



Mississippi Development Authority

Katrina Supplemental CDBG Funds

For

**Low-Income Housing Tax Credit
Assistance Fund**

Amendment 8 Partial Action Plan

October 6, 2008

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Partial Action Plan
For
Low-Income Housing Tax Credit Assistance Fund**

OVERVIEW

This Action Plan pertains to the additional use of the \$5.058 billion allocation in CDBG funding from HUD as part of the \$5.48 billion federal appropriation through the Emergency Supplemental Appropriation Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234). These monies have been designated by Congress for “necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to Hurricanes Katrina, Rita, or Wilma.”

This amendment provides \$30 million from the Small Rental Assistance Program to support the restoration of affordable housing. The need for affordable housing has resulted in this program as part of the solution to the economic downturn of the current real estate and tax credit market. The reduction in tax credit benefits has resulted in a shortfall of tax credit financing that is used for much needed low to moderate housing along the Mississippi Gulf Coast. By providing these funds to offset the tax credit funding gap, developers will be offered the opportunity to continue the rebuilding of housing needs for the residents of the Gulf Coast.

MDA expects the total cost of this program, including administrative cost, not to exceed \$30 million. This action plan is designed to be consistent with the primary objective of providing funds for projects with activities that meet one of the following national objectives of the Housing and Community Development Act of 1974, as amended:

- Benefits to Low/Moderate Income Persons
Give maximum feasible priority to activities that will benefit low and moderate-income persons
- Slums or Blight
Aid in the prevention or elimination of slums or blight
- Urgent Needs
Meet other community development needs having a particular urgency
Because existing conditions pose a serious and immediate threat to the health or welfare of the community and where other financial resources are not available to meet such needs.

PURPOSE

MDA intends to implement the Program to provide up to \$30 million in CDBG funding to certain owners of affordable housing projects (the "Borrowers"). The Funds are intended to provide an additional source of gap financing for projects (the "Projects") receiving affordable housing tax credits (the "Credits") from Mississippi Home Corporation ("MHC"), as a result of market-wide repricing of Credits since allocation by MHC. As described below, the Funds will

only be made available to eligible Borrowers in the form of loans (the "Loans") from MDA. Grants will not be available under the Program.

PROGRAM ELIGIBILITY

The Program intends to provide Funds only to the extent of Project gaps resulting from recent nation-wide downward repricing of Credits. In addition, the following requirements must be met:

- (i) The Project must be located in Pearl River, Hancock, Harrison or Jackson Counties (the "Covered Area") and must have received an award of Credits from MHC during or after 2006 under MHC's then applicable Qualified Allocation Plan (the "QAP");
- (ii) The Borrower must secure a revised commitment letter from a Project equity syndicator/investor (the "Syndicator or Investor") (which does not need to be the same Syndicator or Investor included in the Borrower's application for Credits), demonstrating an adverse change in pricing since MHC's allocation of Credits to the Project;
- (iii) The Project must continue to satisfy all income and rent restrictions, as well as minimum unit set-asides, to meet Credit requirements under the QAP and Section 42 of the Internal Revenue Code of 1986, as amended (the "Code");
- (iv) The Borrower, together with the Project's development team, must demonstrate to the satisfaction of the MDA or its contractor the experience and ability to successfully develop, own, operate and manage an affordable housing development in accordance with the QAP and Section 42 of the Code, including meeting applicable time limits for completion and placing the Project in-service; and
- (v) After accounting for Loan proceeds, the Project must remain "financially feasible" as required by Section 42 of the Code and the QAP. Borrowers will not be allowed to restructure Projects and will be held to the cost information and the amount of any construction and permanent loans submitted in the original application for Credits. However, any subsequent additional credits awarded by MHC may be considered in the calculation for the funding gap created by capital markets.
- (vi) The Borrower must not have closed permanent or construction financing for a Project that is to receive financing under this program including the tax credit limited partnership.

TERMS AND CONDITIONS

Loan Amount: Generally, the amount of the Loan may not be less than \$250,000 and may not exceed the lesser of:

- (i) assuming all of the equity is contributed by the Syndicator/Investor, an amount that would allow the Borrower to pay 60% of the developer fee (the "Developer Fee") for the Project prior to receipt of Form 8609's;
- (ii) the sum of \$.075 of every Credit dollar originally allocated to the Project;
- (iii) an amount equal to the difference in the price of the Credits underwritten by MHC in the original Credit application less the price of the Credits in the Syndicator's/Investor's revised commitment letter; or
- (iv) \$2,500,000.

The State has the authority to increase the maximum loan amount on a case by case basis and may waive the maximum amount. The State reserves the right to negotiate the loan amount on each project.

Disbursement: No Borrower will be eligible to receive Funds until its admission of the Syndicator/Investor as, as applicable, a member or limited partner of Borrower. Thereafter, Loan proceeds will be disbursed, upon written request of the Borrower to MDA, and to the extent that the Syndicator/Investor makes equity contributions. A request for disbursement shall include the amount of proceeds requested and a certification from the Borrower and the Syndicator/Investor that the Borrower has sought an equity contribution in an amount equal to the Loan funds being requested and that the Syndicator/Investor will fund the equity that the Borrower has sought. Upon receipt of a valid request and certificate executed by the Borrower and the Syndicator/Investor, the MDA, within five (5) business days from receipt of such request, advise MDA to disburse the requested Loan proceeds to the Borrower, following Borrower's receipt of the equity investment from the Syndicator/Investor.

Interest: The Loan shall bear interest at a rate of up to 1.75%.

Repayment: Principal and interest on the Loan shall be paid solely from and to the extent of:

- (i) a percentage of available cash flow from the Project and
- (ii) proceeds of any refinancing of the Project. There shall be no penalty for prepayment of the Loan.

Security: The Loan shall be nonrecourse (with exceptions for fraud, malfeasance and material misrepresentation) secured debt. The Loan shall be subordinate to all other Project financing (including any Developer Fee Note). As reasonably requested by any other commercial lender, MDA will execute a subordination agreement with respect to the Loan.

The Loan shall not be assumable.

LOAN ADMINISTRATION

The Program shall be administered by the MDA and sub grantee MHC. MHC was established by the State Legislature in 1989 as the legal successor in interest to the Mississippi Housing Finance Corporation as a government instrumentality, separate and apart from the State, charged with raising funds from private investors to finance the acquisition, construction and rehabilitation of residential housing for persons of low to moderate income within the State. In such capacity, MHC shall be responsible for the following:

- (i) Establishing a streamlined approval process that includes appropriate due diligence procedures;
- (ii) Creating and facilitating the closing process;
- (iii) Causing disbursement of the Loan proceeds as previously outlined;
- (iv) Providing weekly progress reports to MDA, disclosing the following:
 - (a) a list of applications submitted,
 - (b) status as approved or declined;
 - (c) a list of all Loans closed and funds disbursed;
 - (d) a list of applications delayed for approval or closing describing the reasons for the delay;
 - (e) a list of Borrowers and amount of Funds awarded thereto; and
 - (f) any other information required by MDA; and
 - (g) servicing the Loan as outlined below.

The MDA will make every effort to cause the Loan closing to occur within thirty (30) days from the date of approval. The MDA will follow all federal laws relating to Community Development Block Grant funds in administering the Program.

Schedule of Approval and Funding

Applications for Funds are expected to be available subsequent to public comment and HUD approval of the plan.

Application Review

All applications will be reviewed, scored, and approved by the MDA and MHC using a scoring system established by the MDA (see "Scoring" below). Borrowers must meet the minimum score established by MDA, to be approved for Funds. Applications will either be approved or declined within thirty (30) days of receipt based on the scoring system outlined below. The MDA may delay decisions up to fifteen (15) days beyond the thirty (30) – day period if it determines that such additional time is required to adequately review an application. The MDA will have the right to request additional information to evaluate any application.

Application Scoring and Selection

The MDA will adopt a scoring system for awarding Funds that is fair and consistent with the purpose of the Program. The scoring should reflect the items outlined below:

- (i) Timely closing of the Loan: *(0 to 50 points)*
 - Closing within 30 days: 50 points
 - Closing within 31-60 days: 40 points
 - Closing within 61-90 days: 30 points
 - Closing over 90 days: 0 points

- (ii) Readiness/timing to proceed with construction: *(0 to 40 points)*
 - Within 30 days of closing the Loan: 40 points
 - Within 60 days of closing the Loan: 30 points
 - Within 90 days of closing the Loan: 10 points
 - Over 90 days: 0 points

- (iii) Demonstration of a reduction in tax credit proceeds: *(up to 30 points)*
 - 15 points - Original commitment letter from the Syndicator/Investor and a term sheet for a new commitment with a clear explanation of the change in pricing.

 - 30 points - Original commitment letter from the Syndicator/Investor and a new commitment letter with a clear explanation of the change in pricing.

- (iv) Gap Loan as a percentage of the original amount of the low income housing tax credit equity paid to the transaction as evidenced by the original equity commitment from the tax credit syndicator. (not to exceed \$2,500,000, 10-40 points):
 - 0 to 10% 40 points
 - > 10% up to 15% 35 points
 - > 15% up to 20% 25 points
 - Over 20% 10 points

- (v) Evidence that the Project has sufficient sources to proceed: (0 to 40 points)
 - 40 Points - No gap in Project sources after the Funds are committed
 - 20 Points - A gap of less than 5% of total development costs for the Project, together with evidence acceptable to the MDA or its contractor that the gap will be filled by closing on the gap loan and evidence of their availability for the project within 30 days of closing the gap loan
 - 0 Points - A gap of 5% or more

Maximum Points: 200
Minimum Points for Approval: 140

At the sole discretion of the MDA, Funds may be awarded to Projects that have less than 140 points (to the extent of Funds available), but only after all other awards have been made.

Servicing

MHC will process and service the Loans for a fee that does not exceed 75 basis points of the outstanding principal balance of the Loan. Any such fee will be included in the loan rate. MHC shall monitor and enforce all provisions of the Loans during the terms thereof.

OTHER GENERAL INFORMATION

Eligible Activities

All proposed activities must meet the HUD eligible activities found in Section 105(a) of the Housing and Community Development Act of 1974, and any related waivers and alternative requirements authorized by HUD, including the waiver previously provided for buildings for the general conduct of government. Projects may include more than one activity

The following is a listing of possible eligible activities:

- (1) the acquisition of real property (including air rights, water rights, and other interest therein) which is:
 - a. blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;
 - b. appropriate for rehabilitation or conservation activities;
 - c. appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;
 - d. to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or
 - e. to be used for other public purposes
- (2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;
 - a. Water and sewer facilities
 - b. Community, Senior and Health Centers
 - c. Fire protection facilities
 - d. Parking, streets, curbs, gutters and sidewalks, parks and playground
 - e. Shelters for the homeless
 - f. Flood and Drainage Improvements
- (3) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;
- (4) clearance, demolition, removal of buildings and improvements, and movement of structures and other sites.
- (5) rehabilitate, preserve and restore historic properties, provided such activities meet a national objective.
- (6) rehabilitation of commercial or industrial buildings, provided rehabilitation meets a national objective. However, the rehabilitation of a commercial or industrial building owned by a private for-profit business may qualify under the rehabilitation category only if

the rehabilitation is limited to improvements to the exterior of the building and correction of code violations.

- (7) eligible activities not listed here must be approved by MDA staff prior to project being submitted.

National Objectives

This amendment is designed to be consistent with the primary objective of providing funds for local projects with activities that meet one of the following national objectives of the Housing and Community Development Act of 1974, as amended:

- Benefits to Low/Moderate Income Persons
- Slums or Blight
- Urgent Needs

Threshold Requirements

1. The proposed activities must meet one of the three National Policy Objectives.
2. A letter from the applicant must accompany the application and must state that the proposed use of CDBG funds is not reimbursable by FEMA or other federal agencies. However, CDBG funds may be used to provide the match or unfunded portions for projects funded by FEMA or other Federal programs.

Waivers

The state reserves the ability to waive certain program requirements so long as HUD requirements are met.

Environmental

MDA has determined that due to the nature and design of this program, these actions are subject to an environment review. It is the intent of this program to pass the CDBG funds through to the borrowers. Therefore, the borrower will be required to hire an administrator to carry out the environmental requirements. MDA will review and certify all environmental reviews. MDA will provide technical assistance to assist in making sure the environmental requirements are met and documented as provided for in 24 CFR Part 58. MDA will be responsible for ensuring that environmental reviews are completed and approved by HUD prior to requesting a release of funds from HUD.

Fair Housing

The State has a current Analysis of Impediments (AI) to Fair Housing, which was submitted to HUD in July 2004. This study has been updated to include impacts caused by Hurricane Katrina in the lower six counties. Many of the identified impediments have been or will be addressed in Housing Action Plans. An action plan addressing each of the impediments has been forwarded to HUD for approval.

The Community Services Division of the MDA is responsible for the consolidated plan for the CDBG, HOME, and ESG programs. This division is in the planning process of statewide

impediments study. This study will include the impact of Hurricane Katrina to fair housing across the state. It is anticipated that the study will be completed no later than November 6, 2008.

The State certifies that it will affirmatively further fair housing through conducting and implementing the AI and that it will maintain records reflecting the analysis and actions taken.

Citizen Participant Plan

MDA will solicit public comments on this Action Plan.

Program Income

The State will receive program income based on the type of activity and/or repayment terms. The State requires that all program income be returned; however, MDA may permit the retention of program income to continue the activity from which such income is derived on a case-by-case basis. If program income is retained, it must be expended prior to requesting additional funds.

Program income returned to the State will be redistributed for eligible CDBG programs.

Appeals

MDA will establish an appeals policy for applicants to appeal the award decision; compliance notifications and the demand notification for lack of plan compliance by recipient.

Duplication of Benefits

Activities/projects will be approved and included in the loan agreement(s) only after documentation is provided to ensure all sources of funding have been considered in accordance with the Stafford Act. Examples of these sources may include, but are not limited to, FEMA, U.S. Corps of Engineers, and insurance proceeds.

Monitoring

MDA has a bureau dedicated to the monitoring of current and future disaster recovery programs funded with CDBG funds. This staff reports to both the Executive Director of MDA and the Governor of Mississippi. In addition, The State will require the applicant receiving funds under this amendment to enter into sub-recipient agreements with MDA. Among other provisions, these agreements will require regular progress reports, permit MDA access to grant records and sites, and require that all procurement is in accordance with State and Federal requirements. Monitoring programs have been developed and will be amended to include this program.

Audit Requirements

Funds disbursed under this program are subject to the audit requirement of the Single Audit Act of 1996 and OMB Circular A-133.

Investigation and Mitigating Occurrences of Fraud, Abuse and Mismanagement

The MDA will work with all Federal agencies to investigate and mitigate instances of fraud, abuse and/or mismanagement of any CDBG funds. The Auditor for the State of Mississippi has an investigative team assigned to investigate suspected instances of fraud.

The projects will flow through local governmental entities. The Mississippi State Auditor has the responsibility to audit all county governments on a yearly basis. The municipal governments are required by State law to have audits on all funds on an annual basis and must provide copies of audits to the State Auditor. The State Auditor is a state-wide elected official independent of the MDA. The MDA will make it a requirement for the audits to be sent to its offices for review on an annual basis.

Complaint Referrals

Complaints alleging a specific violation of a statutory or regulatory requirement, received by HUD at the Headquarters, Regional, or Field Office level will be forwarded to the appropriate State office for the response

Substantial Amendments

MDA recognizes that adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change requiring an amendment of the action plan.

Citizen Participation / Public Comment

This proposed amendment – Amendment 8 – was submitted for public comment to the website at www.mississippi.org on August 28, 2008 with the public comment period ending September 12, 2008. Written comments regarding this proposed modification could be mailed to MDA, Post Office Box 849, Jackson, MS 39205, Attention: Tax Credit Gap Funding, or sent via facsimile to (601)359-9280. Comments were also accepted online at recovery@mississippi.org.

As required by regulations, a summary of comments or reviews received (the number received is shown in parenthesis) by the September 12, 2008, deadline and MDA's responses are as follows:

- **Opposed to “maximum priority being given to housing for the poor and/or low-income;” requests building attractions that would build tourist base. (1)**

Response – With regard to the opposition to the development of low-income housing, the program remains unchanged.

- **Request that program eligibility requirements be modified to allow “projects to qualify so long as the equity investor has not yet been admitted to the owner entity,” so that developments that have obtained predevelopment loans and/or other forms of “soft” financing prior to the date of the proposed action plan will be eligible for the program. (1)**

Response – The State agrees with this comment and the plan has been modified to clarify the eligibility of projects that may have obtained predevelopment loans and/or other forms of “soft” financing. Those projects that have not closed on permanent or construction financing, including the tax credit limited partnership will be eligible for the program.

- **Request that plan be modified to “allow equity closings for eligible projects on or before [December 31, 2008], even if funds from the plan have not been distributed;” and that MDA provide a pre-2009 firm commitment to provide funds. (1)**

Response – With regard to allowing equity closings prior to December 31, 2008, the program remains unchanged. No funds may be committed for construction until an environmental review is completed. Projects may proceed to equity closings once environmental clearance is provided.

- **Request that the loan remains unsecured (1)**

Response – With regard to the request that the loan be unsecured, the program remains unchanged.

- **Request that “the loans bear interest at a rate not to exceed 1%, accruing annually.” (2)**

Response – The State agrees with this comment and the plan has been modified accordingly. The loans will bear a total interest at a rate of 1.75%, which includes an interest rate of 1% and a loan service fee of 75 basis points.

- **Typographical error with respect to the maximum points available (1)**

Response – The State agrees with this comment and the plan has been modified accordingly.

- **Establish a 9/1/2008 date for program eligibility to “encourage projects that are near financial closing to move forward without delaying the construction start date and avoid missing the place in service deadlines established by MHC.” (1)**

Response – With regard to establishing a date for program eligibility, the program remains unchanged. The scoring system as outlined in the plan awards points for the applicant’s readiness to proceed with construction.

- **Modify the application scoring to award points to projects that “have used bridge financing to preserve their original tax credit financing commitment from the investor;” “have documented 10% increase in construction costs;” include the construction of public housing units; and “have completed the environmental review process and are in a better position to close on the Credit Gap funding in a timely manner.”(1)**

Response – With regard to modifying the application scoring system, the program remains unchanged. The Action Plan contains a provision that, at the sole discretion of the MDA, “funds may be awarded to projects that have less than 140 points (to the extent of funds available)” after other awards have been made.

- **Modify the Loan Amount calculation by removing item (ii), “the sum if \$.075 of every Credit dollar originally allocated to the Project,” from consideration. (2)**

Response – With regard to modifying the loan amount calculation, the program remains unchanged. The Action Plan contains a provision for the State to “increase the maximum loan amount on a case by case basis and may waive the maximum amount.” In addition, the

Action Plan provides that “the State reserves the right to negotiate the loan amount on each project.”

- **Modify Program Eligibility to allow an increase in construction and permanent loans, as long as project remains “financially feasible;” and allow projects to “restructure costs from original [tax credit] application as long as these costs can be justified.” (1)**

Response – With regard to allowing an increase in construction and permanent loans and allowing projects to restructure costs remains unchanged. However, the Action Plan has been modified to allow that any subsequent additional credits awarded by MHC may be considered on a case by case basis in the calculation for the funding gap created by capital markets.