

**This amendment is a substantial amendment  
to the 2019 CDBG Action Plan**

**August 2022**

**NORTH DAKOTA  
COMMUNITY DEVELOPMENT  
BLOCK GRANT PROGRAM - CV  
DISTRIBUTION STATEMENT**

**Prepared By**

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**ALTERNATIVE FORMATS FOR DISABLED  
PERSONS ARE AVAILABLE UPON REQUEST**



## **Substantial Amendment to the 2019 Community Development Block Grant Action Plan for the Community Development Block Grant CARES Act Funds**

### **Introduction**

The Coronavirus Aid, Relief and Economic Security Act (CARES) provided \$6,380,334 for the Community Development Block Grant program administered by the US Department of Housing and Urban Development (HUD). Of this amount, 5% will be used for administration leaving a balance of \$6,061,318 for project activities. The State of ND received three different allocations for the CARES CDBG funds to help communities prevent, prepare, and respond to the Coronavirus.

1. Allocation Round One – \$2,345,392. HUD allocated the first \$2 billion using the same formula as with the FY 2020 CDBG funds.
2. Allocation Round Two – \$2,118,655. HUD allocated \$1 billion directly to states and insular areas based on public health needs, risk of transmission of coronavirus, number of coronavirus cases compared to the national average, economic and housing market disruptions, and other factors as determined by HUD using the best available data.
3. Allocation Round Three - \$1,916,287. HUD allocated \$2 billion based on the same formula used for the regular FY 2020 formula allocation.

Of the total amount, a minimum of \$2,345,392 will be expended in non-entitlement areas of the state. Up to \$4,034,942 can be expended in the entitlement areas of the state. Entitlement areas in North Dakota include the Cities of Bismarck, Fargo, and Grand Forks.

The Federal Register Notice [Docket No. FR-6218-N-01] Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Programs Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs. North Dakota will take advantage of the allowed waivers, which will allow the state to expedite the response to the coronavirus.

All CDBG-CV funds must be used to prevent, prepare for and respond to coronavirus. CDBG-CV grants cannot be used for any other purpose. North Dakota will assure that activities will be limited to the necessary and reasonable costs to prevent, prepare for, and respond to coronavirus.

An environmental review using the HUD standards at 24 CFR Part 58 must be completed prior to any project activities including the signing of all contracts or earnest money agreements for the subject property. Please consult with DCS staff about the Part 58 requirements before starting any eligible activities.

Funds dedicated to this activity will allow low- and moderate-income areas and communities to address gaps in their ability to prepare, prevent and respond to COVID-19 or another coronavirus with pandemic potential, by creating, expanding, or enhancing public facilities that

provide medical care, social services, and/or emergency housing and increasing the community's long-term resiliency and ability to mitigate future coronavirus outbreaks. Due to the COVID-19 pandemic, homeless emergency shelters, health clinics/facilities, medical facilities, domestic violence facilities, and senior centers have been required to reduce capacity and services to clients and establish non-congregate shelters to adhere to CDC guidelines and social distancing. Many rural and smaller urban areas lack capacity in these critical areas which limited a quick and effective response to the pandemic. Existing public facility structures can be modified to prevent the transmission of the coronavirus and allow for adequate social distancing or remote access. Further, few rural and small metro areas have had the opportunity to implement mobile response units or emergency medical services that would have a positive impact on their capability to reach certain households. CDBG-CV funds are eligible to be used for activities which help augment a community's ability to be more resilient in preparing for and responding to future pandemics.

### **North Dakota CDBG-CV Eligible Activities**

Of the total amount of CDBG-CV funding, the entire allocation will be used for public facilities projects, including HVAC upgrades and other facility-based projects that support social distancing or the ability to serve individuals impacted by COVID-19. According to the CDC, upgrades/modifications to HVAC systems can improve air quality and minimize the spread of airborne infectious diseases. To assist local governments for the response to the pandemic, DCS is accepting applications from units of general local governments for projects to upgrade/modify HVAC and ventilation systems and undertake other public facilities projects in CDBG-eligible public facilities in an effort to reduce the spread of the virus. All approved facilities must be a CDBG-eligible public facility and meet a national objective, as described below. Applications will be scored and ranked.

The following activities are eligible under this program:

- Public Facilities Improvements – Section 105(a)(2)
  - Public facilities projects to include:
    - Acquisition, construction, reconstruction or installation of public works, facilities, and site or other improvements.
    - Rehabilitation of buildings and improvements (including interim assistance). Examples of targeted projects include modifications to support social distancing, HVAC system upgrades, or projects that facilitate food programs for vulnerable populations (refrigeration system upgrades).
    - Eligible activities include acquisition, rehab, or new construction of publicly facilities:
      - Homeless shelters, facilities (presumed benefit)

- Domestic violence centers, facilities (presumed benefit)
- Health clinics (area benefit)
- Emergency medical stations (EMS) (area benefit)
- Senior centers/facilities (presumed benefit)
- Community centers

· Administration – Section 105(a)(12)

- Administration activities to implement a specific CDBG-assisted project

The following activities are permitted as a Public Facilities and Improvements Activity with a documented COVID-19 Tie-back.

*Acquisition Related Activities*

CDBG-CV funds may be used to pay the cost of identifying the property to be acquired for eligible public facilities and improvements, purchasing the property based on the Fair Market Value in compliance with the Uniform Assistance and Real Property Acquisition Act (URA), and other related costs such as appraisals, the preparation of legal documents, recordation fees, and other costs that are necessary to the acquisition process.

*Construction or Rehabilitation Activities*

CDBG-CV funds may be used for the construction or rehabilitation of a public facility to prevent or respond to the spread of coronavirus, or to prepare for future pandemics. Rehabilitation includes establishing appropriately ventilated spaces for the public facilities listed above. An additional CDBG-CV eligible activity is the acquisition and rehabilitation (if necessary) of buildings to expand the capacity for non-congregate shelter where such temporary housing is not sufficient during a coronavirus pandemic or epidemic. CDBG-CV funds available under this Notice may not be used for permanent supportive housing or transitional housing.

Any facilities funded with CDBG-CV funds will be required to have a Use of Real Property agreement consistent with applicable CDBG regulations (typically five years after the grant close out period).

The following are examples of eligible activities under Public Facilities and Improvements (not an exhaustive list) to improve a community's resiliency:

- Rehabilitation of a vacant building or duplex to be used as a non-congregate shelter to serve the chronically homeless;
- Acquisition of property and construction or rehabilitation of a building on the property to be used as a non-congregate homeless shelter;
- Acquisition of property and construction or rehabilitation of a building to increase capacity due to the impact of COVID;

- Clearance of a site on which a non-congregate homeless shelter will be constructed;
- Conversion of an abandoned public school to a facility providing both non-congregate shelter and services to the homeless;
- Rehabilitation or construction of a senior center to improve the structure of the building including improving ventilation, the addition of sanitation stations for the elderly, encouraging social distancing, and improvements which will allow contactless meal pickups if necessary;
- Rehabilitation or construction of a non-congregate domestic violence facility for improved ventilation and social distancing to ensure all clients are receiving the necessary social services provided with no limitations; or
- Rehabilitation or construction of a health clinic to provide services necessary for the health and well-being of the clients served including treatment areas and cold storage to store vaccines.

It is important to note that, with few exceptions, the expansion or enhancement of buildings for the general conduct of government is an ineligible activity. Existing public facility structures may be able to be modified to prevent the transmission of the coronavirus and allow for adequate social distancing or remote access if the facility otherwise meets an eligible activity as defined above.

### **Ineligible Facilities**

Buildings used for the general conduct of government are ineligible. Further information regarding this prohibition can be found at <https://files.hudexchange.info/resources/documents/CDBG-Memorandum-Definition-of-Building-for-General-Conduct-Government.pdf>.

Projects that do not meet the Eligible Activity goals or meet a National Objective will not be considered eligible.

### **National Objective**

All applications must meet the national objective being addressed by the proposed improvements for each community facility as required by CDBG regulations (24 CFR 570.483). The national objective for these public facilities is that the proposed projects must primarily benefit low and moderate income (L/M) persons. Public facilities that serve the public at large can meet the L/M income benefit national objective on an area basis (LMA). These public facilities must have:

- A service area that is primarily residential.
- At least 51% of households in the service area that are L/M-income.

Public facilities that serve a specific L/M-income population must meet L/M-income benefit on a limited clientele basis (LMC). These public facilities activities must either

- Benefit a specific group presumed to be L/M income within CDBG regulations.
- Be able to document that 51% or more of persons they serve are L/M-income.
- Have, due to the nature and location, clientele who are primarily L/M-income.

### **Coronavirus Tieback**

Modification of public facilities by providing new HVAC systems or upgrading existing HVAC systems can improve air quality and minimize the spread of airborne infectious diseases according to the CDC. Additionally, projects that support social distancing measures also minimize the spread of airborne infectious diseases. Projects may also increase capacity to serve additional community needs that originate from the COVID-19 pandemic or to prepare for additional needs should there be a future pandemic. Therefore, DCS is accepting applications from units of general local government for projects to upgrade/modify public facilities in an effort to reduce the spread of the virus. These activities are aligned with the goals of CDBG CARES funding to prepare for, prevent, and respond to coronavirus.

**Method of Distribution:** The state proposes to institute a Public Facilities Improvements Program, which will be available to all units of general local government in North Dakota. According to the CDC, upgrades and modifications to HVAC systems can improve air quality and minimize the spread of airborne infectious diseases. Additionally, upgrades that promote social distancing can reduce the risk of transmission, and it is recognized that many public facilities may need to increase capacity related to pandemic effects or to prepare for additional future needs stemming from a pandemic. DCS has allocated \$6,380,334 for upgrades to eligible projects in public facilities.

*Public Facilities Improvements:* DCS has proposed to set aside the entire CDBG-CV allocation for the state to make upgrades to public facilities that allow them to better prepare for, prevent, and respond to COVID-19. In an effort to assist local governments with funding for the response to the pandemic, DCS is accepting applications from units of general local government for projects to upgrade/modify public facilities in an effort to reduce the spread of the virus. The application process will be competitive. Applications will be scored and ranked by a committee to prioritize funding.

In order to be eligible for funding, proposed projects must meet the following minimum requirements:

1. Proposed construction of all improvements must be projected to be complete within 24 months of the award. Awarded projects that fail to meet benchmarks identified in the application may request an extension. An extension may be granted by DCS if the

applicant has a clear timeline for expenditure of the funds that meets HUD's expenditure deadline.

2. Community facility to be modified must meet at least one of the following to be eligible:
  - a. Located in a municipality that is at least 51% low/mod persons based on HUD Summary Data.
  - b. Serve persons that qualify as one of the following groups: abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS or migrant farm workers.
  - c. Require documentation on family size and income in order to ensure that at least 51% of the beneficiaries are of low to moderate income.
  - d. Be of such a nature and in such a location that it can be concluded that clients are primarily low to moderate income.
3. Involve improvements/modifications to take actions to prevent the spread of COVID-19 and prepare for additional pandemic conditions in the event that another outbreak occurs.

Applications to be scored and ranked by regular state scoring and ranking committee. The scoring rubric will include the following elements. Preference will be given to larger, more comprehensive projects.

- Community/Project Need
- Timing & Readiness to Proceed/Capacity of Applicant to Complete Project
- Total Cost & Cost Reasonableness
- Appropriateness of ongoing Use of the Facility or Potential Reuse of Facility
- % of LMI Population

Community Need:

- Project addresses an identified housing, economic, or community development need; addresses a priority need in the community; and/or addresses existing gaps in the availability of and accessibility to facilities and improvements to respond to future pandemics when compared to a larger area.
- How effectively the project will be in:
  - Reducing the risk of individuals contracting or further spreading the coronavirus or future pandemics (prevent);
  - Keeping people healthy by reducing their risk of exposure to the virus or avoiding or slowing the spread of future disease (prepare for); and
  - Mitigating the social, economic, and public health impacts of the current or future pandemics (respond to).

Total Cost and Cost Reasonableness:

- Total cost of the request

- Projects costs are reasonable
- CDBG-CV funds being used efficiently and effectively
- CDBG-CV funds are being used to leverage other public and private resources •

#### Duplication of Benefits:

- Whether the project can or has been funded from another source of funding
- Whether the activity will receive other sources of funding to provide the same objective
- The applicant's ability to document all funding sources separate

Timing of the Project: The development of public facilities can be complicated, often requiring multiple funding sources, competitive bidding, detailed architectural plans, extensive public review, and lengthy permitting processes. Such projects can take several years to complete. Given these challenges, the Department will consider:

- Whether the proposed project be completed in time to address the intended purpose
- How the grantee believes it will meet the requirement to expend 100% of the funded project within 24 months

#### Percentage of Minority Living in Project Area

- One point for each percent of minority population to benefit will be applied. The minority percentage will be determined from census data or from approved survey method results.

#### Ongoing Use of the Facility:

- How long the facility will be used for its intended purpose after completion
- If converted for another purpose once it is no longer used for its specific purpose, how the new use will remain in compliance with CDBG regulations
- Additional information on the potential reuse of public facilities financed with CDBG-CV funds is included below in the "Use of the Public Facility after the Pandemic"\* section.

#### Operational Capacity:

- The grantees and/or its subrecipient have the organizational capacity and funding needed to operate the facility once the project is completed
- Whether additional funds (often an eligible public service activity) will be required  
NOTE: No additional CDBG-CV funds will be made available for continued operations of project.

\*USE OF A PUBLIC FACILITY AFTER THE PANDEMIC Grantees should consider that the use of a public facility may change after the pandemic is over and the facility may no longer be needed



for its intended use. The Uniform Administrative Requirements (24 CFR §200.311 and 24 CFR §570.489(j)) state that real property acquired or improved with Federal funds must continue to be used "for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests."

Often referred to as the change of use standard, the standard applies when more than \$250,000 in CDBG-CV funds are used to acquire or improve real property. In the case of property acquired or improved by a non-entitlement community, the standard applies for a minimum period of five years after the completion of the activities under the contract, including but not limited to all final construction inspection being resolved with no deficiencies and all funding is disbursed. (24 CFR §570.489(j)). Grantees are required to provide adequate public notice and an opportunity for the public to comment on the proposed change of use and determine if the acquired or improved property continues to meet a national objective.

If, after consultation with the public, DCS determines that the change of use is appropriate and that the new use continues to meet a CDBG national objective, the standard would be met, and no further action required. If the change of use does not meet a CDBG national objective, the entity will need to reimburse the CDBG program if it decides to proceed as proposed. The amount required to be reimbursed to the CDBG program is based on the fair market value (based on an appraisal) of the property at the time of the change of use, not the initial expenditure of CDBG-CV funds. That reimbursement is considered to be program income and must be returned to DCS. Program income generated from CDBG-CV funds is treated as CDBG program income. A change in use from the initial use to a later non-coronavirus-related use would not necessarily impact the determination of whether or not the new use meets a CDBG national objective.

**Project Scope Considerations:** In addition to consideration of costs to upgrade/modify the HVAC systems in a public facility, applicants should consider the following (not all inclusive list):

Asbestos - Asbestos was used in almost every public and commercial building constructed before the 1980s in the United States in a variety of ways. Asbestos was used as a fireproofing material, it was used in roof shingles, insulation, siding, wallboard, floor tiles, joint compounds, acoustical plaster and adhesives. However, asbestos becomes a hazard when it is damaged, crumbles, or is in a state of disrepair. It then poses a health risk to building occupants, repairmen, and maintenance workers because asbestos fibers may be released into the air. The risk is even greater if the building is demolished, renovated, or remodeled. Professionals who design the HVAC upgrade/modify should take into consideration that the HVAC upgrades/modifications could include the need for asbestos abatement. Asbestos guidelines and regulations can be found at the North Dakota Department of Environmental Quality web site at: [North Dakota Department of Environmental Quality \(nd.gov\)](http://nd.gov)

Mold - Mold growth inside hard surface (e.g., sheet metal) ducts or on other components of your heating and cooling system may occur. Any HVAC upgrade/modifications for public facilities should include a mold inspection of the duct work and all other components of the HVAC system. A HVAC professional should recommend remediation efforts if necessary.

Remediation efforts could include cleaning, sanitizing or replacement of the duct work and all other components of the HVAC system. More information on mold and guidelines can be found at the North Dakota Department of Environmental Quality website at: [North Dakota Department of Environmental Quality \(nd.gov\)](https://www.nd.gov/deq)

**Additional Program Requirements to note (not all inclusive):**

1. All applicants must have an active Unique Entity ID registered in [www.SAM.gov](https://www.SAM.gov).
2. All applicants must certify that no other federal funds have been received by the applicant/sub recipient for the proposed project resulting in a prohibited Duplication of Benefit.
3. All applicants must complete and provide documentation of citizen participation requirements in accordance with federal regulations.
4. Applicants seeking fees for design professionals must have procured professionals in accordance with federal regulations.
5. All awarded projects must be completed within 24 months of award. Documentation of benchmarks will be required and must be met during implementation of project.
6. Applicants applying for HVAC improvements for public facilities not owned by the applicant will be required to execute a sub recipient agreement with the public entity that provides the services and/or owns the facility, if funded.

**Duplication of Benefits**

**North Dakota Duplication of Benefits (DOB) Policy for CDBG-CV**

The Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs require that grantees prevent the duplication of benefits that is caused when a person, household, business, or other entity receives financial assistance from multiple sources for the same purpose, and the total assistance is more than the total need.

Any person or entity receiving CDBG-CV assistance (including subrecipients and direct beneficiaries) to prevent, prepare for, and respond to coronavirus must agree to repay assistance that is determined to be duplicative.

A Duplication of Benefits occurs when:

- A beneficiary receives assistance, and
- The assistance is from multiple sources (ie. SBA, FEMA, Treasury, IRS, USDA, HHS, EDA, non-profits, City, State, etc.), and
- The assistance amount exceeds the need for a particular purpose.

When determining duplication of benefits, consider the following funding sources at a minimum.

- FEMA Disaster Relief Fund and Public Assistance, Treasury Coronavirus Relief Fund, USDA programs; local duplications with previously committed and available financial resources.

Any person or entity receiving CDBG-CV assistance (including subrecipients and direct beneficiaries) must agree to repay assistance that is determined to be duplicative.

To identify and assure that CDBG-CV assistance does not duplicate other funds received for the same activity (i.e. does not replace other funds received), the following process steps to prevent a DOB from occurring:

1. Identify the total need for assistance prior to any assistance being provided.
2. Identify all potentially duplicative assistance received or to be received.
3. Deduct assistance determined to be duplicative.
4. Determine maximum award.
5. Determine program cap (if applicable).
6. Determine final amount of assistance.

The following is an example of the use of the six-step process:

1. Applicant's total need prior to any assistance \$100,000
2. All potentially available duplicative assistance \$ 35,000
3. Assistance determined to be duplicative \$ 30,000
4. Maximum eligible award (item 1 less item 3) \$ 70,000
5. Program cap (if applicable) \$ 50,000
6. Final award (lesser of items 4 and 5) \$ 50,000

## **Project Amounts**

Minimum Grant Amount – \$50,000

Maximum Grant Amount – no maximum grant amount

Administration Amount – The maximum allowable administrative costs will be determined by the total grant amounts and will be on a cost reimbursement basis only. Grants up to \$200,000 will be allowed up to \$30,000 for administrative costs; grants from \$200,001 to \$600,000 will be allowed up to \$60,000 for administrative costs; and grants over \$600,000 will be allowed a maximum of \$100,000 for administrative costs. No pre-agreement costs will be allowed for administration.

### INCREASE IN ADMINISTRATIVE CAP AND MATCH WAIVER

The Federal Register Notice waives the administrative match requirement for state CDBG-CV grantees to expedite program delivery. The Notice also establishes the 20 percent cap for planning, management, and administrative costs. The maximum amount for state general administration is increased to 5% and technical assistance to 2%. The remaining amount (up to 13%) may be made available to UGLGs for planning and administration.

## **Applications Submittal Process**

Preapplications and final applications can be sent to the address below or emailed to [dcsc@nd.gov](mailto:dcsc@nd.gov).

ND Department of Commerce (DCS)  
1600 East Century Avenue, Suite 6  
PO Box 2057  
Bismarck, ND 58502-2057

Preapplication forms can be found at <https://www.commerce.nd.gov/community-services/community-development/community-development-block-grant-cdbg/cdbg-cares-act>.

DCS will not consider any incomplete applications or applications received after the deadline. Applicants must provide sufficient time to permit delivery on or before the deadline date. Applications must be typed. No hand-written or emailed Applications will be accepted. Deadline for applications is November 30, 2022.

## **Application Procedures and Content**

### *Application Scoring Criteria*

All Applications will be ranked according to a scoring matrix and associated scoring criteria and points for a total of 100 points. Each scoring criteria will be based on a range. An application will receive more points for more fully achieving the standard evaluated. In the event of a tie in scoring, the Scoring and Ranking Committee will recommend the project that will be funded with requested CDBG-CV funds. The scoring criteria below will be followed: