

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

Pursuant to:

U.S. Department of Housing and Urban Development Docket No. FR-5452-N-01 [Federal Register: November 10, 2010 (Volume 75, Number 217)]

Authorized By: The Supplemental Appropriations Act, 2010 (Public Law 111-212, approved July 29, 2010)

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## INTRODUCTION

The State of Tennessee is required to publish an Action Plan for Disaster Recovery (henceforth 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, 2010 (Public Law 110-329, approved September 30, 2010) (The CSDAC Act). The Act provides for disaster relief for unmet needs, long term recovery and restoration of infrastructure, housing and economic revitalization resulting from severe weather in the state that occurred from March through May 2010, for which the President declared a major disaster under Title IV of the Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). The HUD guidance for the funding was published November 10, 2010 in the Federal Register as Docket Number FR-5452-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 \$30,906,517 of CDBG Disaster Recovery Funding toward meeting unmet housing, infrastructure, and economic revitalization needs in counties designated as Presidential Disaster Areas during 2010, as further directed by Public Law 111-212 and HUD's Notice of Funding Availability provided in Federal Register Volume 75, Number 217, Docket No. FR-5452-N-01 published on November 10, 2010 (The Notice).

## **(A) THE EFFECTS OF THE DISASTER AND TENNESSEE'S RECOVERY NEEDS**

(1) *Effects of the Disaster* -- Between April 30 and May 2, more than 22-inches of rain fell in the western portion of Tennessee. Fed by massive rainfall and run-off from creeks and streams, the large rivers in the affected regions attained record crests. Many other record flood levels were set. Through the weekend and into Monday morning, the Cumberland River at Nashville rose more than 33 feet, cresting at 51.86 feet on Monday evening, May 3. This crest was approximately 4 feet higher than the previous flood control era peak (47.64 feet, March 1975), and 10 feet higher than the original forecast issued Sunday morning. More than half of the state had reports of flood damage and approximately a dozen tornadoes in the storm touched down across the state. Twenty-four citizens were killed statewide, primarily by rushing water from flash flooding.<sup>1</sup>

As a result of the May flooding, as many as 10,000 individuals were displaced and more than 1,500 homes were destroyed in Tennessee. Around the state, 102 bridges, 239 roads, and 19 water treatment plans were impacted or damaged.

TEMA's operation center coordinated distribution of 2.5 million gallons of potable water to impacted communities and coordinated 3,000 state response personnel from 25 state departments and agencies and 1,000 mutual aid responders from unaffected jurisdictions. In the state, more than 20,000 local jurisdiction personnel responded to the disaster, as well as volunteers.

Since then, more than 65,000 individuals have registered for FEMA assistance. To date, more than \$269 million in FEMA assistance has been provided to individuals in Tennessee. As a result of the storms and flooding, 49 counties (including entitlement counties) received Presidential Disaster Declarations for some kind of federal assistance.<sup>2</sup>

President Obama declared Davidson County a Federal Disaster Area on May 4, 2010 (FEMA Declaration Number: FEMA-1909-DR). Massive damage occurred to private property and public buildings as well as infrastructure. Damage and economic losses are expected to be in the billions.

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<sup>1</sup>The United States Department of Commerce Service Assessment, National Oceanic and Atmospheric Administration, NWS, Silver Spring, MD: Executive Summary, January 2011, "Record Floods of Greater Nashville: Including Flooding in Middle Tennessee and Western Kentucky May 1-4, 2010"

<sup>2</sup> Testimony of James H. Bassham, Director of TEMA, *before the Senate Appropriations Subcommittee on Energy and Water Development, Thursday, July 22, 2010*  
<http://www.tnema.org/news/tema/?p=644#more-644>

(2) *Plan for Disaster Recovery* -- In an comprehensive manner, the State of Tennessee seeks to provide the funding to assist in various capacities:

- a) Ensure immediate needs for housing are addressed for those who must be relocated, either temporarily or permanently
- b) Ensure the availability of adequate, affordable housing and provide opportunities for individuals or families to rent or purchase those homes
- c) Invest in the housing stock through rebuild efforts
- d) Provide assistance to restore infrastructure and public facilities
- e) Economic development/revitalization

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

The Department has solicited feedback from local governments through a public hearing conducted on October 5, 2010. The public hearing was publicized in advance through individual letter invitations to City and County Mayors, consulting engineers and administrators, as well as Regional Planning Offices and Development Districts. All comments and suggestions were considered prior to publishing this proposed Action Plan.

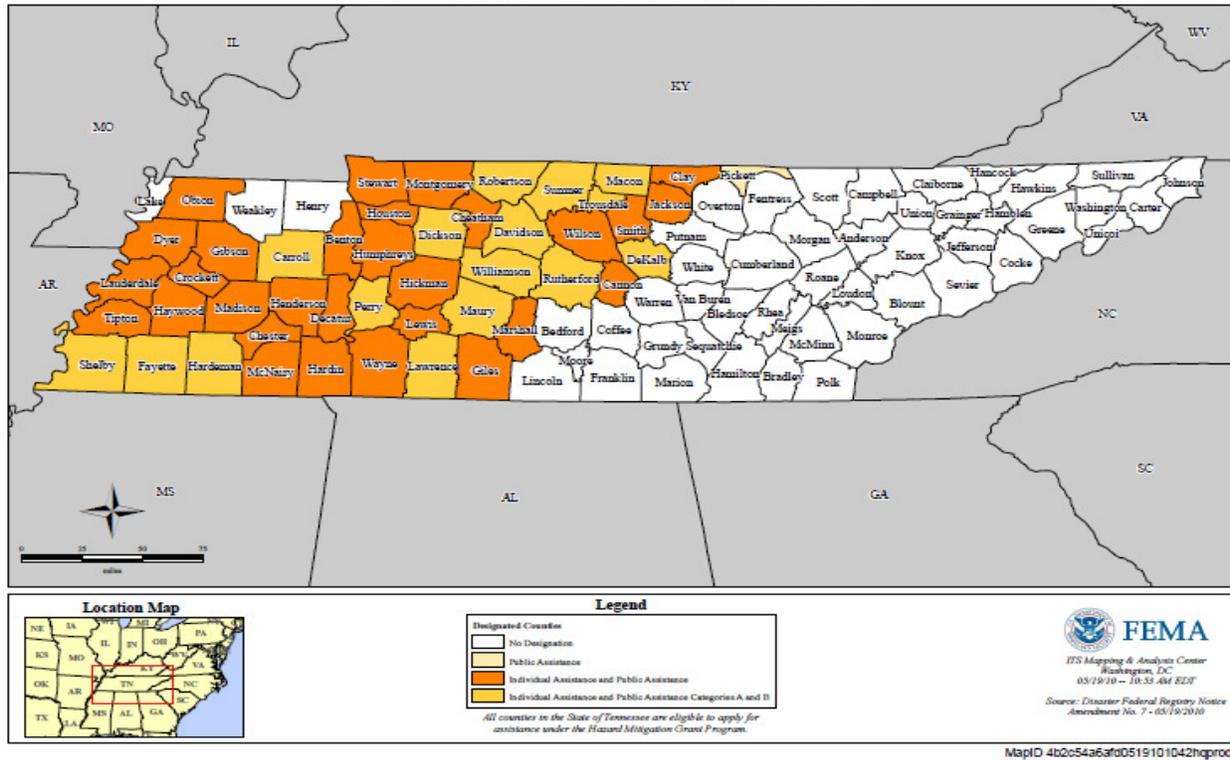
## **(C) FEDERALLY DESIGNATED AREAS ELIGIBLE FOR ASSISTANCE**

The 2010 federally designated areas eligible for assistance include the counties (and cities within eligible counties) designated pursuant to FEMA designation #1909 (05/04/11) for severe storms, tornadoes, straight-line winds and flooding. Designated counties include Benton, Carroll, Cheatham, Chester, Clay, Crockett, Decatur, DeKalb, Dickson, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Hickman, Houston, Humphreys, Jackson, Lauderdale, Lawrence, Lewis, Macon, Madison, Maury, McNairy, Montgomery, Obion, Perry, Robertson, Rutherford, Smith, Stewart, Sumner, Tipton, Trousdale, Wayne, Williamson and Wilson Counties.<sup>3</sup>

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<sup>3</sup> [http://www.fema.gov/news/disasters\\_state.fema?id=47](http://www.fema.gov/news/disasters_state.fema?id=47)

**FEMA-1909-DR, Tennessee  
Disaster Declaration as of 05/19/2010**



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

(1) *Short Term Needs* -- 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 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 staff 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 May 2010 disaster, the amounts of short term assistance totaled \$212.4 million, plus \$885,000 in unemployment benefits.

- \$164 million was approved for Tennessee families in direct assistance through FEMA’s Individual Assistance Program.
- \$121.1 million in low-interest loans for individuals and businesses was approved by the U.S. Small Business Administration (SBA).
- \$46 million was obligated by FEMA for Tennessee infrastructure repairs (eligible roads, bridges, utilities and other infrastructure damaged)

- In the 40 counties declared for individual assistance, 67,954 Tennesseans had registered.<sup>4</sup>
- 20,919 residents visited Disaster Recovery Centers operated jointly by FEMA and the State of Tennessee

Emergency shelters, transitional housing needs for homeless individuals and families, and activities to prevent low-income families from becoming homeless due to this disaster were addressed during the short-term recovery period immediately after the disaster. Those needs will also be considered during the long-term recovery period. The State will work with the Tennessee Housing Development Agency and their Continuum of Care organizations to provide necessary services through programs such as the Emergency Shelter Grant program and the Homelessness Prevention and Rapid Re-Housing Program. The needs assessment by the third-party administrator will assist ECD in determining what needs for these populations remain.

(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 housing, infrastructure and economic revitalization which can be partially addressed and leveraged through an emphasis on the CDBG activities outlined in the November 10, 2010 Notice. 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. A third-party administrative entity will assist the Department in assessing the long-term recovery needs of the affected communities. This assessment will include public meetings, surveys of local government officials or other methods and will occur as soon as possible after the administrative entity is under contract with the Department.

#### **(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

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<sup>4</sup> <http://www.fema.gov/news/newsrelease.fema?id=53225>

and regional plans encourage responsible land use decisions that reflect 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 risk from hurricanes and other coastal storms. The State adopted and operates under the 2009 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**

(1) **Priority Activities** - Note that CSDAC Act directs that grantees use CDBG Disaster funds 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 in 2010. 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 and 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 5% 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 a portion of the 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 “duplication of benefits” with CDBG Disaster funds is prohibited. 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 will 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**

Eligible applicants are units of general-purpose local government located in the 2010 federally designated disaster counties listed in Section C of this Action Plan, including those counties and cities in designated counties eligible to also participate in the urban counties or metropolitan cities "CDBG Entitlement Program" of HUD.

## **(I) ELIGIBLE ACTIVITIES**

(1) The CSDAC Act directs that grantees use CDBG Disaster funds 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 2010. Due to the nature of the floods that occurred, more than 75% of the funds are expected to go to public infrastructure projects. Approximately 15% will go to economic development projects and 10% to housing projects.

(2) 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) EXAMPLES OF INELIGIBLE ACTIVITIES**

Construction of safe rooms for public and private structures

Construction of storm shelters above or below ground

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

Purchase of emergency vehicles

Purchase of communication systems not dependent on towers

Purchase of alert sirens

Purchase of battery operated weather alert radios for schools, public buildings, etc.

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

(1) Tennessee CDBG Disaster funds will be awarded in several rounds of competition. Applications will be reviewed using the competitive criteria outlined in Section M below. Awards will be announced by the Governor or his designee. The application and selection process will be assisted by a third-party administrative entity with experience working with CDBG Disaster Grants who will ensure that CDBG requirements are met and that the State’s plan of action is carried out. The State does not plan to administer any of the programs, but the

State will monitor the projects and the third-party administrator.

(2) At this time the State does not have specific plans for how the grant resources will be allocated among all of the funding categories. The third-party administrative entity will assist the State with a more thorough needs assessment and then with allocating funds to each particular activity. It is expected that the funds to local governments will impact housing, public infrastructure and economic development needs with the majority of the funds being used for public infrastructure projects. The long-term needs revealed by the needs assessment will direct the State to a plan of how funds will be spent according to the eligible uses. The application process for the funds will give priority to those communities that show the most need for the funding according to a point system.

#### **(L) GRANT AMOUNTS**

(1) Grant amounts will vary for a single local government. Any request over \$1,000,000 must have prior approval from ECD.

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

(1) Only grant applications from eligible applicants submitted by the deadline(s) 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.

**(N) RATING AND REVIEW CRITERIA**

(1) Applications will be rated separately to assign points for feasibility, impact and need. 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, how it relates to the flooding disaster, and the economic and overall community impact of the disaster, specifically on the problem addressed by the proposed project. Areas most affected by the disaster will receive additional consideration in this category of scoring.

(7) **Project Feasibility** -- Applicants will be compared in terms of project feasibility. The following factors are considered via an analysis of these items:

(a) verification and reasonableness of cost – Engineering and technical information supporting the feasibility of the project, the need for the project and the cost of the project is required.

(b) documentation that all project financing sources needed for the project will be available – Applicants must show the community investment into the project and that the funds are available at the time of application.

(c) where applicable, documentation that preliminary engineering, architectural and or site plans have been prepared and support the proposed project - These plans show the extent of the damage caused by the disaster, the need for the project and how the project will affect the community and prevent similar effects in the case of another disaster.

(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

(f) compliance with applicable state and federal laws

(g) reasonable project timetables.

(8) **Project Impact** -- Applicants will be compared in terms of project impact. These factors are calculated by the Department so that they are able to be compared across the various proposals and applicants. The following factors will be considered:

(a) the cost per persons benefiting

(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.

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

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. 75 No. 217 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.

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

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 (3) 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 (2009 edition) with amendments which may be viewed at [www.ncbuildingcodes.com](http://www.ncbuildingcodes.com)

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

(1) 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.

(2) 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.

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

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.

(e) A CDBG- Disaster Grant monitoring plan will be developed to outline the process for an investigation and will be based on the Tennessee Subrecipient Monitoring Manual and the ECD Subrecipient Monitoring Plan. The Monitoring Plan will also include plans to address any findings of an investigation. If a violation of CDBG laws and regulations or state laws and regulations is suspected or reported, an investigation by the CDBG Monitoring staff, the Department Internal Auditing staff and/or the State Comptroller’s Office will occur. Any communication regarding fraud, waste and abuse is reported to the State Comptroller’s Office. The Comptroller’s Office Investigation Unit will be involved in a serious investigation, the State Attorney General’s Office can be involved, and the Tennessee Bureau of Investigation would be involved if a felony is suspected.

(f) The State, the Department and federal programs are audited by the State Comptroller’s Office. The Department’s Performance Audit is completed every three to four years, the Single Audit of federal programs is completed annually, and Risk-Based Audits are completed based on risk and the Department’s annual risk assessment.

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

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.

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

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 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:

Total Allocation	\$30,906,517
Eligible Recovery Activities	\$29,361,192
Administration	\$ 1,545,325

The Department will use a third party administrative entity to provide consulting and administrative assistance. This service will be competitively bid through a Competitive Negotiation Process. The company that is awarded the contract will assist with the application and selection process for the communities, provide technical assistance and assist with the

reporting requirements of the award.

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

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). 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 [http://www.tn.gov/e cd/BD\\_CDBG\\_block\\_grant\\_program.html](http://www.tn.gov/e cd/BD_CDBG_block_grant_program.html)

(b) Comments are invited at the following address: [ECDDisaster.Flood@tn.gov](mailto:ECDDisaster.Flood@tn.gov)

#### **(V) PUBLIC COMMENTS RECEIVED**

In accordance with the provisions spelled out in Section R above, the Department published the proposed Action Plan from June 7, 2011 through June 14, 2011 on the Tennessee Department of Economic and Community Development CDBG website 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.

#### **(W) STATE CERTIFICATIONS**

(1) 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).)

(2) 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.

(3) The State certifies its compliance with restrictions on lobbying required by 24 CFR part 87,

together with disclosure forms, if required by part 87.

(4) 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.

(5) 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.

(6) 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.

(7) 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).

(8) 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.

(9) The State certifies that it is complying with each of the following criteria:

(a) 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.

(b) 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.

(c) 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.

(d) 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).

(10) 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.

(11) 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:

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

(b) 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.

(12) 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 that lacks such capacity.

(13) 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.

(14) The State certifies that it will comply with applicable laws.

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

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

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

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

**Appendix 1**

The Proposed Action Plan was placed on the Tennessee Department of Economic and Community Development's website ([http://www.tn.gov/ecd/pdfs/FloodPlan\\_PublicComment.pdf](http://www.tn.gov/ecd/pdfs/FloodPlan_PublicComment.pdf)) from June 7 – June 14, 2011 for public comment.

Comments Received:

No public comments were received.