

## **MISSISSIPPI DEVELOPMENT AUTHORITY**

### **HOMEOWNER ASSISTANCE INITIAL ACTION PLAN**

#### **MODIFICATION # 23 (SUBSTANTIAL) – PROGRAM FUNDING REALLOCATION;**

### **AMENDMENT 4 PARTIAL ACTION PLAN ECONOMIC DEVELOPMENT AND COMMUNITY REVITALIZATION**

#### **MODIFICATION #16 (SUBSTANTIAL) – PROGRAM FUNDING REALLOCATION;**

### **AMENDMENT 6 PARTIAL ACTION PLAN LONG-TERM WORKFORCE HOUSING**

#### **MODIFICATION # 9 (SUBSTANTIAL) – PROGRAM FUNDING REALLOCATION**

## **OVERVIEW**

The Mississippi Development Authority is the recipient of a \$5.058 billion allocation in Community Development Block Grant (“CDBG”) funding from the U.S. Department of Housing and Urban Development (“HUD”) as part of the appropriation through the Emergency Supplemental Appropriation Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-148) [commonly referred to as Disaster Grant 1 or “DG-1”] and to the additional reprogramming of portions of the \$423,036,059 allocation in CDBG funding from HUD as part of the appropriation through the Emergency Supplemental Appropriation Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234) [commonly referred to as Disaster Grant 2 or “DG-2”], all of which constitute a total of \$5.48 billion CDBG funding provided to the State of Mississippi. 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.” These funds are being administered by the Mississippi Development Authority (“MDA”) for the State of Mississippi. In accord with these public laws, the State retains these funds until expended.

## **BACKGROUND OF THE HOMEOWNER ASSISTANCE PROGRAM**

A major component of the State’s comprehensive plan was the Homeowner Assistance Program (“HAP”)<sup>1</sup>. This program was created to assist homeowners who had maintained homeowner’s insurance and, in some cases, flood insurance but still suffered uncompensated Katrina losses when Katrina’s storm surge pushed beyond federally drawn flood boundaries.

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<sup>1</sup>Homeowner Assistance Program Partial Action Plan – September 11, 2006.

The U.S. Department of Housing and Urban Development (HUD) approved the HAP Action Plan in September 2006.<sup>2</sup> MDA awarded more than \$2 billion in HAP grants to 27,756 Mississippi homeowners whose homes were damaged by the winds and flooding of Hurricane Katrina.

HAP, which was rolled out in three different phases, was primarily intended to compensate homeowners, who maintained property insurance, and in some cases flood insurance, but in insufficient amounts.

Phase I initially targeted homeowners outside the established pre-Katrina flood zones who suffered flood damage to their primary residence from Hurricane Katrina. One-time grant payments up to a maximum of \$150,000 were provided under Phase I. This Phase was later expanded to include homeowners within the pre-Katrina flood zones but who were above the pre-Katrina designated flood elevation level.

Phase II targeted homeowners, either in or out of the flood zone, who suffered damage from the hurricane, and who had uncompensated losses due to insufficient or no flood insurance. The Phase II grant was capped at \$100,000.

And finally, Phase III targeted homeowners who either voluntarily or involuntarily sold their homes as part of their post storm recovery plan. Depending on their individual circumstances, these homeowners could receive 50% or 70% of a Phase I or II grant.

Significantly, all HAP grants were reduced by payments made to the homeowner for structural damages to the primary residence by FEMA, private insurance, NFIP insurance and SBA loans. This was accomplished by a duplication of benefits (“DOB”) analysis performed by MDA for each applicant. This DOB analysis directly affected the amount of funds provided to the applicant from the State by way of HAP.

After due diligence and public notice to homeowners in the affected counties, with extensive targeted outreach to all communities, no further applications were received after March 2008 and final disbursements were made in May, 2012. From these final efforts, it is clear that the State met the needs for the Program.

### **HAP INSURANCE LITIGATION**

On April 21, 2015, the Attorney General of the State of Mississippi initiated the first of twelve (12) lawsuits against private insurance companies to recover overpayments made under HAP due to the insurers’ underpayment of Katrina homeowner insurance claims.

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<sup>2</sup> Certain waivers were granted for this Program. *See*, 71 FR 34457, 71 FR 62372, 72 FR 10020 and 72 FR 48808.

The litigation alleges that the insurers mischaracterized, understated, or otherwise failed to pay the full extent of their liability for homeowner insurance claims for Hurricane Katrina wind damage and failed to communicate the true extent of their homeowner insurance liabilities to MDA when the agency was verifying HAP recipients' DOB calculations. As a result, the State subtracted smaller insurance payments in its DOB analyses (and thus made larger HAP grants) than it would have done had the insurers stated and paid their insurance coverage obligations accurately. Therefore, the State of Mississippi paid HAP grant funds to homeowners for losses that rightfully should have been paid by the insurers.

As a result, Katrina CDBG funds were not available for use in other Katrina recovery activities.

As of today's date, the State has negotiated settlement agreements in four (4) of those cases, recovering \$5,738,016.74. Additional settlements or judgments are anticipated. Any recovery of funds from these lawsuits represents an applicable credit to the program allocation, which will remain Mississippi's funds to support ongoing Katrina disaster recovery projects until expended.

In addition to funds recovered as a result of HAP insurance litigation, the State is also receiving repayments from applicants pursuant to the terms of their HAP and/or Elevation Grant agreements.

Under normal circumstances the CDBG funds recovered from HAP insurance litigation and/or applicant repayments would be allocated to HAP to replenish the HAP funds. However, HAP is substantially complete and no HAP grants have been paid since May, 2012.

#### **PROPOSED SUBSTANTIAL MODIFICATIONS**

The purpose of the proposed modifications is to allow MDA to fund continued recovery and resiliency by reallocating the funds recovered from HAP insurance litigation and grant recipient repayments to other open action plans for projects related to Hurricane Katrina. The programs covered under these modifications are the Katrina Economic Development and the Katrina Community Revitalization Programs, which were included in the Economic Development Action Plan approved on December 15, 2006, as Amendment 4, the Long-Term Workforce Housing Program ("LTWH"), which was included in the LTWH Partial Action Plan approved on April 22, 2008, as well as State Administration which was originally funded under the initial action plan.

Since it designed and implemented a battery of disaster recovery programs shortly after Hurricane Katrina, the State of Mississippi's overall recovery plan has consisted of three primary priorities: (1) recovering housing stock, (2) retaining and recruiting jobs within the storm-impacted counties, and (3) rebuilding and strengthening public infrastructure/facilities in designated disaster areas. As Mississippi's long-term recovery and resiliency needs continually

evolve and are reevaluated, KCDBG funds must be reallocated to provide continued State Administration and service to the Post-Katrina population and development trends in accord with the purposes of CDBG funding.

The proposed modifications will:

1. Reallocate funds currently on hand and those received from future settlements and judgments from the HAP insurance litigation to open DG-1 action plans for projects qualifying under Economic Development, Community Revitalization, Long Term Work Force Housing, and State Administration.
2. Ensure that such new activities and projects conform with the following:
  - a. meet an unmet Hurricane Katrina need;
  - b. evaluated and scored in accordance with the following criteria:
    - i. a nexus to Hurricane Katrina;
    - ii. meet a National Objective;
    - iii. is an eligible activity under HCDA 105(a);
    - iv. qualifies under an open KCDBG action plan; and
    - v. is shovel ready and can be completed and closed within a defined timeframe;
  - c. and are subject to publication, public notice and approvals per the applicable regulations and program requirements.

#### **SUBSTANTIAL AMENDMENTS**

The State recognizes that adding or deleting an activity or changing the planned beneficiaries of an activity may necessarily constitute a substantial change requiring an amendment or substantial modification of an action plan. However, with the adoption of these substantial modifications, future reallocation of funds between HAP and other open action plans will not constitute a substantial amendment or substantial modification. Such reallocations will be accomplished through technical modifications.

The current version of DG1 Action Plan and previous amendments and modifications approved by HUD are available on MDA's website at <https://www.msdisasterrecovery.com/action-plans>.

#### **Public Comment**

The proposed Substantial Modifications will be submitted for public comment in English, Spanish and Vietnamese versions to the website at [www.msdisasterrecovery.com](http://www.msdisasterrecovery.com) on May 6, 2019. The substantial modifications will be open to public comment as required by HUD for fourteen (14) calendar days from the date of publication of the proposed amendment.

Public comments will be accepted in writing delivered to MDA either by posted mail or by electronic submission by May 20, 2019 as follows:

**By post to:** Public Comment on Modifications  
Mississippi Development Authority  
Disaster Recovery Division  
P.O. Box 849  
Jackson, Mississippi 39205

**Electronically at:** [disasterrecoverycomments@mississippi.org](mailto:disasterrecoverycomments@mississippi.org)

Comments delivered by fax or telephone will not be considered.

Following this comment period, changes may be made to the proposal and final Substantial Modifications will then be submitted to HUD for approval.

**Proposed Modifications to HAP, ED/CR and LTWH Partial Action Plans and State Administration**

These modifications propose changes to the HAP, ED/CR and LTWH Partial Action Plans and State Administration associated with the successful recovery of Katrina CDBG funds through insurance litigation settlements and judgments and applicant repayments. To date, \$5,738,016.74 has been recovered and MDA anticipates additional settlements and judgments as the litigation continues to completion.

<b>Program</b>	<b>Prior Allocation</b>	<b>Amount Reallocated</b>	<b>Revised Allocation</b>
<b>Homeowner Assistance Program</b>	2,010,678,105.82	(5,754,624.53)	2,004,923,481.29
<b>Elevation Grant Program</b>	37,427,090.80	10,151.95	37,437,242.75
<b>State Administration</b>	154,957,263.94	1,006,455.84	155,963,719.78
<b>Community Revitalization Program</b>	325,022,796.94	4,738,016.74	329,760,813.68