

**STATE OF TENNESSEE  
ACTION PLAN FOR CDBG SUPPLEMENTAL  
DISASTER RECOVERY FUNDS**

Pursuant to:

U.S. Department of Housing and Urban Development Docket No. FR-5256-N-01 [Federal Register: February 13, 2009 (Volume 74, Number 29)]

Authorized By: The Supplemental Appropriations Act, 2008 (Public Law 110-329, approved September 30, 2008)

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## INTRODUCTION

The State of Tennessee is required to publish an Action Plan for Disaster Recovery (hence forth referred to as Action Plan) that describes the proposed use of U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) funding associated with the Supplemental Appropriations Act, 2008 (Public Law 110-329, approved September 30, 2008) (The CSDAC Act). The Act provides for disaster relief of unmet needs resulting from severe weather in the state that occurred during 2008, for which the President declared a major disaster under Title IV of the Stafford Disaster Relief Act (42 U.S.C. 5121 et seq.). The HUD guidance for the funding was published February 13, 2009 in the Federal Register as Docket Number FR-5256-N-01.

This document will describe 1) the eligible affected areas and eligible applicants; 2) the methodology to be used to distribute funds to those areas and applicants; 3) activities for which funding may be used; 4) citizen participation procedures; and 5) grant administration standards.

This Action Plan will be used by the state to guide the distribution of the initial allocation of \$20,363,056 of CDBG Disaster Recovery Funding toward meeting unmet housing, infrastructure, and economic revitalization needs in counties designated as Presidential Disaster Areas during 2008, as further directed by Public Law 110-329 and HUD's Notice of Funding Availability provided in Federal Register Volume 74, Number 29, Docket No. FR-5256-N-01 published on February 13, 2009 (The Notice).

## **(A) GENERAL PROVISIONS**

(1) The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009 (CSDAC Act) includes a nationwide appropriation for Community Development Block Grants (CDBG) to be granted to eligible local governments for long-term recovery activities consistent with Title I of the Housing and Community Development Act of 1974, as amended (The HCD Act). A total of \$92,517,890 will be available for Tennessee's entitlement and non-entitlement communities within federally designated eligible areas. Please note that this document and other details on the State's Action Plan for the CDBG disaster monies will be posted at [www.tnecd.gov/BD\\_CDBG\\_block\\_grant\\_program.html](http://www.tnecd.gov/BD_CDBG_block_grant_program.html).

## **(B) CONSULTATION WITH LOCAL GOVERNMENTS**

(1) The Department has solicited feedback from local governments through a public hearing conducted on June 3, 2009. The public hearing was publicized in advance through individual letter invitations to City and County Mayors, City Executives, County Emergency Management agencies, consulting engineers, and Regional Planning and Development Districts. Receipt of written comments and suggestions was requested by close of business on June 29, 2009. All comments and suggestions were considered prior to publishing this proposed Action Plan.

## **(C) FEDERALLY DESIGNATED AREAS ELIGIBLE FOR ASSISTANCE**

(1) The 2008 federally designated areas eligible for assistance include the counties (and cities within eligible counties) designated pursuant to FEMA designation #1745 (2/7/08) for severe storms, tornadoes, straight-line winds and flooding. Designated counties include Benton, Fayette, Fentress, Hardin, Haywood, Hickman, Houston, Lewis, Macon, Madison, McNairy, Perry, Shelby, Sumner, Trousdale and Williamson Counties. Details on this disaster declaration may be viewed at [www.fema.gov/news/event.fema](http://www.fema.gov/news/event.fema).

## **(D) SHORT AND LONG TERM RECOVERY NEEDS**

(1) *Short Term Actions* --The State of Tennessee short term disaster recovery needs were addressed through a mechanism coordinated through the Tennessee Emergency Management Agency (TEMA). TEMA assisted the local jurisdictions that were responsible for first response to the emergency by coordinating with FEMA to supplement the efforts of the local teams through the establishment of Joint Field Offices. For Individual and Public Assistance, TEMA and other state agencies coordinated teams that included staffs from various state and federal agencies that assist citizens, businesses, local governments and other entities impacted by the disasters to provide immediate assistance with their short term needs.

For the February 5-6, 2008 disaster, the amounts of short term assistance totaled \$9,300,000.

- \$3,147,185 was approved through FEMA’s Individuals and Households Program for housing assistance, including rental assistance and repairs to homes for eligible application. Of that, \$2,129,181 was for housing assistance and \$928,004 was to help applicants recover other essential disaster-related needs.
- \$6,249,500 in loans to homeowners, renters and businesses was approved by the U.S. Small Business Administration (SBA).
- 3,038 residents visited Disaster Recovery Centers operated jointly by FEMA and the State of Tennessee
- 2,289 home inspections were completed
- Of the 18 counties declared for individual assistance, 4,313 Tennesseans have registered.

Details are available at [www.fema.gov/news/newsrelease.fema?id=43037](http://www.fema.gov/news/newsrelease.fema?id=43037)

(2) *Long Term Recovery Needs* --In addition to the areas’ short term needs which were generally addressed as outlined above, the affected jurisdictions also have long term recovery needs in the areas of unmet housing, infrastructure and economic revitalization needs which can be partially solved and leveraged through an emphasis on the CDBG activities outlined in the February 13, 2009 Notice. Based on the Notice and information received through eligible local governments planning documents and TEMA, the Department’s Action Plan contains an emphasis on eligible CDBG activities that “support the repair, rehabilitation, and reconstruction of affordable rental housing stock” sufficient to meet the prorated threshold requirement of at least \$10,176,967. As outlined below in Section I, applicants are encouraged to include eligible activities in their applications that addresses the federal requirement to support affordable rental housing. In addition, other eligible activities may be undertaken that assist in the alleviation of unmet infrastructure and economic revitalization needs. The details are included in the proposed rating and selection criteria.

**(E) TENNESSEE PLANNING REQUIREMENTS FOR LOCALITIES THAT ASSIST RECOVERY**

(1) The State promotes sound short- and long-term planning of future growth at both the state and local levels through the Tennessee Emergency Management Plan (TEMP) of 1993, updated in 1999, 2001 and 2006. Each local government’s Comprehensive Plan contains a Natural Resources element that identifies ‘flood plains’ and other natural systems that each local government must take into consideration in planning its future. Additionally, as a county or city Comprehensive Plan is being updated, other neighboring local governments, and potentially affected parties (e. g. local development authorities, Regional Development Centers, etc.) are afforded an opportunity to review the draft Plan and provide comments, suggestions etc. to the local government authoring the Plan. (Note - Failure of a Tennessee county/city to prepare or maintain their Comprehensive Plan results in a loss of that local government’s eligibility for State grant and loan funding. Therefore, all 95 counties and 336 cities in the State have a

Comprehensive Plan. The Planning Act and the various elements contained within individual and regional plans encourage responsible land use decisions that reflect responsible flood plain management, removal of regulatory barriers to reconstruction, and coordination of individual planning requirements (transportation, water, sewer, housing, etc.) of other state and federal programs and entities.

(2) The State requires construction methods that emphasize high quality, durability, energy efficiency, sustainability, and mold resistance through the enactment and enforcement of building codes that deal with all aspects of building construction. These include modifications to building codes in potential high wind corridors where structures are more at risks from hurricanes and other coastal storms. The State adopted and operates under the 2002 North Carolina Building Code Series. Under the provisions of this Code Series, the Department of Economic and Community Development (ECD) is charged with the responsibility of adopting and maintaining the following codes (Administration and Enforcement Requirements Codes, Energy Code, Conservation Code, Residential Code, International Building, North Carolina Building Code, Plumbing Code, Mechanical Code, Fuel Gas Code, and Fire Code) that have statewide application. All of these codes are 'in effect' throughout the state even if a local government elects not to establish a local code enforcement program. Each of these eight codes is updated by ECD in conjunction with updates published by the State of North Carolina to ensure they are maintained in accordance with the highest applicable national standards.

(3) The State will encourage the provision of adequate storm and flood resistant housing for all income groups that lived in the disaster-affected areas through the planning and building code details contained in Sections E(1) and E(2) above. In addition, where unique or severe redevelopment needs occur and where state resources allow, the Department provides communities specialized technical assistance and workshops that assist in the application of not only the broad planning but also with the "tactical" planning needed for small areas or neighborhood redevelopment. The State has recently been particularly aggressive in passing legislation that encourages incentives for both public and private sector redevelopment projects. These initiatives when leveraged with CDBG, HOME and other federal initiatives can have dramatic results in improving the housing and quality of life for all income groups.

#### **(F) SPECIAL PROVISIONS OF THE CSDAC APPROPRIATIONS ACT OF 2009**

(1) **Priority Activities** - Note that CSDAC Act directs that grantees use CDBG Disaster funds to be used for specific CDBG activities related to disaster relief, long-term recovery, and the restoration of infrastructure, housing and economic revitalization for eligible disasters declared by the President during 2008. In addition to the activities discussed above, the CSDAC also includes an overall priority of improving affordable rental housing stock. In regards to rental housing stock, the CSDAC Act and the Notice require that at least a minimum prorated threshold of \$10,176,967 be spent for CDBG activities "to support" the repair and renovation of affordable rental housing. This Action Plan will allow the CDBG activities outlined below which are eligible CDBG activities consistent with the CSDAC's requirements to address long-term recovery needs and the restoration of infrastructure, housing and economic revitalization for eligible disasters jurisdictions.

(2) **Administrative Costs** - State program administration requirements are modified for this program to be consistent with the CSDAC which allows up to 5 percent of the grant to be used for administrative costs, whether by the state, by entities designated by the state, by units of local government, or by sub-recipients. Pursuant to the Notice, the provisions at 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap overall state administration expenditures and require a dollar-for-dollar match of state funds for administrative costs.

(a) The State reserves 2.0% of the allocation for its administrative costs and will pass through the balance of any remaining allowable administrative allocations for recipients' use. Recipients may use up to 3% of any grant for local administrative costs consistent with ECD's approval.

(3) **Certain Authorized Waivers for Disaster Undertakings** – The following waivers were included in HUD's Notice and are highlighted here for consideration of applicants as they consider potential projects:

(a) Public Comment – Consistent with HUD's public comment waivers as outlined in the Notice, this proposed Action Plan for Disaster Recovery was published via the usual methods and on the ECD web page for no less than 7 calendar days of public comment. Following the public comment period, copies of public comments and ECD's response will be located in Appendix (1);

(b) Modification of Low-Moderate Income Requirements for Housing Activities – ECD notes that the CSDAC of 2009 waived 42 U.S.C. 5305(a) requirements to the extent necessary to allow: (i) homeownership assistance for households with up to 120 percent of area median income; (ii) down-payment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)); and (iii) to allow new housing construction.

#### **(4) Specific Prohibitions for Duplication of Benefits and Failure to Maintain Flood Insurance**

(a) Specifically Ineligible Disaster Costs – The CSDAC of 2009 specifically prohibits the “duplication of benefits” with CDBG Disaster funds. In general, 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended) 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 as to which he has received financial assistance under any other program or from insurance or any other source. Therefore, please note that the Department stipulates that funds may not be used for activities reimbursable by or for which funds have been made available by the Army Corps of Engineers, Federal Emergency Management Agency (FEMA) or the Small Business Administration (SBA).

(b) Persons Failing to Maintain Certain Flood Insurance -- Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received federal flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable federal law

and the person has subsequently failed to obtain and maintain flood insurance as required under applicable federal law on such property. (Section 582 is self implementing without regulations.)

### **(G) REQUIREMENT TO MEET CDBG NATIONAL OBJECTIVES**

(1) All individual projects and combinations of activities should meet one of the CDBG National Objectives which include i) benefit to Low and Moderate-Income (LMI) persons; ii) alleviation of slums or blight; and iii) alleviation of Urgent Needs.

(2) For activities authorized pursuant to the LMI national objective, ECD will take advantage of the Notice's waiver to allow an overall aggregate activities funded benefit level of 51% benefit low- and moderate-income persons.

(3) For activities authorized pursuant to the Urgent Need national objective, ECD will take advantage of the Notice's waiver to allow the State to expend 50 percent (rather than 30%).

### **(H) ELIGIBLE APPLICANTS**

(1) Eligible applicants are units of general-purpose local government located in the 2008 federally designated disaster counties listed in Section C of this Action Plan, including those cities and counties in designated counties eligible to also participate in the urban counties or metropolitan cities "CDBG Entitlement Program" of HUD.

### **(I) ELIGIBLE ACTIVITIES**

Elevating flood-prone homes or businesses: The structure is raised to have a higher first floor that allows floodwater to flow under the structure rather than through it.

Acquisition of (and either demolishing or relocating) flood-prone homes from willing owners and returning the property to open space. The local government becomes the new owner of the property. When federal funds are used to purchase the home or building use of the land is restricted to open space, recreation or wetlands in perpetuity

Acquisition and remediation of damaged properties where no owner can be found or property was vacant prior to disaster

Structural and non-structural retrofitting buildings to minimize damage from high winds flooding, earthquakes and other hazards

Repair of water and gas pumping stations, lines and meters

Back-up system, including generators for raw water intake and purification

Projects for ongoing monitoring of debris in streams creating blockages and further flooding potential

Floodwall systems to protect critical facilities



Minor flood control projects that do not duplicate the flood prevention activities of other federal agencies

Localized flood control projects such as certain ring levees and floodwall systems that are designed specifically to protect critical facilities

Post disaster building code related activities that support building code officials during the reconstruction process

Protective measures for utilities

Storm water management projects

Development and initial implementation of vegetation management programs

Construction of safe rooms for public and private structures

Construction of storm shelters above or below ground

Construction of emergency buildings such as fire stations

Purchase of emergency equipment such as boats and 4-wheel drive vehicles

Emergency vehicles

Emergency communication systems not dependent on towers

Emergency alert sirens

Erosion control projects

Repair of roadways including bridges and culverts

Extension of infrastuctue lines

Battery operated weather alert radios for schools, public buildings, etc.

Public education programs regarding disaster preparation

(1) The CSDAC Act directs that grantees use CDBG Disaster funds to be used for specific CDBG activities related to disaster relief, long-term recovery, and the restoration of infrastructure, housing and economic revitalization for eligible disasters declared by the President during 2008.

(2) Note that to insure compliance with the statutory requirement to address affordable rental housing needs, the State must insure that at least \$10,176,967 is spent for eligible rental housing needs. Therefore, applicants MUST insure that at least 11.5% of its proposed grant is devoted to activities to support affordable rental housing activities. According to the HUD Notice, these activities include the repair, rehabilitation, and reconstruction of affordable rental housing stock (included public and other HUD-assisted housing) in the impacted areas. Applicants are

encouraged to consider devoting the majority of their request for affordable rental housing activities using the activities described below.

(3) Eligible activities include all CDBG eligible activities plus the “new construction” activity authorized pursuant to the HUD “housing waivers” contained on page 7293, item 19 in the Notice. Eligible activities that the Department recommends be considered include, but are not limited to, the following activities:

(a) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements including the reconstruction or rehabilitation of public or privately owned residential properties consistent with the HUD waivers encouraging a focus on affordable rental housing [as authorized pursuant to 42 USC 5305(a)(4) and the Notice] ;

(b) the provision of assistance to private, for-profit entities (*including small businesses and micro-enterprises*), when the assistance is appropriate to carry out an economic development project aimed at long-term recovery (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods) that: (i) creates or retains jobs for low- and moderate-income persons; (ii) prevents or eliminates slums and blight; (iii) meets urgent needs; (iv) creates or retains businesses owned by community residents; and (v) assists businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents as authorized pursuant to 42 USC 5305(a)(17) and 42 USC 5305(a)(22)(A).

(c) the acquisition, construction, reconstruction, or installation of public works, facilities (except for buildings for the general conduct of government), and site or other improvements as authorized pursuant to 42 USC 5305(a)(2);

(d) the provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income as authorized pursuant to 42 USC 5305(a)(24)(D) and taking full advantage of the HUD “housing eligibility” waivers on page 7248 of the February Notice; and

(e) the provision of assistance including loans and grants for activities which are carried out by public or private nonprofit entities, including: (i) acquisition of real property; (ii) acquisition, construction, reconstruction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government); (iii) site improvements and utilities; and (iv) commercial or industrial buildings or structures; and (v) other commercial or industrial real property improvements as authorized pursuant to 42 USC 5305(a)(14).

## **(J) METHOD OF DISTRIBUTION AND DEADLINE**

(1) Tennessee CDBG Disaster funds will be awarded in one single round of competition with applications due in ECD’s central office by 4:30 P.M. on November 30, 2009. Applications were

also received on January 6, 2010. Applications will be reviewed using the competitive criteria outlined in Section L below. Awards will be announced by the Governor or his designee.

(2) Only one CDBG Disaster application and subsequent award will be allowed per unit of local government.

### **(K) GRANT AMOUNTS**

(1) Grant amounts are limited to \$750,000 per award for a single local government. The maximum grant limit for Joint Submissions that include a City or Cities and a County or two or more Counties is \$1,500,000.

(2) Local recipient administrative costs paid with CDBG Disaster funds shall be limited to three percent (3%) of the grant award amount.

### **(L) DISASTER RECOVERY CDBG APPLICATION PROCEDURES**

(1) Only grant applications from eligible applicants submitted by the deadline will be reviewed.

(2) Applications may be submitted individually by one unit of general purpose local government, or jointly, by two (2) or more units of general purpose local government. Joint submissions must contain a copy of the Cooperating Agreement entered into by the cooperating units of government. The agreement should designate the unit of local government that will serve as the lead applicant.

(3) Applications for the CDBG Disaster funds must be submitted in conformance with the format and applicable instructions specified by ECD. To the extent possible, forms and documentation from the regular annual CDBG competition will be utilized in the CDBG Disaster competition with adjustments made in accordance with the special provisions of CDBG Disaster funding. ECD reserves the right to deny CDBG Disaster applications based on slow performance, unresolved findings, outstanding sanctions, or other reasons that could affect an applicant's ability to successfully complete the implementation of a CDBG Disaster project.

#### **(4) Local Citizens Participation**

a) The Housing and Community Development Act emphasizes efforts to involve citizens, especially low- and moderate-income citizens, in all aspects of the CDBG Program.

(b) Applicants for and recipients of CDBG Disaster Recovery funds must certify that they will follow this plan that requires that local units of government will provide for and encourage participation in the planning, implementation and assessment of their CDBG Disaster Recovery program.

(c) Applicants for CDBG Disaster Recovery dollars will follow all required citizen participation requirements as outlined in the 2009 CDBG Applicants' Manual.

## (M) RATING AND REVIEW CRITERIA

(1) Applications will be rated separately to assign points for feasibility, impact and strategy. Demographic scores will be calculated separately for cities and counties. Applications will be rated and scored against each of the following factors, using any additional and/or supplemental information, data, analyses, documentation, commitments, assurances, etc. as may be required or requested by ECD for purposes of evaluating, rating, and selecting applicants under this program.

(2) The maximum score is 200 points as follows:

<b>Criteria</b>	<b>Maximum Points</b>
Latest county unemployment rate	25
1999 Per Capita Income	25
Project Need	50
Project Feasibility	50
Project Impact	50
Maximum Total Points	200

(3) Scores for each set of criteria will be calculated as follows:

(4) **Latest County Unemployment Rate**

(5) **1999 Per Capita Income**

(6) **Project Need** – The degree to which there is a need for the project. The application can substantiate the nature and magnitude of the problem.

(7) **Project Feasibility:** Applicants will be compared in terms of project feasibility. The following factors are considered: an analysis of such items as a) verification and reasonableness of cost; b) documentation that all project financing sources needed for the project will be available; c) where applicable, documentation that preliminary engineering, architectural and or site plans have been prepared and support the proposed project; d) verification that any required property is available for the project; e) where applicable, review of any proposed sub-recipient's credentials to provide evidence of administrative capacity to undertake an approved activity; and f) compliance with applicable state and federal laws, and g) reasonable project timetables.

(8) **Project Impact:** Applicants will be compared in terms of project impact. The following factors will be considered: a) the cost per persons benefiting; and b) the cost per LMI persons benefiting.

(9) **Final Ranking and Grant Selection:** The points received by each applicant on the rating factors will be totaled and the total scores ranked accordingly. Grant awards will be based on this final ranking to the extent funds are available. In case of ties, the applicant with the highest percentage of funds benefiting low- and moderate-income persons will be given priority.

## **(N) ANTI-DISPLACEMENT AND RELOCATION**

(1) Recipients implementing projects and activities enabled through this Action Plan are expected to ensure the assistance and protections afforded to any persons or entities under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970 (URA), as amended and section 104(d) of the Housing and Community Development Act of 1974 (HCD), as amended. Tennessee plans to avail itself and allow any recipients the benefits of the waivers set forth in Federal Register Vol. 74 No. 29 pertaining to URA and HCD given the needed priorities to engage in voluntary acquisition and optional relocation activities to avert repeated storm or flood damage and to improve floodplain management.

## **(O) HIGH QUALITY, DURABILITY AND ENERGY EFFICIENCY**

(1) All housing activities involving the construction or rehabilitation of multi-family and single-family dwellings must meet the building codes and standards discussed in Section E (1) through (4) as well as any local ordinances that exceed State codes and standards. In regards to energy efficiency, Tennessee enforces the North Carolina Energy Conservation Code (2006 edition) with amendments which may be viewed at [www.ncbuildingcodes.com](http://www.ncbuildingcodes.com)

## **(P) MONITORING STANDARDS AND PROCEDURES**

(a) Disaster CDBG projects will receive on-site monitoring to document local accountability and prevent inappropriate activities. Monitoring areas will include the standard CDBG programmatic areas including eligibility of activities, financial management, citizens' participation, environmental, procurement, and review of contract provisions, acquisition, rehabilitation, clearance, and disposition of any properties. The areas will be expanded to include a "duplication of benefits" analysis which will be completed for each grant. At the minimum each activity will be monitored at least once on site. Program representatives will also check and verify reported outcomes during on-site monitoring visits. Should any findings occur, recipients will be required to correct the problem or else the ineligible expenditures will be disallowed and funds recaptured by the Department.

(b) The Department will require status reports for the status of the activities undertaken and the funds drawn. The state will then report to HUD using the online Disaster Recovery Grant Reporting system. Additional reporting requirements (i.e., annual audits, contractual obligations and other required reports) will be specified in the Department's grant agreement.

## **(Q) AVOIDING OR MITIGATING OCCURRENCES OF FRAUD, ABUSE, AND MISMANAGEMENT**

(1) The Department takes an aggressive stand on questions of Fraud, Abuse and Mismanagement. As outlined above, the Department will conduct on-site monitoring to insure that projected milestones are being accomplished and performance goals are being achieved in accordance with the approved application.

(a) All activities must be conducted in compliance with applicable CDBG laws and regulations as well as other applicable federal and state requirements including the OMB circulars A87, A-122 (where applicable), A-133 and the Uniform Administrative Requirements at 24 CFR Part 85.

(b) ECD shall provide technical assistance through a Grantee Workshop and shall make site visits as frequently as necessary to provide needed technical assistance.

(c) In addition to technical assistance, the Department will, at appropriate times during program activities, review Grantees’ records on-site to ensure that all applicable state and federal requirements in over a dozen compliance areas (as applicable) are compliant. This will include review of drawdown and financial management procedures as well as all applicable federal cross-cutting compliance issues.

(d) While the Department's emphasis will be on preventing and correcting minor problems before they develop into major problems, the Department reserves the right to issue sanctions for non-compliance, fraud abuse and mismanagement in a range of penalties including disallowance of all ineligible costs. Additional penalties and sanctions may include referrals for criminal prosecution to appropriate federal or state authorities.

**(R) SUBSTANTIAL AMENDMENTS TO THIS ACTION PLAN**

(1) Any one of the actions listed below shall constitute a “substantial amendment” to this Action Plan. The addition or deletion of any activity described in Section H of this Action Plan (including program income); A change in the location or beneficiaries as described in Section G of this Action Plan; or, following a request by ECD, the implementation of any HUD authorized “waiver” of any major programmatic rules or regulations; and any other action that HUD or the Commissioner of ECD deems to be a significant amendment that needs public input prior to enacting.

**(S) USES OF SUPPLEMENTAL DISASTER RECOVERY FUNDS**

(1) The Department will be unable to supply the exact activities that local governments will undertake with these supplemental disaster funds until after this plan is approved, applications

	Total Allocation	\$92,517,890
	Eligible Recovery Activities	\$80,490,566
	Required Housing Set-aside Local	\$10,176,967
	Administration	\$ 1,850,357

solicited, and projects funded. The Department believes most will conform to the eligible activities listed in Section I. In addition, the Department makes the following estimates of the breakdown of funding:

## **(T) PUBLIC COMMENTS**

(1) In regards to the proposed Disaster Action Plan released for public comment in October, the public is encouraged to submit their comments via U.S.P.O. mail to the address below. The Department supports citizens in the disaster areas to participate in the development of the State of Tennessee Supplemental Disaster Recovery Action Plan.

(a) Following the opportunity for citizens and local governments to comment on the draft Action Plan, the Action Plan will be updated and amended and then submitted to the US Department of Housing and Urban Development (HUD) on or about October 12, 2009. The Action Plan will set forth the method of distribution of funds for the HUD-funded program. Members of the public, especially persons of low and moderate income, are invited to review the draft Action Plan prior to its submission during normal business hours of 8:00 a.m. to 4:30 p.m., Monday-Friday, at the Tennessee Department of Economic and Community Development, 312 Rosa Parks Avenue, 10<sup>th</sup> Floor, Nashville, Tennessee 37243. The draft Plan will also be available on the ECD website at [www.tnecd.gov/BD\\_CDBG\\_block\\_grant\\_program.html](http://www.tnecd.gov/BD_CDBG_block_grant_program.html).

(b) Written comments are invited at the following address: Tennessee Department of Economic and Community Development, 312 Rosa Parks Avenue, 10<sup>th</sup> Floor, Nashville, Tennessee 37243.

## **(U) PUBLIC COMMENTS RECEIVED**

(1) In accordance with the provisions spelled out in Section R above, the Department published the proposed Action Plan and solicited and considered all comments received. The Department received one (1) public comment which was submitted by the Tennessee Emergency Management Agency (TEMA). That communication requested that the Department consider certain planning activities related to disaster preparedness as eligible activities for purposes of the CDBG Disaster funds. The Department responded verbally to TEMA that we would allow Applicants to propose such activities to the extent the planning did not exceed the CDBG planning activity limitations and were legal pursuant to standard CDBG regulatory requirements at 24 CFR Part 570.

## **(V) STATE CERTIFICATIONS**

a. The State certifies that it will affirmatively further fair housing, which means that it has or will conduct an analysis to identify impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See 24 CFR 570.487(b)(2).)

b. The State certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

c. The State certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

d. The State certifies that the Action Plan for Disaster Recovery is authorized under state law and that the state, and any entity or entities designated by the state, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

e. . The State certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for this grant.

f. The State certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

g. The State certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local government that is receiving assistance from the state is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

h. The State certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the state in determining the method of distribution of funding.

i. The Sate certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) as a result of natural disasters that occurred and were declared in 2008.

(2) With respect to activities expected to be assisted with CDBG disaster recovery funds, the Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate income families.

(3) The aggregate use of CDBG disaster recovery funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent of the amount is expended for activities that benefit such persons during the designated period.

(4) The State will not attempt to recover any capital costs of public improvements assisted with CDBG disaster recovery grant funds, by assessing any amount against properties owned and occupied by persons of low and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (A) disaster recovery



grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (A).

j. The State certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

k. The State certifies that it has and that it will require units of general local government that receive grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

l. The State certifies that each state grant recipient or administering entity has the capacity to carry out disaster recovery activities in a timely manner, or the state has a plan to increase the capacity of any state grant recipient or administering entity who lacks such capacity.

m. The State certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA’s most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55.

n. The State certifies that it will comply with applicable laws.

Signature: \_\_\_\_\_

Authorized Official: \_\_\_\_\_

Date: \_\_\_\_\_