance provided to former residential occupants under the URA might duplicate insurance proceeds and federal, state, or local housing assistance that has already been disbursed.

4. The waiver will simplify the administration of a disaster recovery program (SRRRP) initiated years following the disaster and expedite recovery in a location where rehabilitation activities are restricted to a very short building season due to the region's climate. This waiver does not apply to persons in physical occupancy of real property who are displaced by the SRRRP or other HUD-funded disaster recovery programs or projects. Such persons will continue to be eligible for relocation assistance and payments under the URA. Additionally, persons displaced by the effects of the disaster may continue to apply for assistance under the city's approved disaster recovery programs. This waiver does not address programs or projects receiving other HUD funding or funding from other federal sources. The city or the State of North Dakota may already be performing some elements of a re-housing plan, such as providing a public rental registry or undertaking outreach and placement services to those former residents still receiving FEMA housing assistance. The city will provide a description in the re-housing plan of how those existing efforts will be available for the SRRRP to satisfy the requirements of this Notice.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice is as follows: 14.269; 14.218; 14.228.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD

Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: October 1, 2014.

Clifford Taffet,
General Deputy Assistant Secretary for
Community Planning and Development.

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