

Report To The Mississippi Legislature



A Compliance Review of the Mississippi Home Corporation's Tax Credit Program

November 10, 1998

The Mississippi Home Corporation (MHC) administers the federal low-income tax credit program. Through this program, housing developers may receive federal income tax credits as incentives for the development of housing for low-income persons. Federal law gives the states broad latitude in administering the program and does not establish stringent federal oversight requirements. The state also has not established adequate oversight procedures.

PEER identified problems with MHC's program administration, including:

- the practice of amending annual plans during the plan year without legal authority to make amendments;
- inconsistent application of internal policies and procedures when evaluating applications for tax credits; and,
- tax credit housing developments not necessarily going to the areas of greatest need.

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**A Compliance Review of the Mississippi Home Corporation's
Tax Credit Program**

November 10, 1998

**The PEER Committee
Mississippi Legislature**

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

PEER Committee

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November 10, 1998

Honorable Kirk Fordice, Governor
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Honorable Tim Ford, Speaker of the House
Members of the Mississippi State Legislature

On November 10, 1998, the PEER Committee authorized release of the report entitled **A Compliance Review of the Mississippi Home Corporation's Tax Credit Program.**

A handwritten signature in cursive script, appearing to read "Ezell Lee", written over a horizontal line.

Senator Ezell Lee, Chairman

**This report does not recommend increased
funding or additional staff.**

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A Compliance Review of the Mississippi Home Corporation's Tax Credit Program

November 10, 1998

Executive Summary

Introduction

The PEER Committee reviewed the Mississippi Home Corporation's administration of the federal Low-Income Housing Tax Credit Program created by the Tax Reform Act of 1986.

Overview

The Mississippi Home Corporation administers the federal low-income tax credit program in Mississippi. This tax credit program, created in Section 42 of the *Internal Revenue Code*, allows qualified developers of low-income housing to take a credit on their federal income taxes. In administering this federal program, the Mississippi Home Corporation must devise policies for implementation of the program, evaluate applications for the program, and monitor developer's compliance with federal and state requirements.

No state or federal agency of government has the authority to oversee effectively the operations of Mississippi's tax credit program. This is because Congress never established any Internal Revenue Service oversight requirements for the program and the Legislature has never acted to impose on the corporation any of the oversight requirements it usually imposes on state agencies, such as annual audits and ongoing legislative oversight through regular standing committee hearings. The weaknesses cited in this report are directly attributable to the lack of oversight.

The Mississippi Home Corporation's annually adopted qualified allocation plan does not comply with federal statutory guidelines in that it allows the corporation to amend the plan without first complying with public review and comment procedures and the gubernatorial signature requirement. These failures deny public review of the corporation's decisions and could jeopardize the validity of tax credits issued under authority of the illegally amended plans. In several instances, the Mississippi Home Corporation's administration of

the tax credit program has not complied with its own annually adopted qualified allocation plans, creating a question regarding fairness of the process by which the program is administered.

The corporation's program monitoring efforts are in compliance with federal requirements and the program has resulted in the development of housing in areas where there exists a need for new low-income housing. The areas of most chronic need for housing have not, however, received the benefits of new low-income housing developed through the tax credit program.

Recommendations

1. The Legislature should require that the Mississippi Home Corporation make a complete annual report to the Legislature of all tax credit applications made, all granted, and the reasons for granting and denying the applications. This report should also contain an analysis of the number of low-income housing units constructed by county, as well as the total number of housing units and substandard units by county. (The Appendix to this report, page 31, contains proposed legislation concerning the Mississippi Home Corporation.)
2. The Mississippi Home Corporation should comply fully with its own policies and those of the Internal Revenue Service.
3. The Legislative Oversight Committee should request that the Mississippi Home Corporation staff develop an annual options study which appraises the Legislature of the strategies which could be implemented to encourage the development of low-income housing in the areas of the state most difficult to develop.

4. The PEER Committee's Executive Director should forward a copy of this report to the Internal Revenue Service for its review.

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A Compliance Review of the Mississippi Home Corporation's Tax Credit Program

Introduction

Authority

The PEER Committee authorized a compliance review of the Mississippi Home Corporation's tax credit program pursuant to the authority granted by MISS. CODE ANN. Section 5-3-51 et seq.

Scope and Purpose

PEER's review of the tax credit program addresses legal requirements governing the Mississippi Home Corporation's administration of the tax credit program as well as the manner in which the corporation administers the program. The report includes a discussion of legal requirements imposed by state and federal law relative to administration of the program; the Mississippi Home Corporation's formulation of its annual qualified allocation plans, which contain the corporation's policy controlling year-to-year administration of the program; the corporation's implementation of its own policy; and, the impact the program has had on development of low-income housing in Mississippi, particularly in the areas of the greatest need for such housing.

Method

In conducting this review, PEER reviewed the corporation's annually developed qualified allocation plans to determine whether the provisions of these plans are in compliance with federal and state law. PEER also reviewed a random sample of fifty application files taken from calendar years 1995, 1996, and 1997 to determine whether the corporation followed its own policies in reviewing, approving, and rejecting applications for tax credits. PEER reviewed files to determine whether the corporation conducted program monitoring of 1995, 1996, and 1997 approved projects in accordance with federal requirements. PEER also determined the locations of tax credit projects for 1995, 1996, and 1997 to determine if they were located in areas of the greatest housing need. In conjunction with its review of files and records, PEER interviewed corporation staff and board members, as well as other parties interested in administration of the tax credit program.

Overview

The Mississippi Home Corporation administers the federal low-income tax credit program in Mississippi. This tax credit program, created in Section 42 of the *Internal Revenue Code*, allows qualified developers of low-income housing to take a credit on their federal income taxes. In administering this federal program, the Mississippi Home Corporation must devise policies for implementation of the program, evaluate applications for the program, and monitor developers' compliance with federal and state requirements.

No state or federal agency of government has the authority to oversee effectively the operations of Mississippi's tax credit program. This is because Congress has never established any Internal Revenue Service oversight requirements for the program and the Legislature has never acted to impose on the corporation any of the oversight requirements it usually imposes on state agencies, such as annual audits and ongoing legislative oversight through regular standing committee hearings. The weaknesses cited in this report are directly attributable to the lack of oversight.

The Mississippi Home Corporation's annually adopted qualified allocation plan does not comply with federal statutory guidelines in that it allows the corporation to amend the plan without first complying with public review and comment procedures and the gubernatorial signature requirement. These failures deny public review of the corporation's decisions and could jeopardize the validity of tax credits issued under authority of the illegally amended plans. In several instances, the Mississippi Home Corporation's administration of the tax credit program has not complied with its own annually adopted qualified allocation plans, creating a question regarding fairness of the process by which the program is administered.

The corporation's program monitoring efforts are in compliance with federal requirements and the program has resulted in the development of housing in areas where there exists a need for new low-income housing. The areas of most chronic need for housing have not, however, received the benefits of new low-income housing developed through the tax credit program.

Overview of the Tax Credit Program

What is a Tax Credit?

A tax credit is a legally authorized reduction of an income tax payer's bottom line tax liability. Generally, government uses tax credits as a means of encouraging business investment in activities which businesses might not otherwise consider profitable. Such areas of business activity include, but are not limited to, investment in new equipment, business expansion into areas of high unemployment or poverty, and low-income housing.

What are Low-Income Housing Tax Credits?

Congress created the Low-Income Housing Tax Credit Program through the Tax Reform Act of 1986. Enacted as a tax incentive, the program is designed to stimulate and maintain the supply of quality low-income rental housing. Persons eligible to receive tax credits include both for-profit developers of housing and not-for-profit developers. Not-for-profit developers are generally tax-exempt organizations, but may enter into syndication arrangements with for-profit firms, such as oil companies, which may use the tax credits to offset their income. Under these arrangements, the not-for-profit firms transfer their credits to for-profit partners in a low-income housing venture and receive funding in return from the for-profit syndication partners. Firms receiving credits may take them in equal installments over a ten-year period.

What is the Mississippi Home Corporation's Role in Administering the Low-Income Tax Credit Program?

A unique feature of this tax credit program is that Congress delegated to states the authority to determine who is eligible to receive these tax credits. Title 26, Section 42 of the *Internal Revenue Code* requires each state to designate an entity to administer the tax credit program. In 1990, then-Governor Ray Mabus designated the Mississippi Home Corporation as the state housing agency for purposes of administering the tax credit program.

The Mississippi Home Corporation is a not-for-profit corporation organized under the authority of MISS. CODE ANN. Section 43-33-701 et seq. for the purpose of developing housing in the state for persons of low and moderate income. The corporation's Board of Directors consists of thirteen members appointed by the Governor to represent savings and loan associations, commercial and mortgage banking, residential housing construction, the licensed residential housing brokerage business, manufactured housing, nonprofit housing development, the low- to moderate-income sector, and the general public. The four-year board appointments are staggered. The Executive Director of the Department of Economic Development, the Director of the Veterans' Home Purchase Board, and

the State Treasurer also serve as ex officio members of the corporation. See Exhibit 1, page 5, for a breakdown of the dollar value of credits issued.

What is the Role of the Mississippi Home Corporation Board?

The Mississippi Home Corporation's Board of Directors is responsible for approving the awarding of tax credits and the development of the annual qualified allocation plan.

The MHC Board Has Final Authority in Approving the Awarding of Tax Credits

A five-person committee of the Mississippi Home Corporation Board oversees the tax credit program. The Tax Credit Committee reviews staff recommendations regarding awarding of tax credits before consideration by the full board. The Tax Credit Committee is responsible for determining whether tax credits are being given in a way to encourage development of affordable rental housing, as well as evaluating past allocation of tax credits to verify that the credits were allocated according to applicable Internal Revenue Service requirements. Furthermore, the committee is also to evaluate implementation of the tax credit program and decide whether the corporation's allocation plan should be altered in any way.

As lay members, however, the board depends on the MHC staff for interpretation of the tax credit program and its requirements. General Counsel for the corporation stated that the board generally approves the staff recommendation on the advice of legal counsel due to the complexity of the tax credit program.

MHC Develops a Qualified Allocation Plan, Sets Funding Cycles, and Monitors Each Tax Credit Project

Title 26, Section 42 of the *Internal Revenue Code* requires each state to develop a "qualified allocation plan" for the tax credit program which determines a state's housing priorities and outlines the tax credit application process. The Mississippi Home Corporation Board is responsible for developing and approving the annual qualified allocation plan. Based on the qualified allocation plan, the Mississippi Home Corporation allocates tax credits through a competitive application process held at least once a year. These application periods are known as "funding cycles," and for the period covered by PEER's review, a second or third "funding cycle" or application period is held. The amount of credits available for allocation and the number of applications for tax credit projects determines whether a third funding cycle is necessary.

Exhibit 1

Summary of Low-Income Housing Tax Credits, 1995-1997

| Year | Projects | Total Units | Returned Units† | Net Units†† | Tax Credit Value |
|---------------|------------|-------------|-----------------|--------------|---------------------|
| 1995 | 38 | 1,562 | (394) | 1,168 | \$2,979,408 |
| 1996 | 66 | 3,159 | 0 | 3,159 | 5,192,072 |
| 1997 | 44 | 2,481 | (152) | 2,329 | 5,384,253 |
| Totals | 148 | | | 6,656 | \$13,555,733 |

† “Returned units” refers to projects which received tax credits that year, but returned them to MHC.

†† “Net units” refers to the amount of units actually built, after the number of units for which credits were returned are subtracted from the total.

SOURCE: MHC records.

What is the Role of the Mississippi Home Corporation Staff?

The staff of the Mississippi Home Corporation is responsible for administering the board-adopted qualified allocation plan and making recommendations to the board on the approval of credits and monitoring for project compliance with state and federal requirements.

Implementation of the Qualified Allocation Plan

The *Internal Revenue Code* requires states to evaluate the reasonableness of development costs and the proposed sources and uses of project funds. This review is performed in order to ensure that no more credits are awarded than required for the project’s financial feasibility. Housing finance agencies must also determine a project’s financial viability through evaluation of the financing and project development plan submitted in the application by the project developer. The Mississippi Home Corporation staff carries out this mandatory function and reports its recommendations to the board.

Developers apply to the corporation for tax credits for a particular project. MHC staff review and evaluate their proposals for compliance with federal law and regulations, as well as Mississippi’s most pressing housing needs, as outlined in the state qualified allocation plan. The qualified allocation plan, explained in more detail below, also sets out the application process and tax credit

requirements developers must meet. Part of the MHC staff evaluation determines the dollar amount of tax credits for which a project may be eligible. As noted earlier, the board generally follows staff recommendations with respect to the awarding of credits.

Monitoring of Compliance

After the awarding of credits, the state's responsibility does not end. Federal law requires the Mississippi Home Corporation to monitor each tax credit project for continuing compliance with IRS requirements on rent restrictions, tenant income, and the continuing habitability of the building. MHC must report cases of noncompliance to the IRS if not corrected within a reasonable time (ninety days in most cases). MHC is also required to report annually to the IRS the amount of credits awarded each year.

Federal and State Oversight of the Mississippi Home Corporation's Tax Credit Program

The 1986 federal legislation creating the tax credit program gave the states responsibility for administering the program. Thus the burden is placed on the states to ensure that the program is being administered in accordance with federal legal requirements. Serious consequences may result if developers receive tax credits under plans which are not in conformity with federal law. A taxpayer could lose the value of a credit if the IRS determines through a taxpayer audit that the credit was not granted in conformity with the law.

No federal or state agency has the authority for insuring that the Mississippi Home Corporation's tax credit program is administered in accordance with law.

The Internal Revenue Code Does Not Require that the IRS or Any Other Federal Agency Oversee Administration of the Tax Credit Program

The tax credit program differs in both specificity and oversight from most federal/state programs. Unlike most programs funded in part with federal dollars, the tax credit program, established under Section 42 of the *Internal Revenue Code*, does not require that the IRS approve the state plan prior to its becoming effective. Thus a qualified allocation plan becomes qualified merely by being subject to public review and comment and gubernatorial signature. Further, while federal law is specific on the procedures a state must follow in adopting a plan, no authorization exists for the IRS to deny a plan for failure to comply with provisions of federal law. Federal law does not authorize IRS program audits of the tax credit program to measure and evaluate performance of each state's program. Section 42 of the *Internal Revenue Code* does state, however, that credits are zeroed out if awarded under a plan which fails to follow federal requirements. This subjects the recipient of such credits to repayment of any taxes offset by taking the credits, plus penalties and interest.

These oversight weaknesses have not gone unnoticed. In 1997, the United States General Accounting Office (GAO) released a report on various aspects of the tax credit program, including an assessment of controls currently available to the IRS and the states over operation of the program. The GAO surveyed tax credit policies and procedures in all fifty states, as well as 423 randomly selected housing projects, to evaluate how states determine project costs and characteristics and how states apply available controls. The report found major weaknesses in the IRS's authority and ability to oversee state programs. Among them were the following:

- the IRS needs more information to monitor tax credit allocations and taxpayer compliance with program requirements; and,

- the IRS lacks specific authorization to evaluate state agencies' tax credit programs for compliance with laws and existing regulations.

Thus, states are given the responsibility to manage the federally granted resources of the tax credit program and are the only sources of effective program oversight to insure compliance with federal regulations.

*State Law Does Not Require that Any State Agency Oversee
Administration of the Tax Credit Program*

The Mississippi Home Corporation was established under law as a not-for-profit corporation rather than as a state agency. While administration of the tax credit program is not specifically provided for in state law, the general mandate of the corporation is sufficiently broad to encompass the corporation's acceptance of the responsibility of administering the program. In no provision of law does the legislation creating the Mississippi Home Corporation provide for state agency oversight of the program.

The general authority of the Mississippi Home Corporation, as stated in MISS. CODE ANN. Section 43-33-702 (1972), provides:

(c) . . .the shortage of adequate and affordable housing can best be addressed through a strong, unified organization which can develop creative approaches to housing production and assistance through active cooperation of public and private entities, including federal, state and local government, private nonprofit and for profit entities, community and citizens groups, charitable organizations, and private citizens; that this organization should stimulate private development, construction and rehabilitation, develop a wide range of state housing assistance programs, engage in comprehensive planning, study, research and statewide coordination with respect to low and moderate housing, provide technical, educational and consultative services, and promote governmental and community interest in the provision of housing for low and moderate income persons in the state; that this organization should receive appropriations of public funds, should be authorized to obtain funding for its programs by issuing its bonds and notes; and that this organization should be authorized to administer available federal, state or local programs and monies and to retain for its corporate purposes all such fees and income generated thereby.

In no portion of this section, or in the remainder of Title 43, Chapter 33, MISSISSIPPI CODE ANNOTATED, are there provisions of law vesting any agency with effective oversight of the corporation's activities.

As a not-for-profit corporation, rather than a state agency, the Mississippi Home Corporation is not subject to the budgetary oversight of the appropriations process or regular standing committee hearings dealing with the effectiveness,

efficiency, or legal compliance of the corporation's programs. Further, no law requires the State Auditor to audit the corporation annually. Under present law, the corporation is the judge of its own practices.

While the corporation's statutes provide for legislative advisors to the corporation's board, these legislators are not responsible for administering the corporation or carrying out any duties of corporate management. Any role other than an advisory one for legislators could constitute a violation of the doctrine of separation of powers as announced in *Alexander v. Allain*. Generally, separation of powers requires that legislators not perform the executive functions of executing and administering the laws they pass.

Making the corporation the judge of its own practices places upon it the duty of determining how the valuable resource of tax credits should be allocated. The following conclusions show that the corporation has not met its responsibility of overseeing the fair and consistent application of the program's requirements. This failure is a direct result of the lack of effective federal and state oversight of the program.

Mississippi Home Corporation Procedures' Compliance with Federal Law and Regulations

The Mississippi Home Corporation establishes policy with respect to issuance of tax credits through its qualified allocation plan. The plan informs interested parties of what they must propose to do in the area of construction or rehabilitation of low-income housing in order to receive tax credits.

In general, the qualified allocation plan informs applicants of the criteria the Mississippi Home Corporation will use in determining whether an applicant will receive tax credits. These plans must be subjected to a public review and comment process and approved by the Governor before they become effective. For further details on the mechanics of the qualified allocation plan, see page 15 for conclusions dealing with the application of tax credit criteria.

While federal law gives broad latitude to states in administering their tax credit programs, it does set requirements with respect to procedures a state must follow in adopting a plan for the allocation of tax credits to developers. PEER has identified problems with the Mississippi Home Corporation's practices with respect to adoption of qualified allocation plans for tax credits.

The Mississippi Home Corporation amended its qualified allocation plan in 1995 and 1996, without the legal authority to do so under Section 42 of the *Internal Revenue Code*, creating an appearance of impropriety and the possibility that tax credit recipients could lose their tax credits.

PEER reviewed activities of the corporation between 1995 and 1997. The following details the number of times the Mississippi Home Corporation amended its qualified allocation plan during these three years.

MHC Amended Its Qualified Allocation Plan Several Times During 1995-1997

In April 1995, MHC Amended Its Qualified Allocation Plan to Add a Set-Aside Program

At its April 20, 1995, meeting, the MHC Board of Directors amended by board resolution the 1995 qualified allocation plan to include a set-aside, or preference, for projects which combined historic tax credits with low-income housing credits. MHC has no record that such changes, which apparently became effective immediately, were submitted prior to or after passage for public comment or to the Governor for approval. The original qualified allocation plan, which underwent a public hearing and was approved by the Governor on January 18, 1995, contained only three set-asides--the ten percent set-aside for qualified not-for-profits required by federal law and the two following set-asides required by the Mississippi Home Corporation:

- Rural Economic and Community Development (formerly Farmer's Home Administration and now known as Rural Development) was to receive forty percent of the state's total allocation authority during the first and second application cycles of 1995; and,
- projects receiving HOME Investment Partnership Program funds (through the Department of Economic and Community Development, Community Development Division) were to receive ten percent of the state's total credit allocation for 1995.¹

January 1996 Amendments to the Qualified Allocation Plan Required a Higher Financial Contribution from Housing Developers

At its January 18, 1996, meeting, the MHC Board of Directors approved amendments to the 1996 qualified allocation plan in the tax credit underwriting policies, one of which added the requirement of an "equity contribution" by the developer of a tax credit project. This change was approved shortly before the beginning of the first "cycle" for accepting applications for tax credit projects. Specifically, developers were now required to contribute five percent equity in their projects, by either a cash investment in the project; collateral (land or building) investment in the project; reduction in the project's eligible basis; or an investment in the project from the proceeds of the sale of the tax credits. This amendment was not subject to public hearing or comment or gubernatorial review before it was implemented.

August 1996 Amendments to the Qualified Allocation Plan Changed the Set-Asides for Particular Projects

At its August 15, 1996, meeting, the Mississippi Home Corporation's Board of Directors amended the 1996 qualified allocation plan to make the following changes to set-aside programs:

- increased the allocation for Rural Development/Section 515 projects from \$800,000 to \$895,000;
- reduced the allocation for eligible projects which also utilized HOME program financing from \$800,000 to \$595,000; and,
- increased the allocation for projects which combined historic credits with low-income housing tax credits from \$150,000 to \$282,000.

¹The HOME Investment Partnership Act (Title 42, U.S.C. Sec. 12701 et seq.) was enacted by Congress in 1990. Administered by the states through the U.S. Department of Housing and Urban Development (HUD), HOME funds are to be used to expand the supply of safe and affordable housing, build and strengthen public and private partnerships in maintenance of a supply of safe and affordable housing, and provide other forms of federal housing assistance.

MHC has no record of circulation to the public of the change in set-asides, nor of any public hearing on the amendments, nor of approval by the Governor.

The MHC Amended the 1996 Qualified Allocation Plan
a Third Time in October 1996 to Change
One Set-Aside Program

At its October 24, 1996, meeting, the Mississippi Home Corporation's Board of Directors once again amended the 1996 qualified allocation plan, again without submitting the change to a prior public notice and comment procedure or to the Governor for his consideration. The board had previously allocated \$895,000 of its total allocation authority for U. S. Department of Agriculture Rural Development projects.² In its resolution, the MHC Board set aside \$250,000 of Mississippi's remaining pool of tax credits for Rural Development projects for the third application cycle.

*Federal Requirements Set Criteria for Qualified Allocation Plans,
but Allow States Latitude in Tailoring These Plans
and Administering the Program*

Federal law [26 U.S.C. § 42(m)(1)(B)] sets out the criteria each state must follow in developing a qualified allocation plan. The statute requires that the plan give preference in the distribution of tax credits to those projects which serve the lowest income tenants for the longest period of time. The state plan must also include a procedure to monitor tax credit projects for compliance with Section 42 of the *Internal Revenue Code*. Finally, the monitoring process must include the procedure the state will use to notify the Internal Revenue Service if and when noncompliance is discovered during the monitoring process. While this section has specific provisions on the adoption of plans following public comment and gubernatorial approval, it contains no provisions regarding the amendment of a qualified allocation plan.

PEER discussed with personnel of the IRS the provisions of Section 42 and confirmed that the provision contains no authority to amend a qualified allocation plan. Some personnel noted that there would be no need to amend a plan since new plans are developed annually. Even under a permissive standard allowing amendment if the process for adoption of the initial plan were followed, the corporation's amendments would not be in conformity with the requirements of *Internal Revenue Code* Section 42 because the amendments were not subject to review and comment or gubernatorial approval.

In discussing amendment of plans with personnel in neighboring states, PEER determined that three states have allowed technical amendments to bring

² The available credit authority includes Mississippi's annual allocation (\$1.25 per each state resident, based on the 1990 census), plus returned credits from other projects, in addition to credits Mississippi received from a national pool.

their plans into conformity with federal law changes, but only after public review and comment and gubernatorial approval.

- The Tennessee Housing Development Agency posts a notice of proposed change with the Board of Directors' meeting notice in the State Capitol and mails notice of proposed changes to those on its mailing list.
- The Alabama Housing Finance Authority publishes notice of proposed changes in four newspapers throughout the state prior to a public hearing.
- The Louisiana Housing Finance Agency has a public hearing prior to any amendment in its qualified allocation plan.

*The Corporation's Conduct Creates an Appearance of Impropriety
and Could Jeopardize Tax Credits*

MHC Changes Create an Appearance of Impropriety

Changing policy during a funding cycle without clear documentation and public discussion raises the issue of why the changes are being made, especially since the qualified allocation plan is issued annually. When set-asides are suddenly created after a plan has been commented upon by interested parties and approved by the Governor, it causes developers to question whether some individuals are benefiting to the detriment of others.

While changes in the plan might be harmless and only intended to move credits into areas where the corporation believes them to be needed most, the negative impact of mid-year changes--a loss of credibility among developers and the appearance of impropriety--more than offsets the benefits to program administrators from the flexibility to alter plans in mid-year.

MHC's Plan Amendments Could Jeopardize Tax Credits
Awarded to Developers

In response to PEER's inquiry, MHC staff have stated that the Governor's signature of a portion of the plan allowing for amendment by the Mississippi Home Corporation's Board of Directors makes legal any amendments which were not subject to public review and comment as well as gubernatorial approval. However, PEER research revealed no authority in federal law which supports the corporation's position.

Failure of the Mississippi Home Corporation's Board of Directors to submit qualified allocation plan amendments to a public notice and hearing procedure followed by Governor's approval could jeopardize tax credits awarded under the amendments. One interpretation of the Internal Revenue Service requirements is

that all projects which received tax credits as a result of the amended plan would be zeroed out, subjecting the tax credit recipients to repayment of taxes offset by the credits, plus payment of applicable penalties and interest.

Furthermore, the Mississippi Home Corporation Board's failure to follow the IRS-mandated procedure has a negative impact on the perception of fairness of administration of the tax credit program. The process of applying for tax credits is expensive and time-consuming. When a plan is subject to change at will, it defeats the purpose of establishing a plan, which is subject to annual, legally authorized review and modification by its very terms. Additionally, there is no level playing field for those who apply without prior notice of changes, particularly changes regarding the amount of tax credits available for specific types of projects.

Mississippi Home Corporation's Implementation of the Tax Credit Program

Implementation of the Qualified Allocation Plans

The Mississippi Home Corporation often fails to apply or misapplies the tax credit evaluation criteria it adopts in the annual qualified allocation plan.

MHC Establishes Requirements for Applying for the Tax Credit Program in the Qualified Allocation Plan

The qualified allocation plan establishes the terms and conditions under which the Mississippi Home Corporation will allocate tax credits to developers of low-income housing. To ensure that no more tax credits are awarded to a developer than necessary to stimulate low-income housing development, the state agency administering the tax credit program is required to evaluate each project proposal for factors such as the reasonableness of development costs and the sources and uses of funds. The *Internal Revenue Code* also contains general criteria that each state must consider in its qualified allocation plan, such as project location and characteristics of sponsors of tax credit projects. State tax credit allocating agencies must give preference to those projects which serve the lowest-income tenants for the longest period.

MHC states in its qualified allocation plan that the essential criteria by which each application for tax credit must be judged include threshold analysis, scoring analysis, and feasibility analysis, as detailed in Exhibits 2 and 3, pages 16 and 17. MHC does not include any information in its qualified allocation plan that notes that exceptions or deviations from the written procedures will be accepted.

In Nearly Half of the Sample of Files PEER Reviewed, MHC Did Not Require Applicants to Meet All Application Criteria or Misapplied the Criteria

Of the randomly selected sample of fifty application files PEER reviewed, twenty-three applications (46 percent) did not comply with recordkeeping and application requirements of the qualified allocation plan. Within these twenty-three application files, MHC deviated in thirty-three instances from the standards MHC published in its qualified allocation plan. These deviations include six improperly documented application files, the wrongful denial of an application, the approval of two applications shown not to be feasible, twenty-one instances of changing feasibility assumptions, and overstatement of an applicant's potential income in two instances. The files also contain one instance in which the analysis for a project awarded tax credits showed that the development would have been feasible without tax credits. Following are details of these instances.

Exhibit 2

Mississippi Home Corporation's Criteria for Application to the Low Income Housing Tax Credit Program

Threshold Analysis: MHC requires all tax credit applications to be complete. MHC staff review all applications for four threshold requirements:

- Site control requires the applicant to have ownership of an option to purchase the property for the housing development.
- Local zoning and development conditions require the applicant to provide documentation that the housing development will be located in a properly zoned area with sufficient utility services.
- Documentation of need requires the applicant to provide a market study noting a need for proposed development or a documentation of operating history for three years prior to application.
- Firm financing commitments require applicants to certify the amounts and terms of the financing agreements for financing the housing development.

If an applicant fails to meet any one of these requirements, MHC should reject the application.

Scoring Analysis: MHC uses a set of housing and socioeconomic factors to rank projects that best meet the state's housing needs. These factors are set forth in the annual Qualified Allocation Plan.

For example, the 1997 Qualified Allocation Plan provides a lower minimum score (170 points) for applicants who elect to provide 100 percent of the housing units to tenants at or below 50% of the county median gross income for 40 years or more.

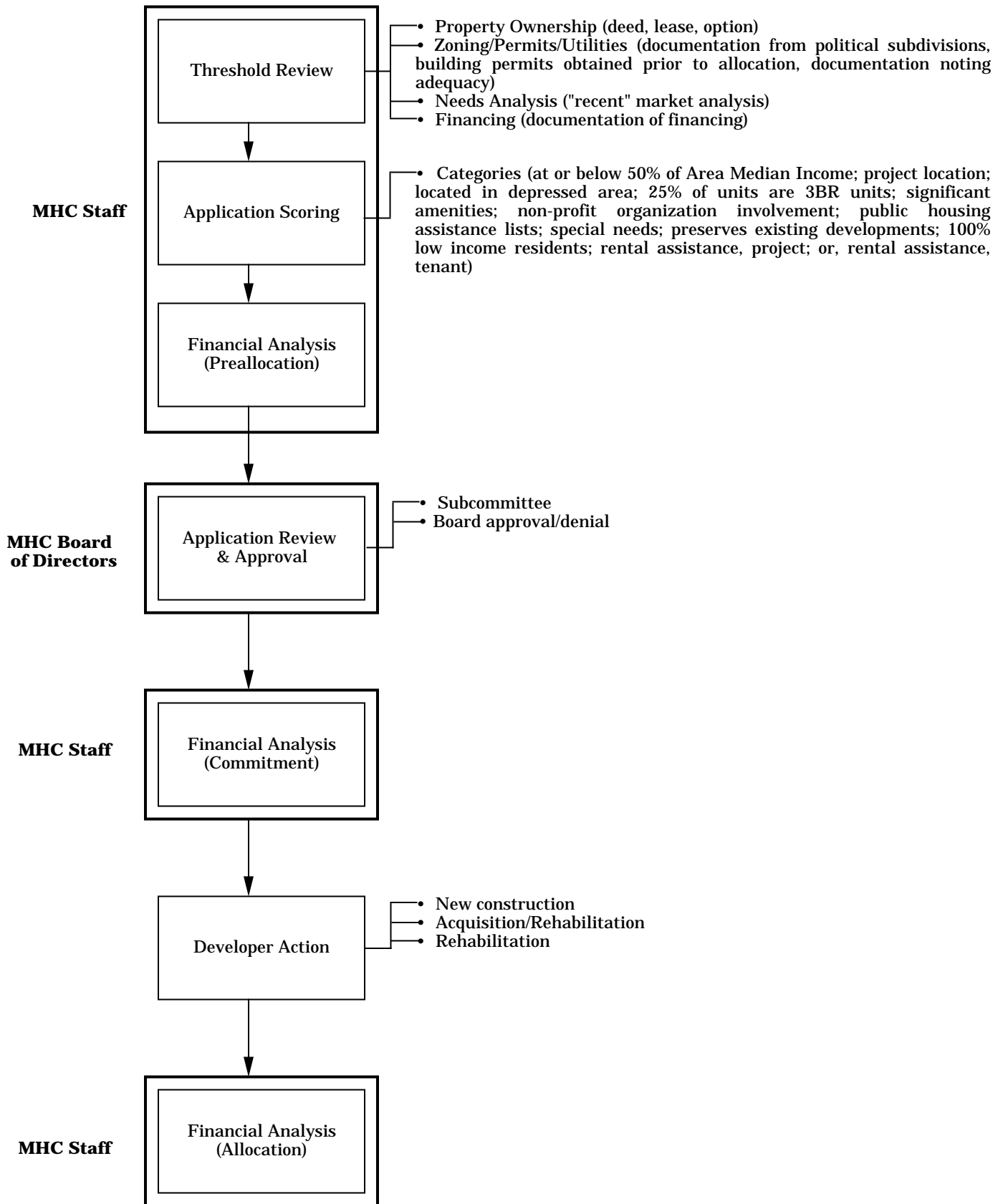
Feasibility Analysis: According to the Qualified Allocation Plan, MHC staff review certified financial proposals from the applicant's engineers and accountants to determine whether the housing project will be feasible during a fifteen-year period. Although the tax credits can only be used for a ten-year period, all recipients are required to maintain the housing development for a fifteen-year period, during which the recipients must also continue to meet all federal requirements. All approved applications must be financially feasible to be eligible to receive tax credits.

MHC defines its trend assumptions for financial feasibility analysis in its qualified allocation plans. For example, in 1995 MHC assumed an annual growth of income and expenses for housing development to be 5% annually with a 10% vacancy rate. In 1996, MHC changed its assumptions to 3% increase in income, 5% increase in expenses, and 10% in vacancy rate. In 1997, MHC changed its assumptions to 3% for both income and expenses and 10% for vacancy. The Mississippi Home Corporation does not include any information in its Qualified Allocation Plan that notes that exceptions or deviation will be made from the written procedures.

SOURCE: Mississippi Home Corporation qualified allocation plans 1995-1997.

Exhibit 3

Mississippi Home Corporation's Low Income Housing Tax Credit Program's Application Process



SOURCE: PEER analysis of Mississippi Home Corporation's Qualified Allocation Plans, 1995, 1996, and 1997.

Six Files were Improperly Documented, Resulting in Failure to Establish a Basis for MHC's Conclusions

In four of the six cases of improper documentation, the Mississippi Home Corporation staff was unable to provide evidence to support its analyses that applicants had met threshold requirements, which is the first level of evaluation by MHC. The corporation's qualified allocation plan states that applications which fail to meet threshold requirements are to be rejected and receive no further staff evaluation.

In a fifth example of MHC's failure to follow its own standards, the Mississippi Home Corporation staff failed to require the applicant to document fully the need for the project. The 1995 qualified allocation plan requires that applications for new construction include a market study documenting the need for a new housing project or, in the case of rehabilitation of an existing project, operating statements for three years. MHC staff used a letter from the development's financing provider as sufficient for documenting the need for rehabilitation of an existing apartment project. Further, MHC staff could document only one year of operating statements instead of the required three years.

Finally, in the sixth case, MHC staff performed a financial feasibility analysis on an application for which it denied credits due to the applicant's failure to provide sufficient permanent financing information. Under MHC standards, no financial feasibility analysis is performed if the application fails to meet one of the four threshold requirements, which includes documentation of permanent financing. The corporation would have been unable to perform the financial feasibility analysis without the information it said the applicant failed to provide.

MHC Wrongfully Denied One Application

In 1997, the Mississippi Home Corporation wrongfully denied an application for failing to meet minimum scoring criteria. The 1997 qualified allocation plan required a minimum score of 170 points for applicants who elect to provide one hundred percent of the housing units to tenants at or below 50% of the county median gross income for forty years or more. According to MHC correspondence dated July 3, 1997, the corporation rejected the application for failing to meet the minimum score, noting that the application scored only 169 points; however, MHC scoring documentation shows that MHC staff gave the applicant a score of 189 points. MHC responded that the scoring sheet was for another project.

MHC Approved Applications for Two Projects for Which the Feasibility Studies Showed Negative Cash Flows

Under the provisions of the qualified allocation plan, projects must have a projected positive cash flow to receive tax credits. The Mississippi Home Corporation approved one project in late 1994 for 1995 tax credits. However, in MHC's analysis dated prior to the allocation award, the application showed a negative cash flow in years 1 through 7. In another example, MHC also approved a second project application in late 1994 for 1995 credits. In this development's application for additional credits, MHC's feasibility analysis shows a negative cash flow in years 1 through 15.

MHC Deviated Twenty-one Times from Its Initial Feasibility Assumptions

The Mississippi Home Corporation has a set of standards published in its qualified allocation plan which are used to perform the financial feasibility analysis on each application. For example, in 1995 MHC required applicants to use five percent to calculate the annual growth in both income and expenses and use ten percent as the annual vacancy rate. The qualified allocation plan does not allow for deviation from use of these figures in computing annual growth in income or expenses or the vacancy rate.

Yet, MHC staff deviated twenty-one times from the corporation's own published standards outlined in its annual qualified allocation plans from 1995 through 1997. In eleven of the twenty-one instances, the Mississippi Home Corporation staff used percentages provided by the U. S. Department of Agriculture's Rural Development Division (formerly Farmers' Home Administration), which are based on historical information from similar developments. These Rural Development percentages, which differed from the standard figures adopted by MHC, also varied from project to project. Although PEER staff found no problem with use of Rural Development's percentages, the Mississippi Home Corporation did not include information in its qualified allocation plan informing all applicants that use of any other percentages would be acceptable to employ in their tax credit applications.

MHC Overstated Two Applicants' Income, Resulting in Faulty Financial Analysis

The qualified allocation plan requires applicants to include projections in annual income, such as monies collected from rent and on-site laundry facilities. MHC staff routinely take this information from the application and enter it into a computer software program to produce the financial feasibility analysis. PEER reviewed application information from each of the fifty projects contained in the random sample survey, using the criteria contained in MHC's qualified allocation plan. PEER's evaluation showed that in two applications, the

Mississippi Home Corporation overstated the developments' annual income in the financial feasibility analysis.

In the first application, the Mississippi Home Corporation overstated the income by \$237,600 annually. The application showed other annual income of \$21,600 in addition to rental income. According to MHC documents, MHC staff computed this amount as monthly income, resulting in the extreme overstatement of projected income available to this development. MHC denied this application, finding that it was feasible without tax credits. Mississippi Home Corporation staff later responded that the \$21,600 figure was entered incorrectly into its financial feasibility software program. MHC staff stated that the application was not penalized as a result of the mistake, but that the project was rejected for tax credits because it failed to score sufficient points in the ranking system. In the case of the second development's 1996 application, PEER's evaluation showed that MHC also overstated the development's first-year income by \$294. This project was awarded tax credits.

MHC Did Not Reject One Project on the Basis of Its Financial Viability Without Tax Credits

In the feasibility analysis for a 1996 application, file documentation shows that the Mississippi Home Corporation staff calculated that the project had more financing than required to build the development. Thus, according to the MHC analysis, the project needed no tax credits to be a financially viable project. Although MHC denied the application, the MHC staff cited as its reason that other projects with higher scores were awarded tax credits. According to federal law, however, any project which is financially feasible without tax credits should be rejected. MHC gave the wrong reason for rejection of this project.

MHC's Failure to Follow Requirements of its Qualified Allocation Plans Has Created the Appearance of Impropriety Concerning One Developer

Despite MHC's stated policy in its qualified allocation plans that no changes or corrections would be accepted in tax credit applications after the application deadline, MHC has allowed changes and corrections to some applications, but not others. In this case, MHC awarded a certain developer \$592,853 in annual tax credits, although the developer had initially failed to meet three of MHC's four threshold requirements.

MHC Allowed One Particular Developer to Make Changes in an Application After the Deadline

For the period reviewed by PEER, MHC's qualified allocation plan clearly states that MHC will accept no changes or corrections to applications once the application deadline has passed. However, PEER noted that some applications

deficient upon submission underwent numerous additions, corrections, and changes during the allocation process, while others were rejected outright for failure to meet threshold requirements or other problems.

In one of the most extreme examples of this practice, MHC in 1994 awarded \$592,853 in tax credits to one certain developer, despite numerous changes and corrections for more than a year after the application was submitted. Before he became a developer of tax credit housing projects, this individual was involved with administration of the low-income tax credit program at the Alabama Housing Finance Agency. During his tenure there, this individual had designed the software program which MHC staff still uses to evaluate the financial feasibility of all tax credit applications.

MHC Awarded Tax Credits to This Developer's Project Although It was Deficient in Three of Four "Threshold" Areas

On October 14, 1994, the developer submitted a tax credit application for a 144-unit apartment complex to be located on the Automall Parkway in D'Iberville, Mississippi. MHC's 1994 tax credit application packet clearly stated that no changes or corrections would be accepted after the application deadline. Also, the qualified allocation plan required submission of all documentation with the application by the deadline of October 14. The developer's project was insufficient in several respects, according to correspondence contained in the project allocation file as maintained by MHC staff. The deficiencies included:

- no documentation of control of the proposed site;
- no documentation of appropriate zoning; and,
- no documentation of need (either a letter of support from the chief elected official or his or her designee or a market study acceptable to MHC which identified the need to be met).

While the developer later provided documentation of site control (an option to purchase the proposed location), he failed to meet two of four initial or "threshold" requirements:

- proper zoning, and,
- documentation of need.

Also, the partnership through which the developer applied for tax credits did not even exist until November 2, 1994, despite an MHC requirement that all necessary documents be submitted by the application deadline, which was October 14, 1994.

Nevertheless, on November 17, 1994, MHC issued a certificate of binding commitment to the project for \$592,853 in 1995 tax credits--an amount worth

nearly \$6 million over the ten-year life span of the credits. MHC followed up with the issuance of the initial reservation of credits on March 31, 1995, with conditions. The developer was to provide several items by May 31, 1995, including a copy of the Land Use Restriction Agreement (LURA) required by Section 42 of the *Internal Revenue Code* to ensure that the property would be used only for low-income housing for thirty years.

This Same Developer Changed Site Locations, Yet Neither MHC nor the Developer Notified Local Officials as Required

MHC records show no change in the award of credits to this same developer, who not only failed to meet the conditions required in the March 31, 1995, initial reservation of credits, but changed the project location from D'Iberville to Biloxi, with MHC approval. PEER noted the following problems:

- Section 42(m) of the *Internal Revenue Code* requires that the chief elected official of the jurisdiction in which the project is located be notified of the proposal. Although Section 42(m) does not specifically state which party (the housing agency or the developer) is responsible for notifying the elected official of such change, in similar situations MHC has taken the responsibility of notifying local officials.

MHC files contained no evidence of correspondence to the Mayor of Biloxi concerning the change in this project's location. MHC staff stated to PEER that notice had been sent, but could not produce a copy of such letter.

- MHC records indicate that the developer acquired the site on December 14, 1995. However, he did not file the restrictive land use agreement with the Harrison County Chancery Clerk until December 28, 1995, well beyond the May 31, 1995, deadline imposed by MHC. Corporation officials responded that the *Internal Revenue Code* only requires the agreement be filed before issuance of the IRS allocation form, which allows the tax credit to be used.

MHC files contain a revised application filed by the developer in October 1995 indicating the Biloxi site, but PEER found no record of payment of a re-application fee or new evaluation of the application. Furthermore, the restrictive land use agreement the developer filed with the Harrison County Chancery Clerk refers to the October 1994 application, not the revised October 1995 application.

MHC's Failure to Enforce the Requirements of the Qualified Allocation Plan Jeopardizes the Integrity of the Tax Credit Program

The Mississippi Home Corporation's failure to follow the qualified allocation plan not only jeopardizes the integrity of the program but creates

confusion as to the impartial administration of the program in the following ways:

- *Failure to enforce the application criteria consistently creates confusion among developers.* Regular deviations from adopted standards raise concerns among developers that some people are being given benefits that others do not receive through preferential application of rules.
- *Failure to enforce the application criteria consistently creates doubt among developers that the program is being fairly administered.* Variation in the application of criteria impugns the essential integrity of the low-income tax credit program. Mississippi Home Corporation's selective application of rules also brings into question its own administration of the low-income housing tax credit program by its failure to utilize its own rules consistently.

The Mississippi Home Corporation's failure to apply the rules in a consistent manner erodes public confidence in the fairness and integrity of the process by which developers are awarded tax credits. From the available documentation, PEER was unable to determine to what extent the Mississippi Home Corporation's actions prohibited other contractors from obtaining tax credit allocations.

Implementation of the Compliance Monitoring Program

The Mississippi Home Corporation sufficiently monitors developers' compliance with Internal Revenue Service requirements.

The *Internal Revenue Code* requires states to monitor tax credit projects for fifteen years to ensure compliance with Section 42. Compliance monitoring, however, does not begin until issuance of the IRS form (8609) to claim the credits. The federal statute is general; it merely requires that a qualified allocation plan contain procedures for monitoring for noncompliance and the process it will use to notify the IRS of any noncompliance revealed by monitoring. The law allows agencies to conduct their own monitoring or to delegate monitoring to an independent contractor. The primary thrust of compliance monitoring is to ensure that:

- owners rent to low-income and very low-income persons as stated in their application for tax credits;
- owners maintain proper documentation on tenants' income; and,
- the housing remain habitable throughout the fifteen-year compliance period.

Federal regulations detail more fully the requirements of the tax credit compliance monitoring program. Regulatory requirements are set out in *26 Code of Federal Regulations*, Section 1.42 et seq. These requirements include:

- recordkeeping and record retention provisions;
- certification and review by owners that they are following Section 42 mandates;
- inspections; and,
- a procedure to notify the IRS of noncompliance.

MHC Monitoring of Projects Exceeds Federal Requirements

Federal regulations require MHC to inspect at least twenty percent of all tax credit projects. However, MHC sets a goal to inspect at least thirty percent of all tax credit projects each year. This monitoring includes verification that the owner maintains the proper documentation on tenant income through random inspection of tenant files and that the owner observes the rent restrictions contained in the tax credit application. MHC also sends annually updated compliance material to owners by certified mail and places the receipt in each development's compliance file. Furthermore, MHC staff personally visit each housing development when it opens to review the requirements of the program with each owner and/or manager.

Organizationally, the compliance monitoring section is in MHC's Multi-family and Rural Housing Division. MHC had a two-person staff responsible for compliance monitoring and annual update and revision of the compliance monitoring plan. These two persons are responsible for monitoring compliance for more than 450 housing developments throughout Mississippi, as well as educating property owners and managers of the program's requirements.

Within PEER's Sample, All Projects Subject to IRS Monitoring Requirements Were in Compliance

Of the fifty projects selected at random for PEER's review, only five were subject to compliance monitoring by MHC. All of these five compliance files had the required information. Evidence in the files showed telephone or written contact with owners and managers to obtain the information called for by both the IRS and the corporation. Developers corrected most omissions within ninety days and most problems appeared to be the result of confusion over complex reporting requirements.

MHC had cited only one project in the PEER sample to the Internal Revenue Service for noncompliance with recordkeeping provisions. The file for

this project, a single-family unit in Jackson renovated with tax credits, showed documentation of numerous compliance problems, including failure to document tenant income properly and failure to meet IRS reporting requirements. Evidence also revealed extensive effort on the part of MHC staff to elicit cooperation from the property owner.

Impact of the Mississippi Home Corporation's Administration of the Tax Credit Program

Although the Mississippi Home Corporation's tax credit program will yield 6,656 low-income housing units throughout the state, only 1,999 units (30%) are located in the areas of greatest need.

MHC Gives Preference to Housing Developments Planning to Locate in Economically Distressed Areas

To help fulfill its mission of stimulating and maintaining the supply of quality low-income rental housing, the Mississippi Home Corporation attempts to give preference to housing developments located in economically and geographically distressed areas. MHC determines these targeted areas based on state and federal census, housing, and economic data. The U.S. Census Bureau provides data about substandard housing in each county and the federal departments of Housing and Urban Development and Treasury determine the criteria for and designate economically distressed areas using household income and fair market rent data.

MHC's application process provides scoring incentives for developments located in one of the three designations: (1) areas of chronic economic distress; (2) qualified census tracts; and, (3) difficult development areas. (See sidebar, right.) Incentives range from three points added to fifteen points added, depending on the percentage of substandard housing present in the area of the planned development. The corporation's qualified allocation plans differentiate among each of these socioeconomic factors; however, scoring incentives do not. An applicant who plans to develop a project in an area of chronic economic distress receives the same scoring incentive as an applicant who plans to build in either a qualified census tract or a difficult development area.

U. S. Government Definitions of Economically Distressed Areas

Area of Chronic Economic Distress: An area designated by the state as meeting the following standards established in regulations and approved by the Secretary of the Treasury and by the Secretary of Housing and Urban Development. This designation is based upon a statistical analysis of data regarding the age of housing stock, need of area residents for owner financing under a qualified mortgage bond issue, potential use of owner financing to improve housing conditions in the area, and the existence of a housing assistance plan that provides displacement services.

Qualified Census Tracts: Designated by the U.S. Department of Housing and Urban Development, 50 percent of households in these census tracts have incomes below 60% of the Average Median Gross Income.

Difficult Development Areas: HUD also designates these areas by comparing household incomes with housing costs data annually. DDAs are those metropolitan areas and non-metropolitan counties with the highest ratios of income to rent to 20 percent of the 1990 state population.

SOURCE: Mississippi Home Corporation.

*Although the Tax Credit Program Will Yield 6,656 New
or Improved Low-Income Housing Units, Only 1,999
Will Be Located in the Areas of Greatest Need*

Between 1995 and 1997, the Mississippi Home Corporation received 355 applications for low-income housing tax credits. Of these applications, the Mississippi Home Corporation approved tax credit allocations for 148 low-income housing developments, or 6,656 new or improved housing units for low-income families. Exhibit 4, page 28, shows Mississippi counties with substandard housing and units provided by tax credit projects, 1995-1997.

Within MHC's targeted areas are those areas PEER defines as "areas of greatest need"--those counties having more than 47% substandard housing in the *1990 Census on Population and Housing* which are also identified as either an area of chronic economic distress, a qualified census tract, or a difficult development area. Only 1,999 of the 6,656 tax credit program housing units (approximately 30%) are located in the areas of greatest need, with only one development (twelve units) located in an area in which 55% to 65% of the housing available is substandard. (See Exhibit 5, page 29). Thus, adequate affordable rental housing may not be available to those who need it most.

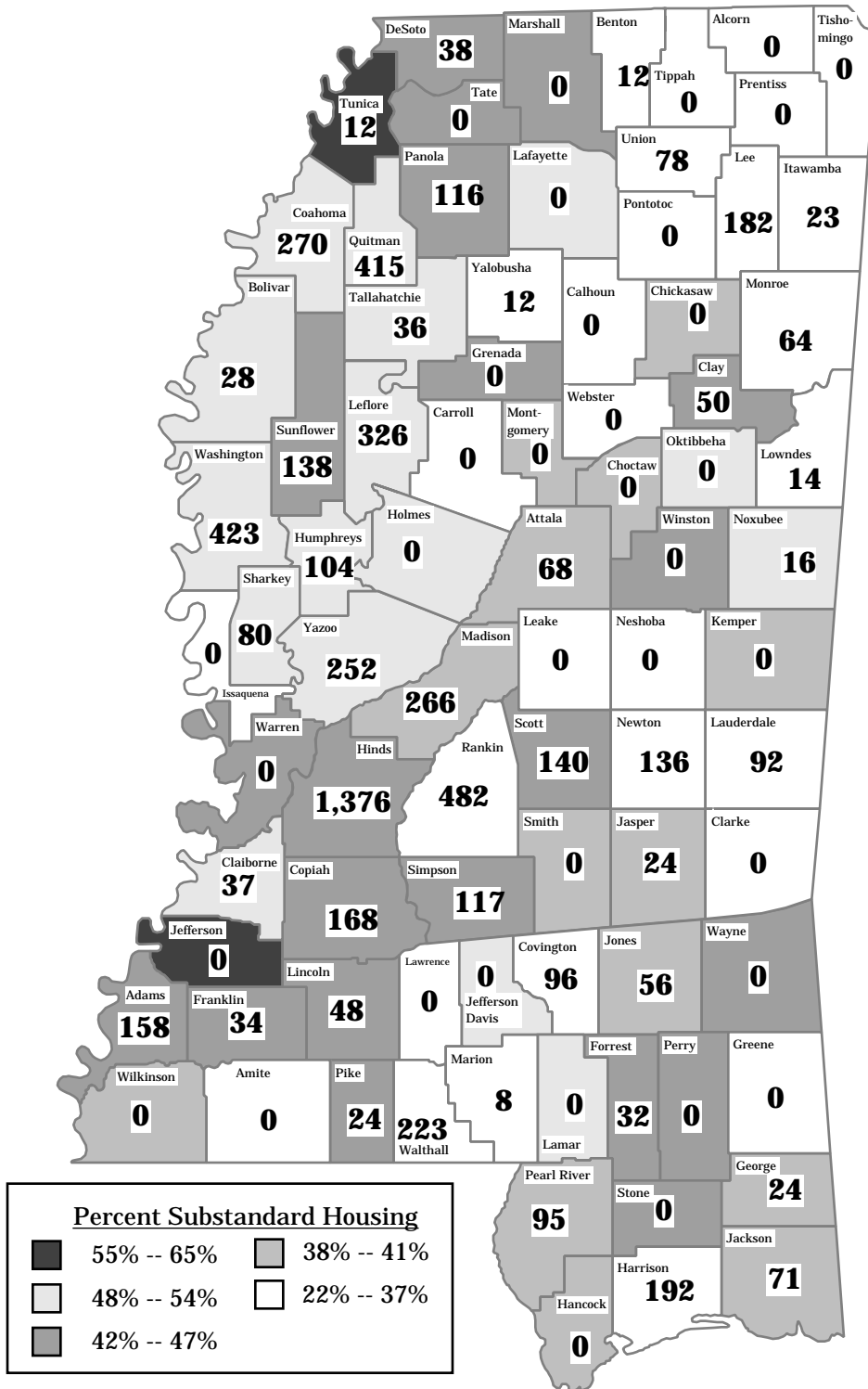
*Both MHC's Scoring Incentives and Market Conditions Have
Contributed to the Lack of Tax Credit Program Projects
in the Areas of Greatest Need*

The Mississippi Home Corporation provides scoring incentives to persuade developers to build low-income housing in areas of targeted need. However, developers receive only one scoring incentive whether they build the project in an area of chronic economic distress, qualified census tract, or a difficult development area, or in an area which falls into multiple categories. For example, MHC awards a ten-point incentive to developers applying to build projects in one of the three designated categories within Tunica, Amite, George, or Lafayette counties. However, under federal definitions, Tunica County qualifies both as an area of chronic economic distress and as a qualified census tract. If a developer applies to build a project in Tunica County, instead of receiving a scoring incentive of twenty points (ten points for each category), MHC will assign an incentive of ten points--the same incentive that a developer applying to build a project in Amite, George, or Lafayette counties would receive. Thus, the scoring system provides no real economic incentive for developers to build in the areas of greatest need--those which may qualify as economically distressed by more than one criterion.

Also, although MHC provides scoring incentives to encourage developments in the areas of greatest need, market conditions continue to drive the private sector's involvement in this program. For example, if the developer's rent restrictions would be below the break-even point and thereby make the development unfeasible, the developer will not build the housing development regardless of MHC's incentives.

Exhibit 4

Mississippi Counties with Substandard Housing and Units Provided by Tax Credit Projects, 1995-1997



SOURCE: PEER analysis of MHC Qualified Allocation Plans and Allocation Files, 1995, 1996, 1997.

Exhibit 5

Distribution of Mississippi's Tax Credit Program Low-Income Housing Units in Targeted and Nontargeted Areas, 1995-1997

| Percentage of Substandard Housing in Areas Receiving Projects | Units Located in Targeted Area | Units Located in Non-Targeted Area | Total Units |
|---|--------------------------------|------------------------------------|-------------|
| 55%-65% | 12 | -- | 12 |
| 48%-54% | 1,987 | -- | 1,987 |
| 42%-47% | 1,479 | 960 | 2,439 |
| 38%-41% | 382 | 222 | 604 |
| 22%-37% | 435 | 1,179 | 1,614 |
| Totals | 4,295 | 2,361 | 6,656 |
| Percentage | 65% | 35% | 100% |

NOTE: Shaded areas denote the areas of greatest need of low-income housing.

SOURCE: PEER analysis of Mississippi Home Corporation records.

Recommendations

1. The Legislature should require that the Mississippi Home Corporation report annually to the Legislature on all tax credit applications made, all granted, and the reasons for granting and denying the applications. This report should also contain an analysis of the number of low-income housing units constructed by county, as well as the total number of housing units and substandard units by county. (The Appendix, page 31, contains proposed legislation concerning the Mississippi Home Corporation.)
2. The Mississippi Home Corporation should comply fully with its own policies and those of the Internal Revenue Service.
3. The Legislative Oversight Committee should request that the Mississippi Home Corporation staff develop an annual options study which appraises the Legislature of strategies which could be implemented to encourage development of low-income housing in the areas of the state most difficult to develop.
4. The PEER Committee's Executive Director should forward a copy of this report to the Internal Revenue Service for its review.

Appendix

**Proposed Legislation Concerning the
Mississippi Home Corporation**

Mississippi Legislature

Regular Session, 1999

BILL

AN ACT TO AMEND SECTION 43-33-727, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE MISSISSIPPI HOME CORPORATION SHALL SUBMIT ANNUALLY TO THE LEGISLATIVE MISSISSIPPI HOME CORPORATION OVERSIGHT COMMITTEE A STUDY DESIGNED TO INFORM THE LEGISLATURE OF METHODS TO ENCOURAGE THE DEVELOPMENT OF LOW INCOME HOUSING IN AREAS OF THE STATE IN WHICH SUCH HOUSING HAS BEEN THE MOST DIFFICULT TO DEVELOP; TO REQUIRE THE MISSISSIPPI HOME CORPORATION TO MAKE A COMPLETE REPORT TO THE LEGISLATIVE OVERSIGHT COMMITTEE OF ALL APPLICATIONS FOR THE LOW INCOME HOUSING TAX CREDIT PROGRAM; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Section 43-33-727, Mississippi Code of 1972, is amended as follows:

§ 43-33-727. Mississippi Home Corporation Oversight Committee.

- (1) There is hereby created the Mississippi Home Corporation Oversight Committee. Such oversight committee shall consist of five (5) Senators appointed by the President of the Senate and five (5) Representatives appointed by the Speaker of the House of Representatives, who shall serve in an advisory capacity to the corporation. The members thereof shall report the actions of the corporation to the appropriate legislative committees. The oversight committee shall have no jurisdiction or vote on any matter within the jurisdiction of the corporation. When the Legislature is not in session, members shall be paid per diem and all actual and necessary expenses, including mileage expenses, from their respective contingent expense funds at the rate authorized for committee meetings when the Legislature is not in session; however, no per diem and expenses will be paid when the Legislature is in session. The terms of the members of the oversight committee shall expire at the end of their terms of office.

SOURCES: Laws, 1989, ch. 525, § 15, eff from and after July 1, 1989.

(2) The Mississippi Home Corporation shall annually develop and transmit to the Legislative Mississippi Home Corporation Oversight Committee by December 15 of each year a study to inform the Mississippi Legislature of methods to encourage the development of low-income housing in those areas of the state in which such housing has been most difficult to develop.

(3) Additionally, the Mississippi Home Corporation shall make by December 15 of each year a complete report of all activity in the low-income housing tax credit program; including, but not limited to, all applications for low income housing tax credits, the action taken on each application, the reason such action was taken on each application, and an analysis of the number of low-income rental housing units constructed by county, as well as the total number of housing units and the amount of substandard housing units in each county.

Section 2. This act shall take effect and be in force from and after July 1, 1999.

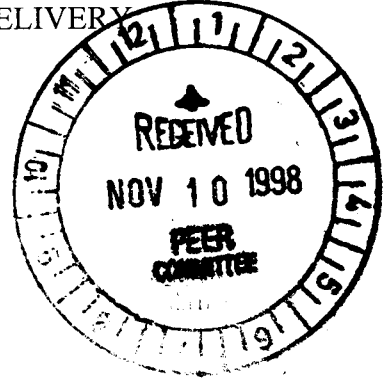


MISSISSIPPI HOME CORPORATION
POST OFFICE BOX 23369
JACKSON MISSISSIPPI 39225-3369

Agency Response

November 10, 1998
VIA HAND DELIVERY

Max Arinder, Executive Director
PEER
222 North President Street
Jackson, Mississippi 39201



RE: MISSISSIPPI HOME CORPORATION

Dear Mr. Arinder:

Please find to follow the response to the Performance, Evaluation and Expenditure Review Committee staff's (hereinafter called PEER) findings regarding the Low Income Housing Tax Credit Program (hereinafter called LIHTC Program) in the State of Mississippi as administered by the Mississippi Home Corporation (hereinafter called the Corporation), to wit:

To reach their opinions, PEER used a random sampling of applicants to the LIHTC Program from 1995-1997. Since 1997, the Corporation has undergone notable changes in upper management. The Corporation has already addressed many concerns cited by PEER. For example, as a policy matter the Corporation has chosen, although the Corporation still reserves the right to, to not amend the Qualified Allocation Plan (hereinafter called QAP) during the year. Such management changes, and their impending philosophies, are noteworthy whereas, as PEER points out, the Board of Directors of the Corporation heavily relies on staff information and recommendations regarding the administration of the LIHTC Program in no small part due to the complexity of the federal program.

The Corporation has strived to achieve excellence in the administration of the LIHTC Program by combining extensive staff training, public comment and equity. PEER's review nor the Corporations's response can fully explain the enormous legal system that we must conquer in implementing one of the most complex programs established by the federal government. One must remember that the LIHTC Program was created by, is continually funded by, and in which Congress has the ultimate oversight authority. Aside any viewpoint regarding the adequacy of the federal government's oversight authority, the federal government is still the ultimate arbiter to decide federal compliance.

PEER has stated that the scope of their investigation is a review of the legal

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requirements of § 42 of the Internal Revenue Code (hereinafter called IRC § 42) and the manner and need of the allocation and monitoring of the LIHTC Program in Mississippi. One should be aware that compliance with the legal requirements of IRC § 42, in all of the discrepancies cited by PEER is a matter of legal interpretation.

In reaching their conclusions, PEER states that they spoke with Corporation staff, board and "other parties" who were interested in the administration of the LIHTC Program. Because of the highly competitive nature of the LIHTC Program, individuals considered "other parties" may be prejudicial to the competent administration of the LIHTC Program. This will remain unknown whereas PEER has not disclosed individuals considered "other parties."

The crux of PEER's concerns is the assumption that the Corporation does not have oversight of the administration of the LIHTC Program. This assumption is flawed in that there are at least six different potential State oversight mechanisms regarding the administration of the LIHTC Program. They are as follows: (1) gubernatorial approval, (2) specific public comment opportunities, (3) general open meetings of the Corporation, (4) the Corporation's legislatively created oversight committee, (5) audit by the State Auditor, and (6) assumably, PEER. Further, federal guidelines are subject to compliance review by the Internal Revenue Service and the General Accounting Office (hereinafter respectively called the IRS or the GAO). By coupling the state and federal oversight guidelines the LIHTC Program is subject to what the creators and suppliers of the LIHTC Program, Congress, currently believes to be more than adequate supervision.

One aspect of failings caused by the presumed inadequate oversight is that the Corporation's annual QAP does not comply with federal guidelines in which the QAP "allows the Corporation to amend the plan without first complying with public review and comments procedure and the government signature requirement." The premise of this argument is flawed in that PEER discounted the fact that there is no federal or state prohibition against allowing a particular allocator of low income housing tax credits to reserve the right to amend their QAP after such was subject to a public review and gubernatorial signature. Labeling something "illegal" in the current situation is at most an opinion.

Another aspect of PEER's concerns deals with perceived fairness. PEER cites' instances in which they decide that the process of administering the LIHTC Program by the Corporation creates an aura of unfairness amongst developers. Not only did PEER not produce a single disgruntled developer, they failed to prove how the administration of the LIHTC Program by the Corporation has created inequity to the citizens targeted by

Max Arinder
November 10, 1998
Page 3

the LIHTC Program. Never does PEER address the inequity of any deviation from or adjustments to the QAP's. The only presumption from this omission is that there was no inequity involved with any deviations.

PEER's interpretation that the states bear the burden to ensure that we are administering the LIHTC Program according to federal regulations is risky in that they did not produce any authority that this is factual. One factor that PEER uses to make this assumption is founded in a GAO study conducted in 1997. In this study, the GAO stated that the IRS needed more information regarding the low income housing tax credit allocation and compliance process at the state level, and that the IRS lacks the specific authority to evaluate the above process. Apart from the GAO study, the IRS has not petitioned Congress to specifically address the cited instances.

PEER has recommended that the Legislature require the Corporation to make certain disclosure and findings to the Legislature annually. The information that PEER requests to be disclosed and distributed is currently provided to the legislatively created oversight committee, to the tax credit advisory committee, the Board of Directors of the Corporation and to all the public that requests a copy. The second recommendation by PEER deals with compliance with internal policies and state and federal law. Considering this, the Corporation would again state that it will continue to endeavor to follow the letter and spirit of all policies, procedures and guidelines whether we selfly impose them or by law.

The final recommendation by PEER regarding the development of low income housing strategies would duplicate the work already preformed by the Corporation. Staff currently reports such options to the Board of Directors and the Legislative Oversight Committee annually usually with the Board of Directors annual planning sessions.

In closing, the Corporation would like to thank PEER for their efforts to attempt to understand a very complex part of federal legislation. As noted, the Corporation had previously adopted policies that addressed many concerns raised by PEER. Although we have some differences of opinion regarding some matters, the Corporation believes that the exercise of internal and external review can best meet its objectives when performed in a congenial manner.

Warmest regards,

MISSISSIPPI HOME CORPORATION



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