#488

Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER)

Report to
the Mississippi Legislature

A Review of the Mississippi Home Corporation's Low-Income Housing Tax Credit Program

The Low-Income Housing Tax Credit Program is a program created under the Tax Reform Act of 1986 that the Internal Revenue Service uses as an incentive to the private business sector for the development of affordable housing for low-income Americans. The Mississippi Home Corporation (MHC) administers and oversees the state's Low-Income Housing Tax Credit Program utilizing federal guidelines.

PEER found that while MHC complies with the Internal Revenue Service's requirements regarding public review and gubernatorial approval of its annual Qualified Allocation Plan (QAP), language in the QAP allows the corporation to amend the plan without a public review and comment period prior to implementation of changes. Also, in administering the Low-Income Housing Tax Credit Program, MHC has:

- allowed developers to exceed maximum cost per unit guidelines, which is contrary to program goals;
- provided an advantage to developers who have a record of noncompliance; and,
- failed to monitor developers' compliance with debt service ratio requirements throughout the fifteen-year compliance period.

Through the incorporation of strong incentives into its QAP, MHC has had success in encouraging developers to serve the state's lowest income tenants located within qualified census tracts. However, there are still needy areas of the state that the Low-Income Housing Tax Credit Program has not served.

Also, MHC does not specifically seek feedback from tenants residing in low-income units when developing the QAP, but specifically seeks feedback from the developers and syndicators. This creates the image that the MHC is more concerned with the needs of those involved in the administration of low-income housing units than those for whom the units are constructed.

August 8, 2006

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 joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven 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 four Representatives and four 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 that 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.

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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.

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August 8, 2006

Honorable Haley Barbour, Governor
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On August 8, 2006, the PEER Committee authorized release of the report entitled **A Review of the Mississippi Home Corporation's Low-Income Housing Tax Credit Program.**

Senator Richard White, Chair

This report does not recommend increased funding or additional staff.

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A Review of the Mississippi Home Corporation's Low-Income Housing Tax Credit Program

Executive Summary

Introduction

The purpose of this review is to follow up on findings contained in PEER's 1998 report entitled *A Compliance Review of the Mississippi Home Corporation's Tax Credit Program* and to address specific concerns over the Low-Income Housing Tax Credit Program that were expressed by a complainant.

Background

A *tax credit* is a federally authorized dollar-for-dollar reduction in tax liability. The federal government generally uses tax credits as an incentive for businesses to become involved in activities that might not otherwise be considered profitable. The Low-Income Housing Tax Credit (LIHTC) Program is a tax credit program created under the Tax Reform Act of 1986 that the Internal Revenue Service uses as an incentive to the private business sector in exchange for the development of affordable housing for low-income Americans.

The Mississippi Legislature established the Mississippi Home Corporation in 1989 to serve as a government instrumentality, separate and apart from the state, to finance the acquisition, construction, and rehabilitation of single and multifamily housing for persons of low to moderate income. In 1990, former Governor Ray Mabus selected the Mississippi Home Corporation to administer and oversee the Low-Income Housing Tax Credit Program utilizing federally established guidelines. The corporation receives no state funding for the implementation of the tax credit program.

Following are brief descriptions of the MHC's three major roles in administering the Low-Income Housing Tax Credit Program:

- *creating and implementing the Qualified Allocation Plan*--As specified by Internal Revenue Service regulations, MHC develops an annual Qualified Allocation Plan (QAP) that sets forth the criteria to determine housing priorities appropriate to local conditions within the state and establishes the application process for potential developers. The QAP also provides a procedure for compliance monitoring. The QAP must be developed and approved annually through a process that includes committee input, investor feedback, board approval, public review, and gubernatorial approval.

- *allocating tax credits*--Once the annual QAP has been approved, the MHC uses it, in combination with IRS regulations, to review the application of each developer who wants to build low-income housing units. MHC checks applications for compliance with federal regulations and the annual plan, ranks each applicant, and then determines the amount of tax credit the applicant would need for a feasible development. The MHC Board determines which developments should receive an allocation of tax credits.

- *monitoring for compliance*—During the fifteen-year compliance period, the MHC must monitor developments for compliance through tenant file audits and physical inspections. The MHC must report instances of major noncompliance to the Internal Revenue Service.

Conclusions: Follow-Up on PEER's 1998 Report on MHC's Low-Income Housing Tax Credit Program

With respect to the follow-up on findings contained in PEER's 1998 report entitled *A Compliance Review of the Mississippi Home Corporation's Tax Credit Program*, PEER sought to determine the following:

- Does the Mississippi Home Corporation (MHC) incorporate public review and comment into the Qualified Allocation Plan?

- Does MHC's administration of the program promote the best use of tax credits to provide low-income housing?

- Has MHC distributed tax credits to ensure benefit to areas of need throughout the state?

PEER presents these questions below, with summary answers.

Does the Mississippi Home Corporation incorporate public review and comment into the Qualified Allocation Plan?

While MHC complies with IRS requirements regarding public review and gubernatorial approval of its annual Qualified Allocation Plan, language in the QAP allows the corporation to amend the plan without a public review and comment period prior to implementation of changes.

The Internal Revenue Service requires MHC to subject its QAP to public review and then have the plan signed by the governor. However, as noted in its 1998 report on MHC's Low-Income Housing Tax Credit Program, MHC has amended the annually approved QAP several times during the program's existence without obtaining public review and comment prior to implementation of the amendment. This practice has the potential to create the appearance of impropriety and could have a negative impact on the perception of fairness of administration of the program.

Does MHC's administration of the program promote the best use of tax credits to provide low-income housing?

PEER found that in administering the Low-Income Housing Tax Credit Program, MHC has:

- ***allowed developers to exceed maximum cost per unit guidelines, which is contrary to program goals;***
- ***provided an advantage to developers who have a record of noncompliance; and,***
- ***failed to monitor developers' compliance with debt service ratio requirements throughout the fifteen-year compliance period.***

MHC annually establishes a maximum cost per unit for low-income housing developments by examining variations in construction and land costs and statistical cost data on completed developments. The maximum cost per unit guideline should help maximize the number of housing units that can be built to serve areas and tenants of greatest need. However, PEER found that during calendar years 2004 and 2005, MHC allowed 81% of the program's approved developments to exceed its own maximum cost per unit guidelines. If MHC had enforced the guidelines, based on the average cost per unit, the corporation could have funded the construction of an additional 648 units for low-income residents.

In selecting developers to build low-income housing units, MHC utilizes a point system that incorporates the selection criteria in that year's QAP. PEER found that MHC has awarded "developer experience" points during the application process to numerous developers who have failed to comply with program requirements in their previous MHC developments. This practice rewards poor performance and could result in a loss of tax credits should the IRS determine the pattern of noncompliance to be significant.

The IRS requires that developers participating in the Low-Income Housing Tax Credit Program stay within certain parameters of financial feasibility in order to receive an allocation of tax credits. To oversee this financial feasibility, the IRS requires that MHC monitor for compliance with these parameters. PEER found that MHC's staff does not monitor developers' compliance with debt service ratio requirements (one of the financial feasibility guidelines) throughout the fifteen-year compliance period. This creates the potential for developers that comply with the Low-Income Housing Tax Credit Program application's financial requirements to come out of compliance and thus jeopardize tax credits.

Has MHC distributed tax credits to ensure benefit to areas of need throughout the state?

Through the incorporation of strong incentives into its QAP, MHC has had success in encouraging developers to serve the state's lowest income tenants located within qualified census tracts. However, there are still needy areas of the state that the Low-Income Housing Tax Credit Program has not served.

The Corporation's QAP provides incentives to encourage developers to build in low-income areas (i.e., qualified census tracts) and difficult development areas.* In calendar years 2003 through 2005, the majority of MHC's low-income housing developments and units were placed in counties with the greatest number of substandard housing units as reported in the 2000 census (e.g., Hinds, Madison, Lauderdale, Harrison, Jackson, Forrest, Washington, Sunflower, Bolivar, Coahoma, Panola, Lowndes, and Lee). Also, from calendar year 2003 through 2005, MHC placed approximately 66% of the Low-Income

* A *Qualified Census Tract* is an area in which, based on the most recent census data available, either fifty percent or more of the households have an income of less than sixty percent of the area median gross income or which has a poverty rate of at least twenty-five percent. A *Difficult Development Area* has high construction, land, and utility costs relative to area median gross income. These designations are made by the U. S. Secretary of Housing and Urban Development.

Housing Tax Credit Program developments and units in qualified census tracts.

However, some counties with a relatively large number of substandard housing units and qualified census tracts (e.g., Leflore, Yazoo, and Jones) and many counties with a significant percentage of qualified census tracts and a smaller number of substandard housing units (e.g., Noxubee, Leake, Holmes, Tallahatchie, Quitman, Wilkinson, and Adams) received no new MHC low-income housing units during this period. Fifty-six counties with twelve or more substandard housing units (the minimum allowed size of an MHC low-income housing development) received no low-income housing units over the three-year period.

Conclusions: Status of Recent Complaints Regarding MHC's Administration of the Tax Credit Program

PEER also addressed the following questions regarding MHC's administration of the Low-Income Housing Tax Credit Program based on issues that were raised by a complainant:

- Does the MHC adequately inform citizens of proposed tax credit projects in their neighborhoods?
- Does the MHC physically inspect the suitability of proposed sites for the tax credit developments prior to project approval?
- Does the MHC repeatedly approve developments for and award tax credits to the same developers?
- Because developers applying to receive low-income housing tax credits contract for their own market studies, does this compromise the objectivity of the studies?
- Does the MHC hold developers accountable for maintaining their tax credit developments?
- Does the MHC obtain feedback from the target population of the Low-Income Housing Tax Credit Program?

PEER presents these questions below, with summary answers.

Does the MHC adequately inform citizens of proposed tax credit projects in their neighborhoods?

The MHC requires developers to inform the public of proposed tax credit developments in their area. However, the MHC's 2005 Citizen Participation Requirements Checklist and Certification does not require MHC to verify the presence of written comments obtained from the public hearing (i.e., evidence that MHC has actively solicited public input) as specified in the QAP.

By MHC not including the written comment component on the checklist and certification form, there is no clear documentation available for MHC to verify the presence of any written comments from the public hearing, nor any written responses made by the developer to the attendees. Thus, the MHC may not actively solicit the viewpoints of concerned citizens within the target community of the proposed development.

Does the MHC physically inspect the suitability of proposed sites for tax credit developments prior to project approval?

Although the MHC physically inspects the suitability of proposed development site locations, one development MHC approved for a reservation of tax credits in 2003 is currently considered not suitable for occupancy by local government standards based on poor physical site conditions regarding drainage and location issues. However, until MHC performs a final site inspection for the development, the issue must be dealt with through the local governmental authority and must conform to local standards before receiving an actual allocation of credits.

MHC staff was not aware of the Certificate of Occupancy problem associated with this development until informed by PEER. This can be attributed to the limited communication that occurs between the MHC and the local governmental authority after the initial application process.

Does the MHC repeatedly approve developments for and award tax credits to the same developers?

Yes, but although 69% of the developments approved by MHC from 2003 to 2005 went to approximately 29% of the developers, these developers had submitted more applications and MHC followed established procedures in evaluating all of the applications.

The applicant rating system set in the QAP provides point incentives to developers with prior experience in the program, but MHC uniformly awards these incentive points to all developer applicants who qualify for them.

Because developers applying to receive low-income housing tax credits contract for their own market studies, does this compromise the objectivity of the studies?

No, because skewing a market study to overstate the market in a given area would not be in the developer's best interest, since the development must remain profitable to continue to receive tax credits. As a further check on an area's ability to support a proposed Low-income Housing Tax Credit development, MHC reviews the market studies of all applications in a given area to make sure that approval of multiple proposed developments in the same area would not exceed the area's market capacity.

The Internal Revenue Service requires a comprehensive market study to be conducted at the developer's expense before the MHC allocates credits. The market study must be conducted by a disinterested individual or entity that is qualified to prepare such market study and approved by the MHC. Should the market study be altered to show the need of the proposed development in a market area not suitable, which could either be saturation of low-income units in the proposed area or a lack of potential tenants with the ability to afford the proposed units, then the development could not generate enough revenue to remain operable, and therefore cause a potential recapture of credits.

Does the MHC hold developers accountable for maintaining their tax credit developments?

The MHC holds developers accountable for maintaining their developments by checking records of applicants' previous developments for patterns of noncompliance with Internal Revenue Service regulations, by auditing tenant files and conducting physical inspections at least once every three years, and by reporting major issues of noncompliance to the Internal Revenue Service. If developers fail to comply with Internal Revenue Service regulations, the IRS may recapture those developers' tax credits.

MHC also must ensure that developers comply with Internal Revenue Service regulations because repeated instances of developers' noncompliance could lead to loss of the developer's eligibility to participate in the Low-Income Housing Tax Credit Program in the future.

Does the MHC obtain feedback from the target population of the Low-Income Housing Tax Credit Program?

The Corporation does not specifically seek feedback from tenants residing in low-income units when developing the Qualified Allocation Plan, but specifically seeks

feedback from the developers and syndicators. This creates the image that the MHC is more concerned with the needs of those involved in the administration of low-income housing units rather than those for whom the units are constructed.

Although the feedback from the tenants of low-income units may not always benefit the development of the annual plan or the allocation process, excluding this feedback could possibly limit the impact and effectiveness of the program if the program does not fulfill the needs of the target population.

Recommendations

1. The corporation should revise the Qualified Allocation Plan amendment process to include the use of public review and comment prior to the board adopting amendments.

2. The MHC Tax Credit Committee's approval of a request to exceed the maximum cost per unit should be the rare exception rather than common practice. Before approving such a request, MHC should require detailed documentation of each cost component of the requested increase and why each requested increase in a cost component is necessary to the viability of the development.

3. The Tax Credit Committee should maintain minutes or meeting notes regarding any decisions for approvals and denials of increased cost per unit requests. MHC should keep these notes on file with the request letters and responses.

4. The criteria of Developer Experience in the Applicant Rating System should be removed and the five points previously awarded for this category should be reallocated to increase the preference specified in IRC §42 if a development is located in a Qualified Census Tract and contributes to a concerted community revitalization plan.

5. The MHC should ensure that its method of calculating the amount of tax credit to be awarded based on financial feasibility is accurate. For example, the corporation should modify its automated spreadsheet used to calculate financial feasibility to add a field noting whether MHC approved an increase in the

cost per unit expenses, which would enable the spreadsheet to determine more accurately the amount of tax credit to be allocated.

6. The MHC compliance monitoring staff should annually review trends in the debt service ratio for each development to ensure that the owners of developments trending out of compliance for the fifteen-year period adjust rents as necessary to ensure that the debt service ratio for the development falls within the required fifteen-year average range of 1.15 to 1.30.

7. The corporation should ensure the distribution of low-income housing units by annually monitoring the need for low-income housing throughout the state based on the annual assessments of the location of low-income developments constructed in comparison to the number of substandard housing units per county, rather than solely relying on the market studies to determine the number of low-income units an area can absorb. In addition, the corporation could increase the total number of incentive points that developers may earn by adding incentive points for developments proposed in areas that have not received low-income developments within the past two years.

8. The MHC should increase communication with the local governments prior to placing tax credit developments. The MHC should contact the city or other applicable entity during the physical site inspection at the fifty-percent completion phase of the development. This would ensure that the development is in compliance with local codes and permits earlier in the process, reducing the chance for issues to arise between the local government and the developer at the final inspection.

9. The corporation should revise the Qualified Allocation Plan to remove the option of allowing a developer to submit an American Institute of Architects certificate of substantial completion in jurisdictions that require a certificate of occupancy.

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A Review of the Mississippi Home Corporation's Low-Income Housing Tax Credit Program

Introduction

Authority

In response to a legislative inquiry, the PEER Committee reviewed the Mississippi Home Corporation's Low-Income Housing Tax Credit Program. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972).

Scope and Purpose

The purpose of this review is to follow up on findings contained in PEER's 1998 report entitled *A Compliance Review of the Mississippi Home Corporation's Tax Credit Program* and to address specific concerns expressed by a complainant about the tax credit program.

With respect to the follow-up, PEER sought to determine the following:

- Does the Mississippi Home Corporation (MHC) incorporate public review and comment into the Qualified Allocation Plan[1]?

- Does MHC's administration of the program promote the best use of tax credits to provide low-income housing?

[1] As specified within IRC §42, MHC must develop an annual *Qualified Allocation Plan* that sets forth the selection criteria to determine housing priorities appropriate to local conditions within the state and to establish the application process for potential developers to be utilized in the state.

- Has MHC distributed tax credits to ensure benefit to areas of need throughout the state?

PEER also addressed the following questions regarding MHC's administration of the Tax Credit Program based on issues that were raised by a complainant:

- Does the MHC adequately inform citizens of proposed tax credit projects in their neighborhoods?

- Does the MHC physically inspect the suitability of proposed sites for the tax credit developments prior to project approval?

- Does the MHC repeatedly approve developments for and award tax credits to the same *developers*[2]?

- Because developers applying to receive low-income housing tax credits contract for their own market studies, does this compromise the objectivity of the studies?

- Does the MHC hold developers accountable for maintaining their tax credit developments?

- Does the MHC obtain feedback from the *target population* of the Low-Income Housing Tax Credit Program?

In conducting this review, PEER examined MHC's Low-Income Housing Tax Credit Program application files for calendar years 2003 through 2005 and program compliance files for calendar years 2000 through 2005.

During the course of PEER's review, the federal government significantly increased the amount of low-income housing tax credit awarded to Mississippi in an attempt to address the urgent need for housing created by Hurricane Katrina. (See Appendix E, page 61.) This report does not include a review of MHC's handling of this additional tax credit authority because the corporation had not awarded any of these tax credits by the time that PEER concluded its fieldwork.

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[2] Appendix C, page 52, includes definitions of terms such as *developer* that are related to the Low-Income Housing Tax Credit Program. The report italicizes the first occurrence of terms defined or explained in the appendix.

Method

In conducting this review, PEER:

- reviewed relevant sections of IRC §42 pertaining to policy and procedures for the establishment of the Qualified Allocation Plan, requirements regarding the administration of the program by the corporation, and requirements for the compliance monitoring of active developments;

- reviewed the corporation's 2005 Qualified Allocation Plan to determine its compliance status with IRC §42;

- interviewed corporation staff from the Executive Division, Research and Development Division, Allocation Division, and the Compliance Division;

- examined all allocation files from 2003 through 2005 to determine the allocation of credits in accordance with federal regulations and the Qualified Allocation Plan, excluding only those financed in part by tax-exempt bonds that are overseen by the Mississippi Development Authority;

- examined all active compliance files for developments in active status from 2000 to the present to determine whether the corporation conducts compliance monitoring in accordance with federal regulations and the Qualified Allocation Plan; and,

- examined the forty-two tax credit allocation files from 2004 and 2005 to determine compliance with *financial feasibility* requirements and to analyze the locations of the developments in view of the areas with the greatest need of low-income housing.

Background

What is a Low-Income Housing Tax Credit?

A *tax credit* is a federally authorized dollar-for-dollar reduction in tax liability, unlike tax deductions and exemptions that only reduce the amount of income that is taxable. Tax credits are treated as a payment already made toward taxes owed. The federal government generally uses tax credits as an incentive for businesses to become involved in activities that may not otherwise be considered profitable, such as low-income housing.

The Low-Income Housing Tax Credit Program is a program created under the Tax Reform Act of 1986 that the Internal Revenue Service uses as an incentive to the private business sector in exchange for the development of affordable housing for low-income Americans.

The Low-Income Housing Tax Credit (LIHTC) Program is a tax credit program created under the Tax Reform Act of 1986 that the IRS uses as an incentive to the private business sector in exchange for the development of affordable housing targeting low-income Americans. These tax credits may be received by both for-profit and non-profit developers. To take advantage of the tax credit, non-profit developers enter into *syndication agreements* with for-profit firms, such as oil companies, to exchange the tax credits for development funding. The for-profit firms receive the benefit from the tax credits over a ten-year period. (See Appendix A, page 37, for information on caps on profits and fees associated with Mississippi's Low-Income Housing Tax Credit Program developments.)

The Mississippi Home Corporation's Role in Administering the Low-Income Housing Tax Credit Program

The Legislature established the Mississippi Home Corporation in 1989 as the legal successor to the Mississippi Housing Finance Corporation. The corporation was created to serve as a government instrumentality, separate and apart from the state, to finance the acquisition, construction, and rehabilitation of single and multifamily housing for persons of low to moderate income. The corporation established its mission to enhance Mississippi's long-term economic viability by financing safe, decent, affordable housing and helping working families build wealth.

IRC Section 42 requires the governor of each state to designate a state entity to administer and oversee the Low-Income Housing Tax Credit Program utilizing federally

established guidelines. In 1990, former Governor Ray Mabus selected the corporation as the *state housing entity* to carry out these responsibilities for Mississippi.

The Mississippi Home Corporation was designated in 1990 by the governor as the state housing entity to administer and oversee the Low-Income Housing Tax Credit Program.

MISS. CODE ANN. Section 43-33-704 (1972) establishes the Mississippi Home Corporation. The members of the corporation (referred to in this report as the MHC Board) serve six-year, staggered terms. Six members are appointed by the Governor, two from each Supreme Court district, with advice and consent of the Senate, and three members are appointed by the Lieutenant Governor, one from each Supreme Court district.

Although the corporation receives no state funding for the implementation of the tax credit program, it does have a Legislative Oversight Committee. This is a ten-member, nonvoting advisory committee consisting of five members of the House of Representatives appointed by the Speaker of the House and five senators appointed by the Lieutenant Governor. The committee attends MHC Board meetings and receives information updates on MHC programs and operations.

The corporation has three major roles in administering the Low-Income Housing Tax Credit Program: creating and implementing the Qualified Allocation Plan, allocating tax credits, and monitoring for compliance.

Creation and Implementation of the Qualified Allocation Plan

The Internal Revenue Code requires that MHC develop an annual Qualified Allocation Plan that includes criteria for housing priorities, an application procedure, and a compliance monitoring procedure.

As specified within IRC §42, the corporation must develop an annual Qualified Allocation Plan that sets forth the criteria to determine housing priorities appropriate to local conditions within the state and establishes the application process for potential developers to be utilized in the state. The QAP must also provide a procedure the corporation must follow in monitoring for compliance.

MHC utilizes *selection criteria* that include factors such as whether the area has a public housing waiting list. The Qualified Allocation Plan must also give preference in allocating tax credits to developments that serve the lowest income tenants, serve qualified tenants for the longest timeframe, and that are located within a Qualified Census Tract.[3] MHC incorporates the selection criteria into a point system, evaluating and scoring development

[3] A *Qualified Census Tract* is designated by the Secretary of Housing and Urban Development as an area in which, based on the most recent census data available, either fifty percent or more of the households have an income of less than sixty percent of the area median gross income or which has a poverty rate of at least twenty-five percent.

proposals on the basis of this point system. (See Appendix B, page 41, for a description of the 2005 selection criteria and point associations.)

The process that the Qualified Allocation Plan must undergo to be approved consists of several steps. First, MHC Board Chair appoints a Tax Credit Committee (i.e., three MHC Board members appointed annually by the board's Chair) to develop the annual plan. Next, the corporation meets with developers and a conference call with *syndicators* and *investors* to obtain feedback about the QAP and the application process. The Tax Credit Committee then modifies the plan if deemed necessary based on this feedback. The proposed plan is then sent to the Mississippi Home Corporation Board of Directors for approval. Once this has been completed, MHC holds a public hearing to inform the general public and any interested parties about the components of the plan and what has been proposed. After the public review, the Board of Directors makes any changes resulting from the public hearing and votes on approval of the final plan. The annual plan must be submitted for the governor's signature in order to become a legal plan utilized to allocate credits within the state.

Allocation of Tax Credits

Once MHC reviews the developer's application and verifies the documentation and the development passes MHC's final site inspection, MHC awards the development an IRS Form 8609, showing that it is eligible to receive tax credits, and notifies the IRS.

Once the annual Qualified Allocation Plan has been approved, it becomes the standard the corporation must adhere to, in combination with IRC §42, to review each application throughout the calendar year. The corporation reviews each application for compliance with federal regulations and the annual plan, ranks each applicant, and then determines the amount of tax credit the applicant would need for a feasible development. At each step of the application process, the Tax Credit Committee submits recommendations to the MHC Board based on the applicant and the credit authority available for the application year. The board then has the final authority to determine which applications will receive a reservation of tax credits. In order for the development to receive tax credit allocations, the development must be at 100% completion and the application must be submitted, with the necessary documentation, to the MHC to have the building placed in service (see Appendix C, page 53). Once MHC verifies the documentation and the development passes MHC's final site inspection, MHC awards the development an IRS Form 8609, showing that it is eligible to receive tax credits, and notifies the IRS.

Compliance Monitoring

The compliance period is a fifteen-year period in which the corporation must monitor any and all developments financed with low-income housing tax credits for issues of noncompliance.

For fifteen years, MHC must monitor developments financed with low-income housing tax credits for issues of noncompliance.

Compliance monitoring has two components: the *tenant file audit* and *physical inspection*. IRC §42 states that each development must have a file audit and physical inspection within two years of the "placed in service" date and at least one of each performed in three-year intervals throughout the remaining compliance period. The MHC must report instances of major noncompliance noted from either the tenant file audit or the physical inspection to the Internal Revenue Service on Form 8823, which denotes any issue of major noncompliance, whether the issue has been corrected or not.

File audits focus on the tenant files and monitor information such as rent restrictions, tenant incomes, and tenant services. This is often submitted on an annual basis. During these audits, the compliance monitoring staff also notes any written tenant complaints, verifies the continuing presence of *replacement and operating reserves* for the development, and ensures the development has *positive annual cash flow*. Depending on the size of the development, MHC may conduct either an on-site audit or a desk audit. If the development has fewer than twenty-four units, MHC will conduct a desk audit, wherein the development *owner*/manager submits the necessary tenant files to the corporation for review. Should the development have more than twenty-four units, MHC conducts an on-site audit, wherein compliance monitoring staff would travel to the development to review the files.

MHC conducts its physical inspections in accordance with HUD guidelines to ensure that the development is free of health and safety hazards, not subject to material adverse conditions, and is structurally sound, secure, habitable, and in good repair.

MHC conducts its physical inspections in accordance with HUD guidelines to ensure that the development is free of health and safety hazards, not subject to material adverse conditions, and is structurally sound, secure, habitable, and in good repair. The standards for the maintenance and physical inspections of these developments focus on health and safety concerns and compliance with state and local codes relative to:

- project site;
- building exterior;
- building systems; and,
- common areas.

For more detail on how the Low-Income Housing Tax Credit Program works, see Appendix C, page 53. For examples of other low-income housing programs in Mississippi, see Appendix D, page 60.

Impact of the Low-Income Housing Tax Credit Program in Mississippi

Nationwide, since the program's inception in 1986, the Low-Income Housing Tax Credit Program has developed approximately 1.5 million low-income units from the allocation of approximately $7.5 billion in tax credits.

For the next two years, the number of low-income housing units developed and credits allocated will increase significantly due to the additional federal funding provided for the Gulf Opportunity Zone ("GO Zone") in response to the damage caused by Hurricane Katrina.

Within Mississippi, the tax credit program has allocated $64,009,677 in tax credits for 21,861 units from the program's inception through 2004. Over the last three years, $22,421,336 in tax credits has been allocated to develop 3,811 low-income units in Mississippi. For calendar years 2006 through 2008, the number of units developed and credits allocated will increase significantly due to the additional federal funding provided for the Gulf Opportunity Zone, also known as the "GO Zone," in response to the damage caused by Hurricane Katrina. (See Appendix E, page 61, for information on additional housing funds that will be made available through the Gulf Opportunity Zone.)

Does the Mississippi Home Corporation Incorporate Public Review and Comment into the Qualified Allocation Plan?

While MHC complies with IRS requirements regarding public review and gubernatorial approval of its annual Qualified Allocation Plan, language in the QAP allows the corporation to amend the plan without a public review and comment period prior to implementation of changes.

IRC §42 requires MHC to subject its annual Qualified Allocation Plan (QAP) to public review and then have the plan signed by the governor. Generally, MHC presents its annual QAP for public review in the fall and the governor signs the plan shortly thereafter. However, as noted in PEER's 1998 report on MHC's Low-Income Housing Tax Credit Program, MHC has amended the annually approved QAP several times during the program's existence without obtaining public review and comment prior to implementation of the amendment. (See Appendix F, page 63, for the executive summary of PEER's 1998 report *A Compliance Review of the Mississippi Home Corporation's Tax Credit Program*.) In the 1998 report, PEER concluded that amendments to the QAP should be subject to the same level of public review as the annual QAP itself.

In response to PEER's 1998 report, MHC added the following language to the QAP:

> *The Corporation will be entitled to amend the Qualified Allocation Plan and its Housing Tax Credit Program as required by the promulgation or amendment of the Regulations and to meet the public purpose policies of the Corporation, from time to time. Such amendment is expressly permitted by the QAP, and the making of such amendment will not require further public hearings.*

Should federal law require changes in the program, public review of QAP amendments is needed so that potential developer applicants and interested citizens may be made aware of the changes prior to their implementation.

As a result of this revised language, on February 15, 2001, the MHC Board again approved an amendment to the 2001 QAP (which was signed by the governor on January 22, 2001), incorporating several federal regulatory changes signed into law by the President on December 21, 2000, regarding qualified census tracts, income and rent limits, and underwriting criteria. The amendment also extended the application cycle and altered the selection criteria for developers--issues of public interest that would be suitable for public review and comment. Only after approval of the

amendment by the board did MHC conduct a public review meeting (held on February 26, 2001) to address issues or concerns with the amendment to the QAP.

PEER contends that even if amendments are allowed to produce conformity with federal law changes, amendments should be subject to the same level of public review and gubernatorial approval as the annual QAP. Should federal law require changes in the program, public review of QAP amendments is needed so that potential developer applicants and interested citizens may be made aware of the changes prior to their implementation. In the 1998 report, PEER noted that the entities responsible for low-income housing tax credit programs in Tennessee, Alabama, and Louisiana allow technical amendments to bring their QAPs into conformity with federal law changes only after public review and comment and gubernatorial approval.

MHC's failure to subject proposed amendments to the QAP to the same review process as the annual plan has the potential to create the appearance of impropriety and could have a negative impact on the perception of fairness of administration of the program.

MHC's position of allowing amendments to the QAP for conformity with federal law changes and for other reasons (i.e., what the corporation has termed "public purpose policies") without public review and comment prior to implementation does not ensure that the public has input and knowledge regarding decisions about the Low-Income Housing Tax Credit Program prior to implementation of changes. MHC's failure to subject proposed amendments to the QAP to the same review process as the annual plan has the potential to create the appearance of impropriety and could have a negative impact on the perception of fairness of administration of the program.

Does MHC's Administration of the Program Promote the Best Use of Tax Credits to Provide Low-Income Housing?

Allowing Developers to Exceed Maximum Cost Per Unit Guidelines is Contrary to Program Goals

During calendar years 2004 and 2005, MHC allowed 81% of the program's approved developments to exceed maximum cost per unit guidelines. If MHC had enforced its maximum cost per unit guidelines, the corporation could have funded the construction of an additional 648 units for low-income residents.

MHC annually establishes a maximum cost per unit by examining variations in construction and land costs and cost data on previous developments, with adjustments for development location, size, and type.

The maximum cost per unit guideline should help maximize the number of housing units that can be built to serve areas and tenants of greatest need.

MHC annually establishes a maximum cost per unit for low-income housing developments by examining variations in construction and land costs and statistical cost data on completed developments. The maximum cost per unit guideline should help maximize the number of housing units that can be built to serve areas and tenants of greatest need.

The MHC formula contained in MHC's 2005 QAP set a maximum cost per unit based on the type of financing for the development ($59,000 for developments financed through Rural Development loans, formerly known as Farmers Home Administration loans, and $74,000 for developments financed conventionally, through HUD or with tax-exempt financing), which is adjusted based on factors related to development location, size, and type. As a result of the adjustments, the financing based maximum costs per unit of $59,000 and $74,000 could increase to maximums of $82,600 and $103,600, respectively. These maximum cost per unit adjustments recognize the generally higher costs of constructing special needs housing in difficult development areas[4].

[4] A *difficult development area* is designated by the Secretary of Housing and Urban Development as an area that has high construction, land, and utility costs relative to area median gross income.

MHC allows developers to exceed the maximum cost per unit if they disclose contributing factors and submit the request through a licensed engineer or architect.

MHC's 2005 QAP includes an explanation of the circumstances under which the corporation could allow a developer to exceed the maximum cost per unit. According to the QAP, the developer seeking corporation approval to exceed the limit would first have to disclose and fully explain all factors contributing to the excess cost per unit, such as exceptionally high land costs, material costs, or special wage rates. The QAP further states that the corporation will award credits to such developments only if:

> *(i) the review reveals that the additional costs are justifiable and reasonable under the circumstances, (ii) can be attributed to unique development characteristics (such as location in a difficult-to-develop area, limited commercial space or tenant services or common areas essential to the character of the development) which are consistent with the housing needs and priorities identified herein, and (iii) are either attributable to costs which Congress has permitted the Tax Credit to finance or, if not, financed by other means.*
>
> *The Corporation will also consider on a "case by case" basis the costs of developments having (i) significant amenities, (ii) significant rehabilitation or construction costs, (iii) significant acquisition and rehabilitation of a historical property, and (iv) having tangibly increased material or labor costs.*

According to MHC staff, a licensed engineer or architect working for the developer must submit the request to exceed the maximum cost per unit to the MHC Tax Credit Committee for its consideration ten working days prior to the application deadline.

From 2004 through 2005, 81% of MHC's applications for low-income housing tax credit developments included requests to exceed the maximum cost per unit, with an average requested increase of $21,870 per unit.

PEER reviewed all forty-two approved MHC low-income housing tax credit applications for calendar years 2004 and 2005 to determine whether any of the developers had

submitted a request to exceed the maximum cost per unit and what action MHC's Tax Credit Committee had taken relative to any such requests. PEER determined that thirty-four of the approved applications (i.e., 81%) included a request to exceed the maximum cost per unit. The amounts of the requests ranged from $87.76 per unit for a ninety-six-unit development (a requested increase of .1% over the maximum) to $107,811.36 per unit for a twenty-unit development (a requested increase of 121% over the maximum). The average requested increase was $21,870 per unit over the maximum cost per unit.

Although very few developers' requests to exceed the maximum costs per unit in 2004 and 2005 included specific itemized costs, the MHC Tax Credit Committee approved all of the requested increases, including a request to exceed the maximum cost per unit by 121%.

Despite the fact that very few of the requests to exceed the maximum costs per unit included specific itemized costs in justification of the request as required by the QAP, the MHC Tax Credit Committee approved all of the requested increases in the amounts requested, including the request to exceed the maximum cost per unit by 121% (which request brought the total cost per low-income housing unit in this development to $197,166). Examples of the broad reasons cited by developers for requesting MHC approval to exceed the maximum cost per unit included the following:

- local and HUD guidelines required handicap accessible units;
- roofing systems are designed using hurricane-resistant materials;
- two-story duplex and four-plex buildings were strongly preferred and provide a higher degree of safety, while integrating families into the new community both socially and physically;
- single-family developments are more expensive to landscape than multi-family properties. Cost of sod and plantings are far higher on a per unit basis;
- the use of brick will increase the longevity of the development;
- two-car carports, exceeding the corporation's minimum standard of a one-car carport;
- the increased value of the property may be seen in additional living space in the home, or in creating "identity" within a development that could be characterized as "repetitious" or "boring."

MHC defends its approval of requests to exceed the maximum cost per unit on the grounds that the higher costs result in nicer units with more amenities for the residents. According to MHC staff, the higher-cost units are not only nicer for the residents but also help the corporation in its efforts to address the issue of local citizens who could be apprehensive about the development. Also, MHC noted that twenty-one of the thirty-four developments approved in calendar years 2004 and 2005 were lease-purchase developments comprised of single-family houses. Under the lease-purchase low-income housing program, residents lease the property for the first fifteen years, and then have the option to purchase the property that they have been living in. In general, lease-purchase housing developments have higher per unit costs than multi-family housing developments. While MHC's 2004 and 2005 QAPs made no provision for the higher costs of these developments in the maximum cost per unit formula, MHC's 2006 QAP sets a separate base maximum cost for "single-family detached units" at $113,000 and because of the higher cost of these units, limits the percentage of lease-purchase units funded through MHC to 40% of total tax credit allocations in a calendar year.

Approximately $5.2 million (approximately 26%) of the $20.3 million in low-income housing tax credits that MHC allocated in calendar years 2004 and 2005 funded development costs that exceeded MHC's maximum costs per unit.

As long as there are Mississippi residents living in substandard housing who could qualify to live in low-income housing financed through MHC tax credits, MHC should seek to maximize the number of safe, decent, affordable housing units built with low-income housing tax credits.

PEER determined that approximately $5.2 million (approximately 26%) of the $20.3 million in low-income housing tax credits that MHC allocated in calendar years 2004 and 2005 funded development costs in excess of MHC's maximum costs per unit. Had MHC adhered to its maximum cost per unit in funding developments during this period, it could have funded the construction of an additional 648 low-income housing units, based on the average cost per unit for these applications. While not all of the persons living in the 10,970 Mississippi housing units defined as substandard by the 2000 census had incomes sufficient to live in MHC low-income housing tax units, the 648 additional units which MHC could have funded represents 6% of the state's total substandard units based on the 2000 census.

PEER notes that as long as there are Mississippi residents living in substandard housing who could qualify to live in low-income housing financed through MHC tax credits (see Exhibit 2-A, page 22), MHC should seek to maximize the number of safe, decent, affordable housing units built with

low-income housing tax credits rather than making safe, decent, affordable units "nicer."

MHC's practice of approving all requests to exceed the maximum cost per unit regardless of size or justification limits the program's effectiveness in meeting the state's low-income housing needs.

It should also be noted that by allowing higher costs per unit, MHC is allowing developers to increase their developer fees without increasing the number of units built, since the developer fee is a percentage of the total cost of the development (see Appendix A, page 37).

While there could be legitimate justification for approval of requests to exceed the maximum cost per unit by small amounts in isolated cases, MHC's practice of approving all requests regardless of the size or justification limits the program's effectiveness in meeting the state's low-income housing needs.

MHC does not keep minutes or written records of the actions of the Tax Credit Committee; thus, the corporation does not document its rationale for decisions on why cost per unit increases were granted.

Upon interviewing the MHC allocation staff in regard to the increased cost per unit, PEER found that MHC does not keep minutes or written records of the actions of the Tax Credit Committee, although the MHC staff does keep a folder of the requests and decision letters sent back to the developer on the request decision. This practice of not documenting its rationale for decisions on why cost per unit increases were granted is consistent with MHC's reluctance to ensure that the public has access to the decisionmaking process in matters involving the public interest (see page 10).

MHC does not ensure that its formula awards the correct number of tax credits in the event that MHC were to deny a request to exceed the maximum cost per unit.

Another potential problem related to maximum cost per unit guidelines is the fact that MHC does not ensure that its formula awards the correct number of tax credits in the event that MHC were to deny a request to exceed the maximum cost per unit. Specifically, MHC's spreadsheet contains two values for the development's cost per unit: the value based upon the application (i.e., total development costs divided by number of units) and the value based on MHC's 2005 QAP maximum cost per unit formula (refer to discussion on page 11). In calculating the number of tax credits that MHC should award to the proposed development, MHC designed the spreadsheet to select the higher of the two values. While the formula yields the correct amount of tax credit as long as MHC approves the developer's request to exceed the maximum

cost per unit, the formula would result in the awarding of excess tax credits in the case where MHC were to deny a request to exceed the maximum cost per unit. Although MHC did not deny any requests to exceed the maximum cost per unit in calendar years 2004 or 2005, an allocation of tax credits in excess of the amount necessary for the financial feasibility of a project would violate IRC §42 and could therefore jeopardize all tax credits awarded to the development.

Providing an Advantage to Developers with a Record of Noncompliance Could Result in a Loss of Tax Credits

MHC has awarded "developer experience" points during the application process to numerous developers who have failed to comply with program requirements in their previous MHC developments. This practice rewards poor performance and could result in a loss of tax credits should the IRS determine the pattern of noncompliance to be significant.

MHC's point system ranks applications for low-income housing tax credit developments, awarding up to 103 points on twenty different selection criteria.

MHC utilizes a point system to rank applications for low-income housing tax credits that have met the required *threshold* factors (refer to discussion of threshold factors on page 55). As specified in IRC §42, the point system for the Low-Income Housing Tax Credit Program should give preference to proposed developments serving the lowest-income tenants for the longest period of time and located in qualified census tracts.

As shown in Appendix B, page 41, MHC's Low-Income Housing Tax Credit application point system awards up to a total of 103 points on twenty different selection criteria. For example, points for individual criteria range from two points for criteria such as the following:

- a public housing waiting list in the area of the proposed development (i.e., the development will be located in an area in which it will provide housing for persons on public housing waiting lists or no housing authority currently provides affordable housing developments for persons on waiting lists);

- location of the development in a Qualified Census Tract and contribution to a concerted revitalization plan (i.e., the development will be located in a QCT and the local authority verifies that the development will fulfill part of

the respective community's revitalization plan); and,

- experience in managing a low-income tax credit housing development (i.e., within three years of application the development's property manager can verify prior management experience for the type of housing proposed);

to fifteen points for the following criteria:

- significant community services and amenities (i.e., the development provides at least two community services, such as educational programs and job training, and two significant amenities, such as a swimming pool and playground); and,

- single-family lease purchased development (i.e., the tenant has the option to purchase the unit once the fifteen-year compliance period has ended).

The point system also subtracts from one to five points for items such as failure to highlight plans and specifications in the application. According to MHC's 2005 QAP, an application must score a minimum of 75 points to be considered for a reservation of tax credits. MHC allocates tax credits in order of the applicants' rankings until there are no more tax credits to distribute or there are insufficient tax credits to fully fund any remaining qualified applicant's project.

Within the point system, MHC awards five points if a developer has experience in the development of low-income housing within three years of the application date.

The MHC staff believes that experienced developers build better developments and should have fewer problems complying with IRS rules and regulations.

MHC's justification for awarding five points in its point system for "developer experience" (i.e., experience in the development of low-income housing within three years of the application date) is that the staff believes that experienced developers build better developments and should have fewer problems complying with IRS rules and regulations governing the tax credit program.

Of forty-five compliance files of the projects developed by eight experienced developers, twenty-three contained at least one instance of major noncompliance MHC reported to the IRS.

In order to determine whether experienced developers were in compliance with IRS rules and regulations on their previous MHC tax credit developments, PEER reviewed files that MHC was actively monitoring for compliance as of April 2006 of developers with previous Low-Income Housing Tax Credit Program experience (i.e., forty-five files representing twelve experienced developers). Twenty-three of these (representing eight experienced developers) contained at least one IRS Form 8823, which is the form MHC must use to report major noncompliance issues to the federal government, whether corrected or not. The most common issues of noncompliance that MHC reported to the IRS included:

- household income above income limit upon initial occupancy;
- major violations of health, safety and building codes;
- owner failed to correctly complete or document tenant's annual income certification;
- owner failed to maintain or provide tenant income certification and documentation; and,
- other (e.g., low-income units occupied by nonqualified full-time students).

These are major noncompliance issues that could result in loss of tax credits if not corrected within the period allowed by the IRS. By awarding developer experience points to developers with serious compliance issues, MHC is rewarding poor performance, when the time invested and credit authority allocated could be better utilized on those developers without major noncompliance.

Lack of Complete Financial Feasibility Compliance Monitoring Could Jeopardize Tax Credits

MHC's staff does not monitor developers' compliance with debt service ratio requirements throughout the fifteen-year compliance period. This creates the potential for developers who comply with the Low-Income Housing Tax Credit Program application's financial requirements to come out of compliance and thus jeopardize tax credits.

According to IRC §42, the corporation should not allocate to a project any tax credit dollar amount that exceeds the amount necessary to assure project feasibility and viability throughout the credit period based on the standards implemented in the Qualified Allocation Plan. The financial feasibility analysis focuses primarily on the presence of replacement and operating reserves, positive annual net income, and an average *debt service ratio* (i.e., the ratio of income to permanent financing payments). In its QAP, MHC established that the average debt service ratio of a development must fall within a range of 1.15 to 1.30 over the fifteen-year compliance period. Should a development not adhere to the financial feasibility standards during the allocation process, it will not be considered financially feasible and therefore will not receive an allocation of tax credits from the MHC.

MHC monitors annual net income and the continued presence of reserves annually throughout the compliance period, but it does not look at the debt service ratio after the application process.

IRC §42 also requires that the MHC provide a procedure that the agency will follow in monitoring for compliance. Currently, the MHC does monitor the annual net income requirements and the continued presence of reserves annually throughout the compliance period, but it does not look at the debt service ratio after the application process. Therefore, the compliance staff is not monitoring all of the financial feasibility requirements as established within the Qualified Allocation Plan, despite the importance of these standards in the allocation phase of the tax credit process.

Without the MHC monitoring the debt service ratio during the compliance period, a development may operate at a debt service ratio not in the 1.15 to 1.30 range. An excess of the debt service ratio is particularly important should the development exceed the 1.30 ratio average over the compliance period, which would result in the development being considered financially feasible without tax credits based on MHC standards. Therefore, the rents of tenants would need to be reduced or a portion of the tax credits may need to be recaptured to bring the development back into compliance with QAP standards. In addition, without monitoring this requirement there is no way to notify the IRS of this potential noncompliance.

Has MHC Distributed Tax Credits to Ensure Benefit to Areas of Need Throughout the State?

Through the incorporation of strong incentives into its QAP, MHC has had success in encouraging developers to serve the state's lowest income tenants located within qualified census tracts. However, there are still needy areas of the state that the Low-Income Housing Tax Credit Program has not served.

The Qualified Allocation Plan for Mississippi Home Corporation's LIHTC Program provides incentives to encourage developers to build in low-income areas. MHC's maximum developer profit formula (refer to Appendix A on page 37) allows up to seven additional percentage points of profit for factors related to serving the state's lowest income residents in qualified census tracts or areas designated as difficult to develop in counties with the highest percentages of substandard housing. Also, MHC's tax credit allocation point system awards up to twenty-six points (out of a maximum total of 103 points) for these same factors.

As shown in Exhibit 1 on page 20, in calendar years 2003 and 2005, approximately 70% of MHC's low-income housing tax credit developments and units were located in qualified census tracts, while in calendar year 2004 47% of the developments and 50% of the units were located in such areas.

Exhibit 1: Percentage of MHC's Low-Income Housing Tax Credit Developments and Housing Units Located in Qualified Census Tracts for Calendar Years 2003 through 2005

Calendar Year	% of Total Developments Located in Qualified Census Tracts	% of Total Units Located in Qualified Census Tracts
2003	70%	74%
2004	47%	50%
2005	72%	68%

SOURCE: PEER's analysis of MHC allocation files.

Also, during calendar years 2003 through 2005 MHC was successful in placing developments in counties such as Jefferson and Tunica that, according to PEER's 1998 report on MHC, previously had few to no MHC tax credit housing units despite having the highest percentages of substandard housing.

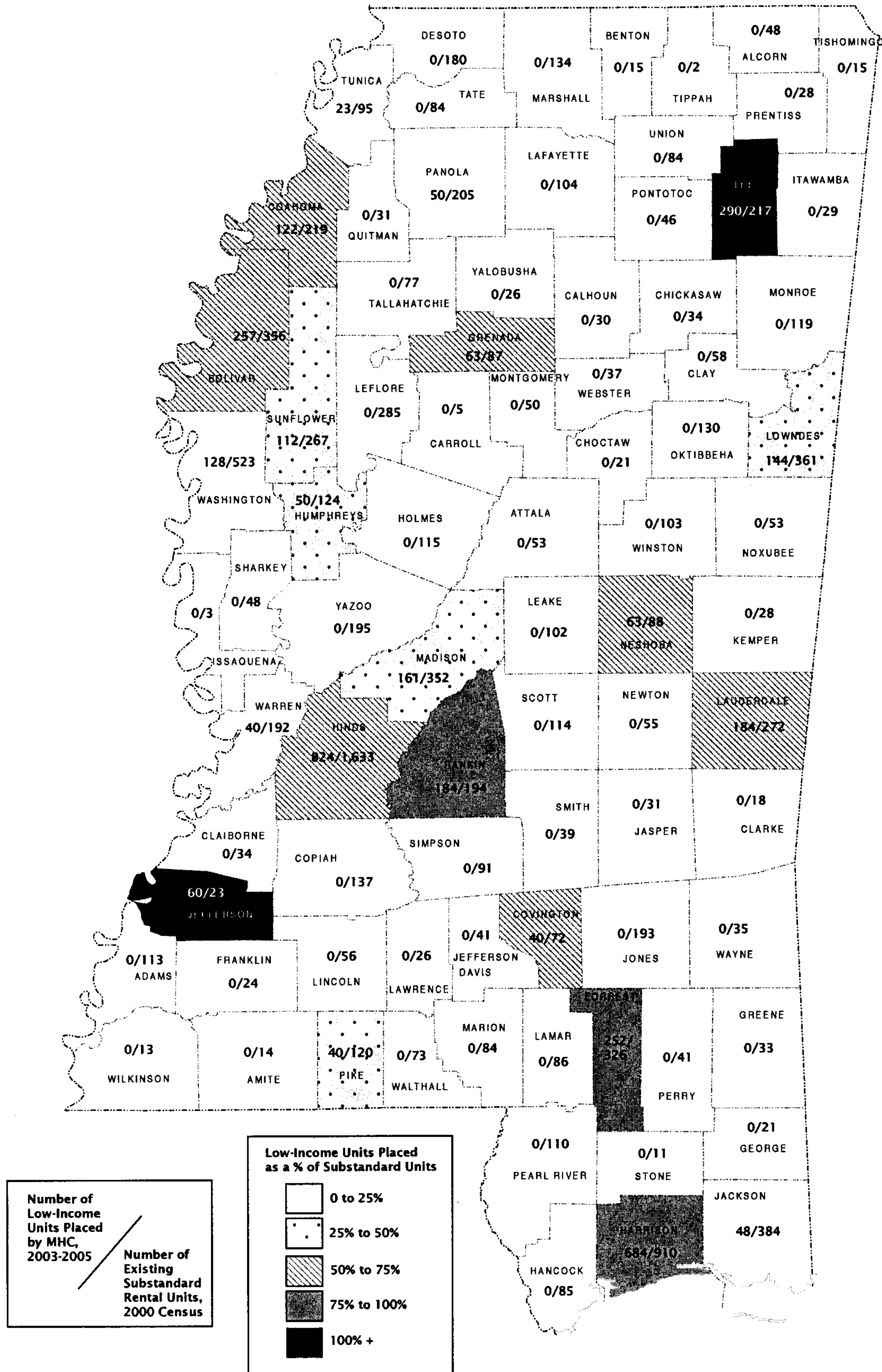
Some counties with a relatively large number of substandard housing units and qualified census tracts (e.g., Leflore, Yazoo, and Jones) and many counties with a significant percentage of qualified census tracts and a smaller number of substandard housing units (e.g., Noxubee, Leake, Holmes, Tallahatchie, Quitman, Wilkinson, Adams) received no new MHC low-income housing tax units from 2003 through 2005.

As shown in the map in Exhibit 2-A, page 22, during calendar years 2003 through 2005, the majority of MHC's low-income housing developments and units were placed in counties with the greatest number of substandard housing units as reported in the 2000 census (e.g., Hinds, Madison, Lauderdale, Harrison, Jackson, Forrest, Washington, Sunflower, Bolivar, Coahoma, Panola, Lowndes, and Lee). However, it should also be noted that some counties with a relatively large number of substandard housing units and qualified census tracts (e.g., Leflore, Yazoo, and Jones; refer to map of qualified census tracts in Exhibit 2-B) and many counties with a significant percentage of qualified census tracts and a smaller number of substandard housing units (e.g., Noxubee, Leake, Holmes, Tallahatchie, Quitman, Wilkinson, Adams) received no new MHC low-income housing tax units during this period. Exhibit 2-C, page 24, summarizes the major factors affecting the location of MHC housing developments.

A review of MHC allocation files for calendar years 2003 through 2005 shows that eleven counties received low-income units for at least one of the three years; eight counties received low-income units for two of the three years; and three counties received low-income units for all three years. Fifty-six counties with twelve or more substandard housing units (the minimum allowed size of an MHC low-income housing development) according to the 2000 census received no low-income housing units over the three-year period reviewed.

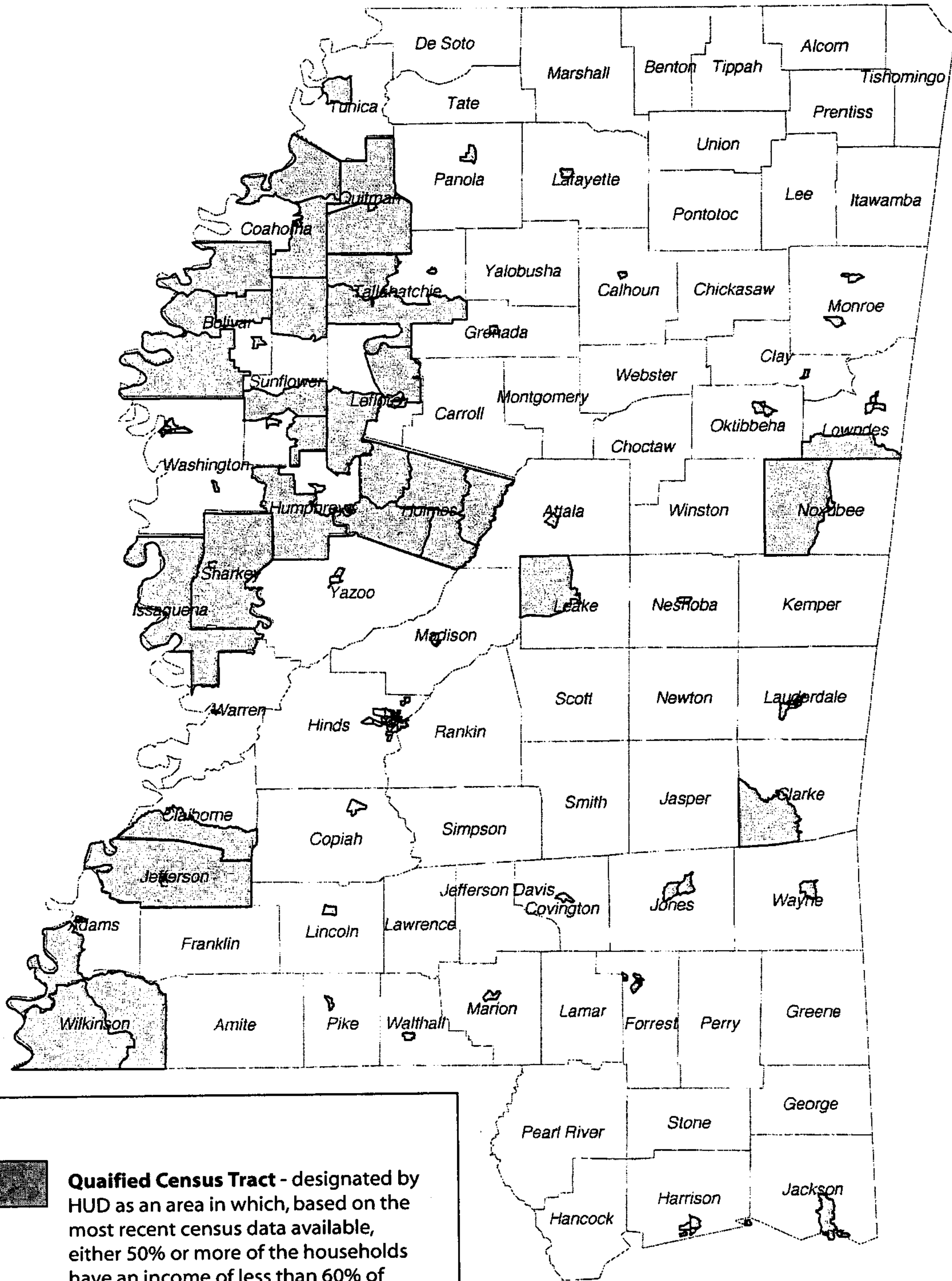
As discussed on page 11, MHC's approval of requests to exceed the maximum cost per unit for a majority of the applicants during this timeframe limits the number of units that MHC could have developed, potentially hindering a broader dispersion of units throughout the state. It should also be noted that no matter how many incentives MHC offers, in some areas of the state locating low-income housing developments would not be financially feasible. The housing needs of the non-working poor are served, in part, by other housing programs, examples of which are given in Appendix D on page 60.

Exhibit 2-A: Number of Low-Income Units Approved by MHC During 2003 through 2005 in Relation to the Total Substandard Rental Units Based on 2000 Census Data



SOURCE: 2000 Census data; MHC allocation files.

Exhibit 2-B: Mississippi Qualified Census Tracts Effective 2004



Quaified Census Tract - designated by HUD as an area in which, based on the most recent census data available, either 50% or more of the households have an income of less than 60% of the area median gross income or which has a poverty rate of at least 25%

SOURCE: MHC website (from 2000 Census data).

Exhibit 2-C: Factors Affecting Location of MHC Housing Developments

As noted throughout this report, several factors affect the location of housing developments built through MHC's Low-Income Housing Tax Credit Program, such as:

- **location factors built into MHC's applicant rating point system**--e.g., five points awarded for developments placed in counties with the highest percentages of substandard housing, two points for developments contributing to a concerted community revitalization plan placed in a Qualified Census Tract or a Difficult Development Area, five points for preserving existing low-income housing units (see Appendix B on page 41)

- **incentives built into MHC's developer fees**--maximum fees are up to 73% higher for developers building a development of sixteen or fewer units located in counties with the highest percentages of substandard housing or in a Qualified Census Tract or a Difficult Development Area, with over 40% of the tenants earning less than $10,000 in annual household income

- **whether a sufficient number of potential tenants are nearby to make a development financially feasible**--i.e., there must be a sufficient number of tenants in need of such housing within commuting distance of their jobs and with sufficient income and job stability to make the development profitable; also, MHC requires that each development have a minimum of twelve units

- **labor cost and availability in the area**

- **proximity to other projects of the same developer**—proximity enables the developer to achieve economies of scale in project construction, oversight, and management

Status of Recent Complaints Regarding MHC's Administration of the Tax Credit Program

As noted on page 2, when conducting this review, PEER also addressed the following questions regarding MHC's administration of the Low-Income Housing Tax Credit Program based on issues that were raised by a complainant:

- Does the MHC adequately inform citizens of proposed tax credit projects in their neighborhoods?
- Does the MHC physically inspect the suitability of proposed sites for the tax credit developments prior to project approval?
- Does the MHC repeatedly approve developments for and award tax credits to the same developers?
- Because developers applying to receive low-income housing tax credits contract for their own market studies, does this compromise the objectivity of the studies?
- Does the MHC hold developers accountable for maintaining their tax credit developments?
- Does the MHC obtain feedback from the target population of the Low-Income Housing Tax Credit Program?

The following sections address these questions.

Does the MHC Adequately Inform Citizens of Proposed Tax Credit Projects in Their Neighborhoods?

The MHC requires developers to inform the public of proposed tax credit developments in their area. However, the MHC's 2005 Citizen Participation Requirements Checklist and Certification does not require MHC to verify the presence of written comments obtained from the public hearing (i.e., evidence that MHC has actively solicited public input) as specified in the QAP.

The Applicant Rating system within the MHC 2005 Qualified Allocation Plan includes an incentive entitled Community Support, which awards the applicant five

points for successful completion of this category. The purpose of this scoring component is to relay information to the local community and others that will be impacted by a proposed low-income housing project and the target population it will serve. The Community Support component requires the following guidelines:

- *Public Hearing*--the applicant must hold one public hearing at least ten days prior to submitting a tax credit application; this public hearing must be held in a location that is handicap accessible;

- *Public Notices*--the applicant must publish two notices advertising the public hearing; these notices must be published in a local newspaper having general circulation in the proposed area and may not be published within three days of each other; however, if no local newspaper is available in the proposed area, then the article must be published in a regional newspaper with general circulation in the area; this notice must also include that the applicant is applying for low-income housing tax credits;

- *Written Comment*--the local community that will be impacted by the proposed low-income development must be informed that written comments will be accepted at the public hearing; the applicant must provide a written answer to each comment within fifteen working days; copies of these comments must be maintained by the applicant for review by the MHC;

- *Proof of Publication*--the applicant must submit proof of publication for the public notices; the applicant must submit copies of the actual notices published in the newspaper and the dates of the notices must be verified to not be advertised more than twenty days before but no less than five days before the date of the public hearing;

- *Public Hearing Minutes*--the applicant must submit the date the public hearing was held as well as the minutes taken during the hearing;

- *Attendance Roster*--a copy of the attendance roster for the public hearing must be submitted to the MHC by the applicant providing the names and number of people who attended the public hearing.

All of the above guidelines must be completed for the applicant to receive the five points in the applicant rating system during the application process. It should be noted

that the Community Support component and required guidelines were changed for the 2006 Qualified Allocation Plan to become the "Community Notification" component. This component is still valued at five points within the applicant rating system, but it now includes the requirement for the developer to place a sign at the proposed development site that informs the community of the intent of use of the property as well as the date, time, and location of the public hearing.

By MHC not including the written comment component on the checklist and certification form, there is no clear documentation available for MHC to verify the presence of any written comments from the public hearing, nor any written responses made by the developer to the attendees.

The Citizen Participation Requirement Checklist and Certification within the MHC tax credit application requires verification for all of the above criteria to satisfy this scoring component, except for the part pertaining to maintaining and verifying written comments. By MHC not including the written comment component on the checklist and certification form, there is no clear documentation available for MHC to verify the presence of any written comments from the public hearing, nor any written responses made by the developer to the attendees. Thus, the MHC may not actively solicit the viewpoints of concerned citizens within the target community of the proposed development.

Does the MHC Physically Inspect the Suitability of Proposed Sites for the Tax Credit Developments Prior to Project Approval?

Although the MHC physically inspects the suitability of proposed development site locations, one development MHC approved for a reservation of tax credits in 2003 is currently considered not suitable for occupancy by local government standards based on poor physical site conditions regarding drainage and location issues. However, until MHC performs a final site inspection for the development, the issue must be dealt with through the local governmental authority and the development must conform to local standards before receiving an actual allocation of credits.

Throughout the application process, MHC requires information submitted by the applicant regarding physical location, zoning, and other site requirements. One of the requirements during the application process requires a letter from the local authority verifying proper zoning, or the lack of zoning requirements, that must be submitted with the application. Also, the market study must include a physical site inspection of the proposed development and a review of the zoning requirements for the proposed site and all land within a one-mile radius. During the selection criteria component, MHC's readiness criteria checklist and certification requires the following:

- physical needs assessment on any rehabilitation work to be completed;

- detailed proposed development drawings;
- completion of the Description of Materials form depicting the materials that will be used in constructing the development;
- verification letter from the licensed architect/engineer stating that the submitted drawings and description of materials are in compliance with the MHC minimum design quality standards; and,
- letter from the licensed architect/engineer stating that the proposed development will meet all applicable building code, permit requirements, and physical site suitability based on applicable local, state, and federal requirements.

Should MHC make a reservation of tax credits to a development, it performs site inspections at the point of fifty percent of development completion and a final inspection once the development applies to receive tax credits.

In addition, the MHC performs a physical site inspection upon submission of the application. This site assessment includes items regarding the development's accessibility, the presence of any existing buildings adjacent to the development and the condition of those buildings, the proximity of the development in relation to basic services and necessities, and whether the development site is near or contains any detrimental characteristics. Should MHC make a reservation of tax credits to a development, it also performs site inspections at the point of fifty percent of development completion and a final inspection once the development applies to receive tax credits.

PEER staff reviewed a complainant's concerns regarding one particular development and discovered that the development, which has not yet applied for an IRS 8609 Form to receive tax credits, is currently considered not suitable for occupancy based on local government standards. While the city did sign off on this development's proposed plan despite noting issues with the drainage due to the retaining wall and proximity to the creek, the city claims that based on original site proposals, not enough work was performed by the developer to stabilize the retaining wall and that the development's parking lot and several units are too close to a creek embankment. According to city personnel, the city has issued the development a Temporary Certificate of Occupancy that only allows for the on-site location of management and other staff to get the units ready for occupancy.

Therefore, citizens' concerns about the development should be addressed to the local government until these conditions are dealt with between the developer and the city and until MHC performs the final site inspection. At

final inspection, the development must pass MHC standards and be in compliance with local, state, and federal requirements (including receiving a Certificate of Occupancy from the city) in order to receive an 8609 Form and begin receiving annual allocations of tax credits.

Once the city submits the initial required zoning and site approval documentation to MHC, communication between the city and MHC is limited until the final site inspection.

MHC staff was not aware of the Certificate of Occupancy problem associated with this development until informed by PEER. This can be attributed to the limited communication that occurs between the MHC and the local governmental authority after the initial application process. Once the city submits the initial required zoning and site approval documentation to the MHC, communication between the city and MHC is limited until MHC's final site inspection.

Does the MHC Repeatedly Approve Developments for and Award Tax Credits to the Same Developers?

Yes, but although 69% of the developments approved by MHC from 2003 to 2005 went to approximately 29% of the developers, these developers had submitted more applications and MHC followed established procedures in evaluating all of the applications. Also, the applicant rating system set in the QAP provides point incentives to developers with prior experience in the program, but MHC uniformly awards these incentive points to all developer applicants who qualify for them.

The complainant alleged that the MHC had repeatedly approved developments for and allocated tax credits to the same developers.

PEER staff reviewed application files for the developments that had received a reservation of tax credits from the MHC for calendar years 2003 through 2005, prior to developments approved from GO Zone tax credit allocations, in order to obtain the following information:

- the number of developments to which MHC had awarded tax credits, by developer;
- the total amount of tax credits MHC had allocated, by developer; and,
- the total number of units applied for and total number of units approved, by developer.

Sixty-nine percent of the developments approved by MHC from 2003 through 2005 went to twenty-nine percent of the developers (i.e., six of twenty-one developers). As would be expected, the total amount of tax credit allocated was higher for those developers who had a higher number of developments approved by the MHC. In addition,

developers with more approved developments were approved for more units by MHC. Forty-four percent of the total low-income units approved by MHC belonged to two developers.

MHC had also denied some of these same developers for several proposed developments.

However, in reviewing application files, PEER determined that although the same developers are receiving the majority of the tax credits, these developers are also submitting more tax credit development proposals. It should be noted that MHC had also denied some of these same developers for several proposed developments because either MHC had ranked other projects higher on the applicant rating system or MHC did not have enough credit authority to fund the remaining projects for that year.

Because Developers Applying to Receive Low-Income Housing Tax Credits Contract for Their Own Market Studies, Does this Compromise the Objectivity of the Studies?

No, because skewing a market study to overstate the market in a given area would not be in the developer's best interest, since the development must remain profitable to continue to receive tax credits. As a further check on an area's ability to support a proposed Low-Income Housing Tax Credit development, MHC reviews the market studies of all applications in a given area to make sure that approval of multiple proposed developments in the same area would not exceed the area's market capacity.

IRC §42 requires a comprehensive market study to be conducted at the developer's expense before the MHC allocates credits. The market study must be conducted by a disinterested individual or entity that is qualified to prepare such market study and approved by the MHC. The MHC Qualified Allocation Plan states that the market study must at least include the following:

- problem definition;
- market area definition;
- physical/location analysis;
- economic analysis;
- demographic analysis;
- supply analysis;
- demand analysis; and,

- reconciliation of supply and demand.

In addition, the application must include with this market study a letter of acceptance from the participating syndicator with the development indicating that the market study submitted is acceptable for the proposed market area should the development receive an allocation of credits.

Should the market study be altered to show the need of the proposed development in a market area not suitable, then the development could not generate enough revenue to remain operable and therefore could cause a potential recapture of credits.

Although the developer is responsible for obtaining and funding the market study, it would not be in the developer's best interest to have the market study altered in favor of the development because low-income developments must make a profit in order to remain financially feasible and receive tax credits. Should the market study be altered to show the need of the proposed development in a market area not suitable, which could caused either by saturation of low-income units in the proposed area or a lack of potential tenants with the ability to afford the proposed units, then the development could not generate enough revenue to remain operable, and therefore cause a potential recapture of credits.

Also, MHC reviews each market study to verify the total number of low-income units the proposed area may absorb and the total number of units the area may absorb should other developments be awarded tax credits in the same market area. The MHC staff also reviews these market studies and compares them to any other market studies performed for developments in the same area for consistency.

Does the MHC Hold Developers Accountable for Maintaining Their Tax Credit Developments?

The MHC holds developers accountable for maintaining their developments by checking records of applicants' previous developments for patterns of noncompliance with IRC Section 42, by auditing tenant files and conducting physical inspections at least once every three years, and by reporting major issues of noncompliance to the Internal Revenue Service. If developers fail to comply with IRC Section 42, the IRS may recapture those developers' tax credits.

During the application process, the MHC conducts an initial review of both in-state and out-of-state developers and principals for prior major noncompliance issues that might remain uncorrected. In this initial review, MHC verifies the roles of these potential developers in their previous developments, their role in the potential development, and their percent interest in ownership of the potential development. The MHC also verifies any prior experience in the Low-Income Housing Tax Credit

Program for each principal of the general partnership or anyone with a direct interest in the development, such as the developer, management team, and architect. If out-of-state developers have previous issues of noncompliance, MHC verifies these with the respective state's housing agency that is responsible for implementing the Low-Income Housing Tax Credit Program.

MHC verifies prior experience and any major issues of uncorrected noncompliance to prevent allocation of tax credits to a proposed development that might be less likely to comply with MHC and IRS regulations.

Once MHC allocates tax credits for a proposed development, the compliance monitoring staff conducts tenant file audits and physical inspections at least once every three years throughout the development's compliance and extended use periods (see Appendix C on page 53.) MHC's tenant file audits are designed to ensure that qualified households are residing in the low-income units and that all tenant documentation complies with MHC and IRS regulations. MHC conducts physical inspections to ensure that the development is decent, safe, sanitary, and in good repair according to the U. S. Department of Housing and Urban Development.

MHC verifies prior experience and any major issues of uncorrected noncompliance to prevent allocation of tax credits to a proposed development that might be less likely to comply with MHC and IRS regulations. MHC reports major noncompliance issues it finds through tenant file audits and physical inspections to the IRS via Form 8823. If developers do not correct major issues of noncompliance, the IRS may recapture those developers' tax credits.

MHC also must ensure that developers comply with IRC Section 42 because repeated instances of developers' noncompliance could lead to loss of MHC's eligibility to participate in the Low-Income Housing Tax Credit Program in the future.

Does the MHC Obtain Feedback from the Target Population of the Low-Income Housing Tax Credit Program?

The corporation does not specifically seek feedback from tenants residing in low-income units when developing the Qualified Allocation Plan, but specifically seeks feedback from the developers and syndicators. This creates the image that the MHC is more concerned with the needs of those involved in the administration of low-income housing units rather than those for whom the units are constructed.

MHC accepts only written complaints from tenants regarding the development. In addition, the only feedback the corporation receives from the general public is after the annual plan has been developed and presented in the fall during the public hearing. However, the corporation

holds meetings with the developers and conference calls with the syndicators after the tax credit cycles have concluded in order to obtain feedback on strengths and weaknesses within the plan.

Excluding feedback from the tenants of low-income housing units could possibly limit the impact and effectiveness of the program if the program does not fulfill the needs of the target population.

Although IRC §42 does not require the feedback from the target population of the program, not specifically seeking feedback from the target population of the program while specifically seeking feedback from the developers and syndicators creates an image that the MHC is more concerned with fulfilling the needs of the developers rather than the target population. Although the feedback from the tenants of low-income units may not always benefit the development of the annual plan or the allocation process, excluding this feedback could possibly limit the impact and effectiveness of the program if the program does not fulfill the needs of the target population.

Recommendations

1. The corporation should revise the Qualified Allocation Plan amendment process to include the use of public review and comment prior to the board adopting amendments.

2. The MHC Tax Credit Committee's approval of a request to exceed the maximum cost per unit should be the rare exception rather than common practice. Before approving such a request, MHC should require detailed documentation of each cost component of the requested increase and why each requested increase in a cost component is necessary to the viability of the development.

3. The Tax Credit Committee should maintain minutes or meeting notes regarding any decisions for approvals and denials of increased cost per unit requests. MHC should keep these notes on file with the request letters and responses.

4. The criteria of Developer Experience in the Applicant Rating System should be removed and the five points previously awarded for this category should be reallocated to increase the preference specified in IRC §42 if a development is located in a Qualified Census Tract and contributes to a concerted community revitalization plan.

5. The MHC should ensure that its method of calculating the amount of tax credit to be awarded based on financial feasibility is accurate. For example, the corporation should modify its automated spreadsheet used to calculate financial feasibility to add a field noting whether MHC approved an increase in the cost per unit expenses, which would enable the spreadsheet to determine more accurately the amount of tax credit to be allocated.

6. The MHC compliance monitoring staff should annually review trends in the debt service ratio for each development to ensure that the owners of developments trending out of compliance for the fifteen-year period adjust rents as necessary to ensure that the debt service ratio for the

development falls within the required fifteen-year average range of 1.15 to 1.30.

7. The corporation should ensure the distribution of low-income housing units by annually monitoring the need for low-income housing throughout the state based on the annual assessments of the location of low-income developments constructed in comparison to the number of substandard housing units per county, rather than solely relying on market studies to determine the number of low-income units an area can absorb. In addition, the corporation could increase the total number of incentive points that developers may earn by adding incentive points for developments proposed in areas that have not received low-income developments within the past two years.

8. The MHC should increase communication with the local governments prior to placing tax credit developments. The MHC should contact the city or other applicable entity during the physical site inspection at the fifty percent completion phase of the development. This would ensure that the development is in compliance with local codes and permits earlier in the process, reducing the chance for issues to arise between the local government and the developer at the final inspection.

9. The corporation should revise the Qualified Allocation Plan to remove the option of allowing a developer to submit an American Institute of Architects certificate of substantial completion in jurisdictions that require a certificate of occupancy.

Appendix A: Caps on Profits and Fees Associated with MHC's Low-Income Housing Tax Credit Developments

Administrative Expenses

MHC developed a formula to determine the maximum administrative expenses for a development by examining statistical cost data on completed tax credit developments. MHC calculates the maximum administrative expenses with a base cost on whether the development is located in the Jackson metropolitan area and this base cost is then modified by three contributing factors: development designation; development size; and management difficulty. (See page 39 for a copy of the formula.) Depending on the development's applicable contributing factors, this formula allows maximum administrative expenses ranging from $2,916 to $4,851 per unit located in the Jackson metropolitan area and from $2,552 to $4,244 per unit located in all other areas.

Should MHC receive an application with administrative expenses that exceed the cap, a certified public accountant must submit written justification that the excessive expenses are justifiable and reasonable. Factors that may contribute to excess expenses include exceptionally high real estate taxes, insurance costs, maintenance reserves, or replacement reserves. MHC also requires all developments to have a minimum administrative expense of $2,700 per unit.

Should the development's excess expenses not be approved by MHC or if the development fails to meet the minimum expense per unit requirements, then it will be considered not financially feasible by MHC and therefore will not receive an allocation of tax credits.

Developer Profit

MHC established the developer profit cap as a base of fifteen percent of the development's total cost. Also, the formula used by MHC to calculate the maximum developer profit modifies this base profit based on the development's size and location. (See page 40 for a copy of the formula.) Utilizing this formula results in a minimum developer profit of fifteen percent and a

maximum developer profit of twenty-six percent. Should the developer profit exceed the maximum calculated for the development, then the developer must defer a portion of the profit or the development will not be considered financially feasible by MHC.

Consultant Fees

According to MHC standards, a consultant's fee includes any professional fees reimbursable through tax credits and excludes any costs allocated to and payable by the syndicator. MHC permits consultant fees only within the developer profit caps.

Builder and General Contractor Profit

MHC set limitations on builder's profit, overhead, and general requirements all at fixed percentages of construction costs. MHC established the following limitations:

- Builder's profit: six percent of construction costs;
- Builder's overhead: two percent of construction costs; and,
- General requirements: six percent of construction costs.

Any amount above these limits will be considered excessive by MHC and result in the development not being considered financially feasible.

Owner Profit

MHC implemented a debt service ratio to limit the profit that the owner of a tax credit development may earn. Utilizing best practices from the National Council of State Housing Agencies, MHC set the debt service ratio requirements to fall within 1.15 to 1.30 over the fifteen-year compliance period. Should an owner exceed the average debt service ratio, MHC requires the owner to obtain a mortgage for a larger amount or reduce the rents charged to tenants.

Determining Maximum Administrative Expenses (MAE) Per Unit Formula:
>>>>($DB) X (DD) X (DS) X (MD) = MAE

ANNUAL OPERATING EXPENSES

Development Base (DB):
(Includes Section 8 - Family, All Elderly/Handicapped, All Family/ Non-Elderly)

Jackson Metropolitan Area.. $4,000.00

All Other Areas..$3,500.00

Development Designation (DD):	***Percentage***
All Senior Citizens	0.900
Mixed	0.950
Congregate	1.000
Family	1.050

Development Size (DS):	***Percentage***
50 or More Units	0.900
33 - 49 Units	0.950
17 - 32 Units	1.000
16 or Less Units	1.050

Management Difficulty (MD):	***Percentage***
Full Profit	0.900
515 / Market Rate	0.950
Split RA	1.000
100% RA / Split Section 8	1.050
100% Section 8 / 515	1.100

Determining Maximum Developer Profit Percentage % (MDPP) Formula

>>>>BASE (15%) X (DS) X (DL)(1) X (DL)(2) X (DL)(3) = MDPP

Development Size (DS):	***Percentage***
33 or More Units	1.000
17 - 32 Units	1.100
16 or Less Units	1.200

Development Location (DL)(1):	***Percentage***
Below 4% housing with selected conditions	1.000
4-5.9% housing with selected conditions	1.050
6-7.9% housing with selected conditions	1.100
(See pages 21-22 of QAP)	

Development Location (DL)(2):	***Percentage***
% Of Renter Household Income <$10,000>40%	1.100
(See Attachment 6)	

Development Location (DL)(3):	***Percentage***
Qualified Census Tract	1.150
Area Designated as Difficult to Develop	1.200
(See Attachment 5)	

Appendix B: Points Associated with 2005 MHC Selection Criteria and Explanations of the Criteria

Selection Criteria	Possible Maximum Points
Development location	05
Significant community services and amenities	15
Public housing waiting list	02
100% low-income use	07
Community support	05
Development readiness	10
Application workshop	10
Developer experience	05
Management experience	02
Located in a Qualified Census Tract and contributes to a concerted revitalization plan	02
Partnership with housing authority in Mississippi	03
> or = 20% of units at < or = 50% of Area Median Gross Income for 40 years or longer *-OR-* Extended use for 40 years or longer *-OR-* > or = 20% of units at < or = 50% of Area Median Gross Income for 40 years or longer *and* extended use for 40 years or longer *-OR-* Single-family lease-purchased development	10 *-OR-* 05 *-OR-* 10+5 *-OR-* 15
Three or more bedrooms *-OR-* Elderly development	10 *-OR-* 10
Development-based rental assistance *-OR-* Tenant-based rental assistance	07 *-OR-* 03
Development is a Preservation or Hope VI development* *-OR-* Preserves existing low-income housing units	05 *-OR-* 05
Maximum Total Points Possible	**103**

SOURCE: MHC's 2005 Qualified Allocation Plan.

* If a development earns 5 points for this criterion, it cannot earn 10 points for the "three or more bedrooms" criterion.

Possible Point Deductions:	
Failure to tab threshold requirements	(05)
1 point deduction for each deficient threshold requirement at initial review	(04)
Failure to highlight plans and specifications	(05)
Located in an area that received > or = 3 tax credits in previous 2 years	(01)

SOURCE: MHC's 2005 Qualified Allocation Plan.

NOTE:

PEER has included explanations of the above criteria, taken directly from MHC's 2005 Qualified Allocation Plan, on subsequent pages of this appendix. The explanations are keyed by item number to the following list of the criteria:

Item Number	Selection Criteria
1	> or = 20% of units at < or = 50% of Area Median Gross Income for 40 years or longer
2	Extended use for 40 years or longer
3	Development location
4	Three or more bedrooms
5	Significant community services and amenities
6	Public housing waiting list
7	Preserves existing low-income housing units
8	100% low-income use
9	Development-based rental assistance
10	Tenant-based rental assistance
11	Community support
12	Development readiness
13	Application workshop
14	Developer experience
15	Management experience
16	Single-family lease-purchased development
17	Located in a Qualified Census Tract and contributes to a concerted revitalization plan
18	Development is a Preservation or Hope VI development
19	Elderly development
20	Partnership with housing authority in Mississippi

POINTS

1. The development sets a side at least twenty percent (20%) of the units for persons at or below fifty percent (50%) of the Area Median Gross Income of the county where the development is located and executes an Extended Land Use Agreement committing to serve tenants at this income level for a period of forty (40) years or longer

   10 pts.

   To receive points for the above scoring component, the election must be made to extend compliance period to forty (40) years or longer. Single family leased purchased developments are not eligible for points under this category if the developer plans to allow tenants to purchase units after the initial fifteen (15) years.

2. Development commits to extend compliance period to forty (40) years or longer

   05 pts.

   Single family leased purchased developments are not eligible for points under this category if the developer plans to allow tenants to purchase units after the initial fifteen (15) years.

3. The development is located in a county where, according to the 2000 Census Report:

0% to 0.9% Housing with Selected Conditions*		1 point
Carroll	Tippah	Tishomingo

1% to 1.9% Housing with Selected Conditions*		2 points
Alcorn	Amite	Clarke
Clay	Issaquena	Itawamba
Lafayette	Oktibbeha	Prentiss
Rankin	Stone	

2% to 3.9% Housing With Selected Conditions*		3 points
Adams	Attala	Benton
Calhoun	Chickasaw	Choctaw
Claiborne	DeSoto	Forrest
Franklin	George	Grenada
Hancock	Harrison	Jackson
Jasper	Jefferson	Jones
Kemper	Lamar	Lauderdale
Lawrence	Lee	Leflore
Lincoln	Monroe	Neshoba
Newton	Pearl River	Pike
Pontotoc	Quitman	Smith
Tate	Union	Warren
Wayne	Webster	Wilkinson
Yalobusha		

4% to 5.9% Housing With Selected Conditions*		4 points
Coahoma	Copiah	Covington
Greene	Hinds	Holmes
Jefferson Davis	Lowndes	Madison
Marion	Marshall	Montgomery
Noxubee	Perry	Scott
Simpson	Tallahatchie	Tunica
Washington		

6% to 7.9% Housing With Selected Conditions*		5 points
Bolivar	Humphreys	Leake
Panola	Sharkey	Sunflower
Walthall	Winston	Yazoo

*Source: U.S. Census Bureau, Census 2000, STF3
The variable "Selected Conditions" is defined for owner and renter occupied housing units as having at least two of the following conditions: (1) lacking complete plumbing facilities, (2) lacking complete kitchen facilities, (3) with 1.01 or more occupants per room, (4) selected monthly owner costs as a percentage of household income in 1999 greater that 30 percent, and (5) gross rent as a percentage of household income in 1999 greater than 30 percent.

4. The development targets large families by including three or more bedrooms in at least twenty-five percent (25%) of its units. *10 pts.*

5. Development offers tenants community services in at least two (2) areas and provides at least two (2) significant amenities not otherwise required by the entity providing financing or typically present in low-income rental housing. *15 pts.*

   Tenant Community Services must be provided for a minimum of ten (10) years beyond the placed in service date.

   - Education Programs (computer classes, personal budget counseling, home buyer counseling programs, etc.)
   - Job Training Programs
   - Child Care Services/Programs, or
   - Other community services acceptable to the Corporation

   A formal contractual agreement must be in place to receive points under this category. The service contract must be on the service provider's letterhead and it must have a designated space for the applicant's acceptance of the contract and agreement to terms of the contract. Points will not be allowed if the formal agreement does not contain the signatures of both parties.

Significant Amenities

- Swimming Pool
- Clubhouse for tenant activities and meetings
- Playground area and equipment
- Washer and dryer connections in individual units must have capability to service side-by-side units or opposite wall units.
- Cable television *(if selected, cable television must be provided by the owner of the proposed development and evidenced by a contract executed by the local cable company and the owner. Documentation must accompany the application)*
- Tenant Security *(ex: electronic locking system, alarm system...)*, or
- Other amenities acceptable to the Corporation *(examples of amenities not acceptable includes, i.e. clotheslines)*

For those developments that have elected to provide a playground, the playground area must have a minimum of four (4) separate pieces of equipment. (Note: A swing structure with four (4) swings is considered one (1) piece of equipment.)

Plans and specifications must include the significant amenities proposed for the development. The proposed amenities must be highlighted. Failure to highlight plans and specifications will result in a five (5) point deduction.

6. The development will provide housing (i) for persons on public housing waiting lists, or (ii) in those jurisdictions where there is no housing authority for persons on waiting lists for other affordable housing developments. A statement of certification must be submitted indicating that housing will be provided to persons on public housing waiting lists or for persons on waiting lists for other affordable housing developments. A signed and notarized statement may be submitted from the owner. *02 pts.*

7. The development preserves existing developments serving low-income residents that would be lost due to conversion to market rate, loss of rental assistance, foreclosure or default, and mortgage prepayment. To be eligible, the development must have been in danger of conversion, foreclosure, or default. Documentation of default and endangerment of foreclosure must be provided by the permanent financing entity forcing the foreclosure action. *05 pts.*

8. All units in the development are set-a-side for low-income use. *07 pts.*

9. *Development-based rental assistance.* Developments requesting consideration under this category must provide evidence from the housing agency providing the housing assistance payments (Example: Rural Development, HUD, etc). For developments proposing owner's rental assistance payments, evidence must be included in the application, which meets the following criteria: *07 pts.*

   a. A commitment to provide rental assistance payments to greater than fifty (50) percent of the development's units that are eligible under the tax credit program.

   b. A plan that identifies which units will be set-a-side for housing assistance payments. In determining which tenants are most eligible to receive rental assistance, first preference should be given to elderly tenants and second preference to single parent households.

   c. Provides for the establishment of a rental assistance account to be monitored in accordance with the compliance monitoring requirements contained herein.

d. Commits to providing rental housing assistance payments for a period not less than five (5) years from the placed in service date.

e. A minimum of $50 per unit must be provided in rental assistance.

10. *Tenant-based rental assistance.* Developments requesting consideration under this category must provide evidence from either a local or regional housing authority indicating that Section 8 vouchers or certificates are available in the area where the development is or will be located. Prior to the issuance of IRS Form 8609, applicants will be required to have signed agreements with either the authority or administrator of the Section 8 Certificate/Voucher programs to mandate the development's first priority to Section 8 Certificate/Voucher holders. *03 pts.*

NOTE: NO DEVELOPMENT IS ELIGIBLE FOR BOTH DEVELOPMENT-BASED AND TENANT-BASED RENTAL ASSISTANCE.

11. *Community Support.* For developments requesting consideration under the community support-scoring requirement, the following information below must be included in the tax credit application. *05 pts.*

a. Applicant must hold one public hearing in accordance with the public hearing requirements as identified in the attached appendix and be completed at least ten (10) days prior to submitting a tax credit application.

b. Applicant must publish two (2) notices advertising the public hearing. A notice may not be published within three (3) days of the prior published notice. There must be three (3) separate days between the publication of the first and second notice. (Ex. If the first notice is published on January 1 then the second notice may not be published prior to January 5. Days 2, 3, & 4 are not acceptable.)

c. Proof of Publication, which must include the specific location within the newspaper where the notice was published, i.e. classified legal, classified non-legal, advertisement, etc. (Publication must not be advertised more than twenty (20), but at least five (5) days before the hearing).

d. Minutes of Public Hearing.

e. Copy of actual notice.

f. Copy of actual attendance roster.

Public notices should be published in a local newspaper having general circulation in the development area. In areas where there are no local newspapers having general circulation in the development area, the applicant is required to publish the public notices in a regional newspaper having general circulation in the development area. The publication must make mention that the applicant is applying for Housing Tax Credits.

Please refer to the attached Citizen Participation Guideline.

12. For developments requesting consideration under the readiness criteria, the applicant must include in the tax credit application the information stated below: *10 pts.*

    a. Acquisition and rehabilitation developments must include a physical needs assessment for the rehabilitation work to be completed.

    b. Drawings depicting: *(items b-d for new construction)*
        i. Building elevations, front, side and back;
        ii. Building floor plans showing total dimensions, total square footage, and other specifics required to make sure final product meets the Corporation's design requirements; and
        iii. Proposed site plan depicting buildings, parking, drives, and other proposed amenities.

    c. Specification outline depicting all major areas of development by completing the attachment entitled "Description of Materials". A blank form is included as an attachment to the tax credit application.

    d. A letter from the licensed architect/engineer of record stating that the "Drawings" and "Description of Materials" submitted with the application are in compliance with the Corporation's Minimum Design Quality Standards.

    e. A letter from the licensed architect/engineer of record stating that the proposed construction, and the plans will meet the applicable building code and permitting requirements of the local jurisdiction. Development owner must also include an original letter from the registered engineer/architect of record stating that the site development will meet all federal, state, and local requirements, and the design will meet all applicable permit requirements of the local, state, and federal jurisdictions.

    f. Documentation of land value and improvements utilizing a certified appraiser for developments involving acquisition/rehabilitation, or documentation of land value utilizing a certified appraiser for developments involving new construction.

g. Certified copies of proposed budgets and cash flows submitted to financing institutions, e.g. RD Form 1930-7, statement of budget and cash flow, or construction loan applications (budgets must be signed and notarized).

h. Commitment letter for construction financing.

i. Letter of Conformance with the State of Mississippi's or applicable Public Jurisdiction's Consolidated Plan.

j. Certificate of partnership or corporation from the State of Mississippi or certificate to do business in the State of Mississippi, if applicable (Must provide stamp filed copy (committal stamp) indicating the Secretary of State's approval).

k. Properly executed and dated construction contract.

13. Application Workshop attendance by the general partner or registered agent of the partnership. *10 pts.*

 12 ½ points may be received at the workshop; however, a maximum of 10 points will be scored in the application process. Only one (1) certificate will be allowed per session for points in the application process. A copy of each certificate of attendance must accompany the file, failure to provide will disqualify applicant from receiving points. Certificates will not be awarded until the sessions are ended.

 In the event the general partner does not attend the workshop, the development's owner shall designate, by notarized statement to the Corporation, a person to attend the workshop and to be the responsible party for all contact and communication for the designated development until the development has been placed in service and receives Forms 8609. *No points will be allowed for this category if the development owner does not sign and notarize the subject statement and include as a part of the application package.*

14. Developer Experience - The general partner has previous experience in the development of the type of housing activity proposed. This experience must be verified as having occurred within three (3) years of the application date. This experience must be documented on the attachments provided in the QAP. *(See attachment –"Previous Participation")* *05 pts.*

15. Management Experience - The applicant secures a contract from an experienced management agent who has previous experience in the development of the type of housing activity proposed. The experience must be verified as having occurred within three (3) years of the application date. This experience must be documented on the attachments

provided in the QAP. Management experience is excluded for developments that have 8823's filed and not corrected. In the event that 8823's have been filed on a particular development, a letter of clearance/correction from the tax credit allocating agency must accompany the management participation agreement. *(See attachment-"Previous Management Participation")* *02 pts.*

16. Single family leased purchased developments. *15 pts.*
    Minimum requirements for Single Family Lease Purchase developments:

    1. Single Family Detached Housing
    2. Side by Side Washer and Dryer Connections
    3. One (1) Car Carport
    4. Paved Driveways
    5. Playground Area and Equipment (Minimum of four (4) separate pieces of equipment.)
    6. Entranceway Appeal - Create Subdivision Appearance.
    7. Landscape Plan
    8. Applicants must maintain lawn throughout the required fifteen (15) year compliance period.
    9. Letter of Support from participating syndicator.
    10. Must have public access and be properly zoned for single-family residential homes. Additionally, these developments must be constructed separate and apart from any other tax credit developments that are exclusively multi-family rental complexes.
    11. The owner shall provide a sample lease-purchase agreement advising tenants of the available purchase option at the end of the fifteen (15) year lease period, which may be included in the body of the lease.

    The development must be fee simple with a homeowner's association for any common areas and must front on a publicly dedicated street at the time of fee simple transfer.

17. The development is located in a qualified census tract and contributes to a concerted revitalization plan of the community in which it will be located. Documentation must include a letter from the city/county, signed by the subject area's verifiable authority, which verifies that the development is a part of the community revitalization plan and provides a detailed description of the contribution to the Revitalization Plan. This documentation must accompany the application. Additionally, the applicant must submit a full/detailed copy of the city/county's revitalization plan that includes all the specifics of the plan and date adopted by the locality. *02 pts.*

18. The development is a Preservation or Hope VI development. *05 pts.*

    Note: Developments that are eligible for points in this category will not be eligible to receive points for large family or preserving existing low-income housing developments.

19. Developments that set a side 100% of its units for the elderly population age fifty five (55) or older, or developments that set a side 100% of its units for persons that meet the requirements as defined by Rural Development or the Department of Housing and Urban Development for elderly housing and accessibility for handicapped persons, and meet the following requirements. *10 pts.*

    a. At least one hundred percent (100%) of the units must be occupied by an elderly household, age fifty five (55) years old or older, or by persons meeting the Rural Development or Department of Housing and Urban Development's definitions.

    b. The development must establish policies and procedures, which demonstrate an intent to provide housing to the fifty five (55) or older age group, or for persons meeting the Rural Development or Department of Housing and Urban Development's definitions.

    c. The development must normally have significant facilities and services specifically designed to meet the physical or social needs of older persons or for persons meeting the Rural Development or Department of Housing and Urban Development's definitions.

    d. The development must provide six (6) of the nine (9) appropriate services or facilities listed below:
        1. an accessible physical environment
        2. congregate dining facilities
        3. social and recreational programs
        4. emergency or preventive health care, or programs
        5. information and counseling
        6. recreational services
        7. homemaker services
        8. outside maintenance and referral services
        9. transportation to facilitate access to social services

    Rural Development and HUD's definition of "Elderly" is where the tenant or co-tenant is 62 or older or handicapped/disabled so long as they are members of the Elderly household.

NOTE: No development is eligible for both large family and elderly points.

20. Developer partners with a Housing Authority in the state of Mississippi. The partnership should allow material participation by the housing authority. This participation should not be limited to referrals of Section 8 Voucher holders to the proposed development. *03 pts.*

One (1) point will be deducted if an applicant proposes a development in an area that has received 3/> tax credit awards in the previous two (2) years. See attached tax credit recipient list for 2004 and 2005 credit authority. Preservation developments will not be subject to this one (1) point deduction.

In the event of a tie in the scores, the attached Tie Breaking System will be used. If a tie persists after utilizing the tie breaking system, applications will be ranked according to tax credits per unit favoring the development that maximizes tax credits per unit.

Appendix C: How the Tax Credit Program Works

Funding of the Program

The IRS issues each state's credit authority to the state housing agencies based on a per capita formula using the estimated population for a calendar year multiplied by a specified dollar amount; currently this amount is $1.9. This puts the average annual credit authority for Mississippi at roughly $5.55 million. See Appendix G, page 65, for a list of each state's credit authority for calendar year 2004.

Eligible Housing

The low-income tax credit program is available for any qualifying development targeting single and/or multi-family housing. The types of housing may be duplexes, four-plexes, apartments, and single-family homes, as long as the development consists of a minimum of twelve rent-restricted units.

Key Players

Eight key players are involved in the Low-Income Housing Tax Credit Program. These key players include the following:

- *Internal Revenue Service*--determines and issues the annual credit authority for each state; also responsible for establishing the federal guidelines to oversee the program in IRC Section 42;

- *state housing agency or entity*--responsible for developing and implementing the annual Qualified Allocation Plan for the state (in Mississippi, this agency is the Mississippi Home Corporation); determines the housing need priorities for the state; responsible for allocating credits for proposed low-income developments; responsible for monitoring noncompliance and reporting these instances of noncompliance to the IRS;

- *owner*--responsible for compiling the initial tax credit application and submitting it to the state housing agency; responsible for finding a developer and property manager for each applicable development in the program, although the owner may also be the developer; bears the sole responsibility on the compliance status of the development;

- *developer*--responsible for the development of the low-income housing project; may also be the owner of the development;

- *syndicator*--negotiates the tax credits allocated to a development between the owner/developer and investors to obtain equity financing;

- *investor*--works with the syndicator to purchase tax credits in exchange for equity financing for the development's construction costs;

- *lender*--the bank willing to provide permanent financing through a mortgage to a tax credit development; and,

- *target population*--the persons the low-income housing developments are built to accommodate; these persons must be at least below sixty percent of the area median income as determined by HUD; tenants pay monthly rent to the owner.

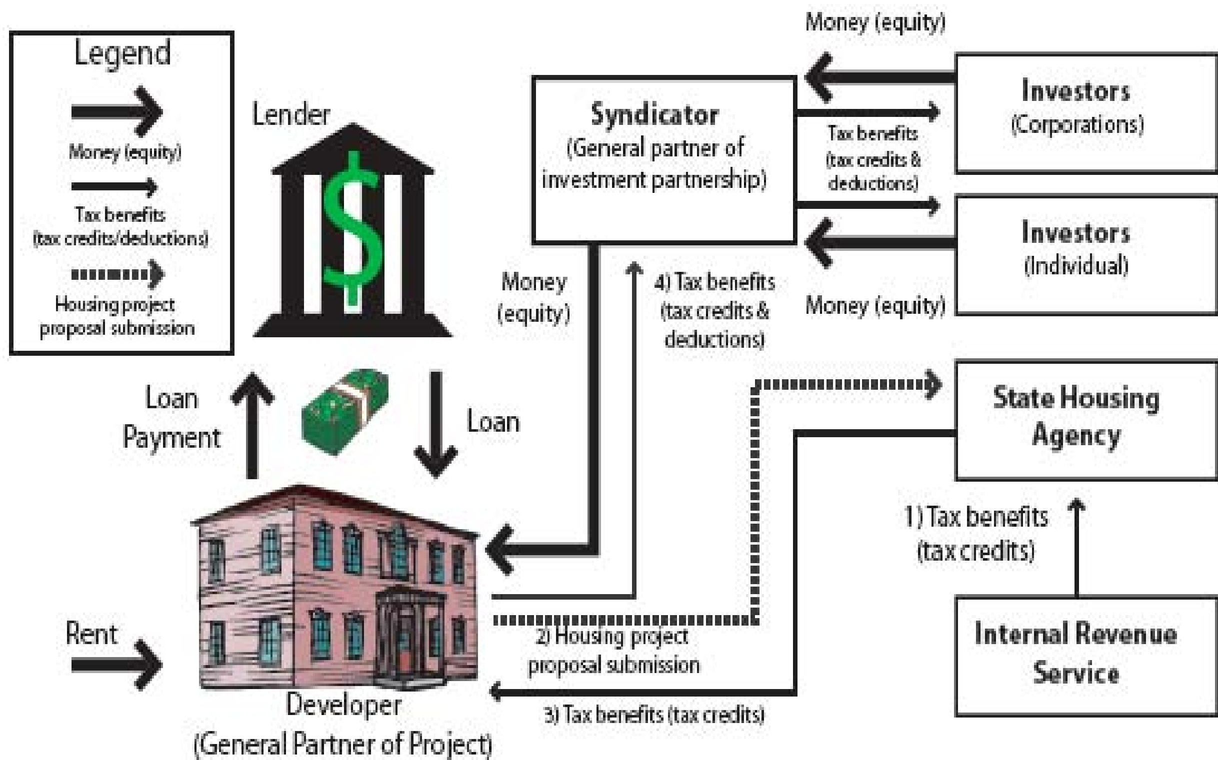
See Exhibit 3, page 55, for an illustration of the roles the key players serve in association with the flow of the funding and tax credits involved in the allocation process.

Flow of Credits

First, the IRS issues the annual credit authority to each state. Then the owner/developer obtains a permanent financing contract with the *lender*. Next, the owner/developer submits an application for tax credits to the state housing agency. Once the state housing agency receives all the applications, it then reviews and issues tax credit reservations accordingly. Upon receiving notice of a reservation, the owner/developer contacts the syndicator with the tax credit amount. The syndicator then obtains an investor to provide the equity financing necessary for the construction of the development. Once the development has been constructed, the owner/developer receives the allocation of tax credits from the state

housing agency upon receipt of an 8609 Form from the IRS. See Exhibit 3, below, for an illustration of the flow of equity and credits for a typical development from application to completion.

Exhibit 3: Flow of Credits and the Roles of Key Players



SOURCE: *The Danter Company, Recreated from GAO/T-GGD/RCED-97-149.*

Allocation Process

The allocation process has three main components. After submission of a tax credit application, the application must undergo a threshold analysis, a selection criteria analysis, and a financial feasibility analysis.

Threshold Analysis

Initially, the corporation's staff reviews all applications to determine whether they meet the four threshold factors:

- *site control*—the applicant must provide documentation that the applicant has ownership of or has secured the right to purchase a designated property as specified within the application;

- *local zoning and development conditions*—the applicant must provide documentation that the proposed development will be placed in an area zoned for the purpose of single or multi-family housing, as determined by the local governmental authority;

- *documentation of need*—the applicant must submit a comprehensive market study with the application to verify the need of the proposed housing in the area, which includes the demographics of an area, the number of competing developments in an area, and the ability for the area to absorb the proposed number of units;

- *permanent financing commitment*--the applicant must submit documentation with the application verifying the amount and terms of the permanent financing agreement, which is the mortgage that will be used to finance the proposed development.

The applicant must satisfy all four of the above-listed threshold factors in order to progress in the application process. Should an applicant not meet one or more these factors, the corporation's staff notifies the applicant regarding the deficiencies. Upon receipt of this notification, the applicant has twenty-four hours to correct the threshold deficiencies. Should an applicant make the necessary corrections, the application proceeds to selection criteria analysis. However, should the applicant not make the necessary corrections, the application does not progress and the development is no longer considered for a reservation of tax credits.

Selection Criteria Analysis

MHC's selection criteria analysis focuses on the use of an applicant rating system, which awards points for various housing need priorities established by the corporation. Each application will be scored and ranked according to the Qualified Allocation Plan. See Appendix B, page 41, for a complete listing of the selection criteria used in 2005.

Each application must score a minimum of seventy-five points out of 105 points in order to progress in the

application process. Should the development not achieve the minimum point requirement, the application does not progress and the development is no longer considered for a reservation of tax credits.

Financial Feasibility Analysis

MHC reviews the applications through a financial feasibility analysis. During this analysis, MHC determines:

- *positive annual cash flow*--Each application must include a fifteen-year Pro Forma that takes into account development costs, income and expenses, and the sources and uses of funds; using this information, MHC determines whether the development will produce enough income to remain feasible;

- *debt service ratio*--This is a ratio of the net cash flow in relation to the debt service payments made over the fifteen-year period; the range a development must fall in to be considered feasible is 1.15 to 1.30; should the development's fifteen-year average debt service ratio fall above or below the stated range it will be considered not financially feasible;

- *replacement and operating reserves*--Each proposed development must have the presence of both of these reserve types in order to be considered financially feasible; replacement reserves should be used only for capital improvements, while operating reserves must be six months of the development's operational expenses.

Once MHC considers the development financially feasible, the staff comments on applications remaining at this point in the process and forwards them to the board for approval. Once the board approves or denies an application, the proposed development either receives a tax credit reservation or is placed on a waiting list. Generally the corporation only holds one application cycle per year; therefore, if the application is not initially approved, it will no longer be considered for a reservation of credits. Once the owner receives the reservation, construction begins and the development must then undergo financial feasibility analyses at the point of fifty percent of construction and upon completion of the project.

Should the development pass all of the applicable feasibility analyses, then the development may apply to the IRS for an Form 8609, which denotes the development

is in good standing and placed in service. The request must be submitted to the corporation and includes documentation such as a Certificate of Completion or Occupancy, Cost Certification, and Certificate of Syndication. Once the Form 8609 has been issued for each building within a development, it may now proceed to the compliance monitoring phase of the program.

For an overview on how the allocation process works, see Exhibit 4, page 59.

Compliance Monitoring Process

The IRS requires the state housing agency to monitor issues of noncompliance for fifteen years. In addition, the corporation monitors any development for an additional fifteen years, or longer for an extended use period. The corporation is required to monitor at least twenty percent of the active low-income housing units once every three years, but the MHC compliance monitoring staff states that it monitors one-third of the low-income units each year.

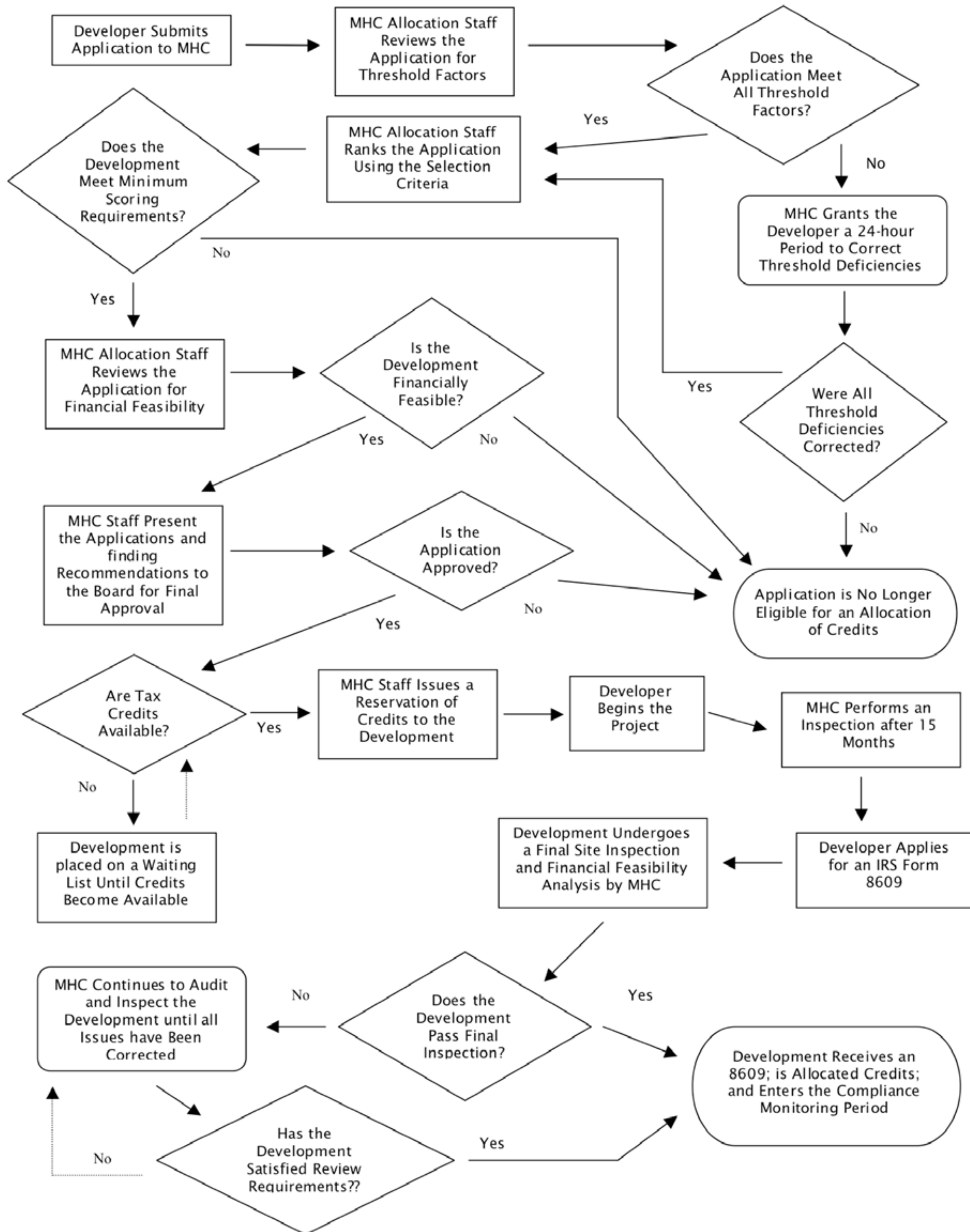
The compliance monitoring process consists of two components:

- *tenant file audit*--must be conducted within two years of a development's placed in service date and once every three years thereafter; the staff monitors minimum set-asides, income eligibility, full-time student status, financial operating information, and selection criteria through Annual Owner Certification forms and quarterly rent roll reports; tenant file audits are conducted through either on-site or desk audit, depending on whether the development has more or less than twenty-four units;

- *physical inspection*--must be conducted within two years of a development's placed in service date and once every three years thereafter; physical inspections are performed on-site based on HUD standards to ensure the units are decent, safe, sanitary, and in good repair.

While monitoring a development for compliance, MHC notifies the IRS of any issue of noncompliance using Form 8823. This form must be submitted to the IRS within forty-five days of the timeframe granted to the development to correct any conditions causing the noncompliance.

Exhibit 4: Flow Chart of the Application Process



SOURCE: *The Danter Company, Recreated from GAO/T-GGD/RCED-97-149;* PEER analysis of information provided by the Mississippi Home Corporation, including the 2005 Qualified Allocation Plan.

Appendix D: Examples of Other Low-Income Housing Programs in Mississippi

Program	Eligibility	Other eligibility requirements	Types of Assistance	Housing Types
Low-Income Housing Tax Credit Program	At or below 50% or 60% AMI*	At least 20% of units rented to tenants w/incomes less than 50% AMI* or 40% w/ incomes less than 60% AMI*	Low-income tax credits to developers willing to construct decent rental housing	Multi-family developments; single-family [lease to purchase] houses
Department of Housing and Urban Development Voucher Program	At or below 50% AMI*	Must provide at least 75% of its vouchers to applicants with incomes at or below 30% AMI*	Voucher for rental housing	Rental housing (single-family homes, townhouses or apartments)
Department of Housing and Urban Development HOME Investment Partnerships Program	At or below 50% AMI*, or at or below 80% AMI*	For rental housing & rental assistance: at least 90% rented to tenants at or below 60% AMI*; in rental projects w/ 5 or more assisted units-20% at or below 50% of AMI*. No one receiving benefits can exceed 80% of AMI*.	Grants, direct loans, loan guarantees or other forms of credit enhancement or rental assistance for security deposits. Can be used for home purchase or rehabilitation, to build or rehabilitate housing for rental or ownership, for development of non-luxury housing or for relocation expenses.	Multi-family housing units; single-family pre-existing rental housing or new, non-luxury single-family homes
Habitat for Humanity	Low-income (at or below 80% AMI*) families that don't qualify for bank home loans. Eligibility varies per community (Metro Jackson ranges between 25% - 72% AMI*).	"Sweat equity" (labor in the work site) of 200 - 400 hours; attendance at Homeowner Training; participation in budget counseling	No-interest mortgage for a new home	Newly constructed single-family homes
United States Department of Agriculture, Rural Development - Single Family Home Ownership Program	Rural homeowners who live in areas with maximum population of 25,000 whose income is between 50% - 80% AMI* (Mississippi requirements)	N/A	Home loans to improve, buy, build or repair and rehabilitate primary residences for rural homeowners	Single-family homes
United States Department of Agriculture, Rural Development - Rural Rental Housing Loans	Very low (below 50 percent of the area median income (AMI*), low (between 50 and 80 percent of AMI*), and moderate income family; and persons with disabilities are eligible for tenancy as well. Rural areas, towns and cities w/maximum population of $20,000 or less (Mississippi requirements).	Those living in substandard housing are given first priority for tenancy. When rental assistance is used, top priority is given to very low-income households.	Direct, competitive mortgage loans made to provide affordable multifamily rental housing. Primarily a direct mortgage program, but funds may also be used to buy and improve land and to provide necessary facilities such as water and waste disposal systems.	Rental multi-family housing

*AMI - Area Median Income

Sources: www.mshomecorp.com, www.hud.gov, www.habitat.org, www.rurdev.usda.gov

Appendix E: Low-Income Housing Tax Credit Funds to be Made Available through the Gulf Opportunity Zone (GO Zone) Act of 2005

On December 21, 2005, President Bush signed the Gulf Opportunity Zone ("GO Zone") Act of 2005 (H.R. 4440) into law. Congress passed the act in order to help the citizens of affected areas of Mississippi, Louisiana, and Alabama to recover in the wake of the devastation caused by hurricanes Katrina, Rita, and Wilma.

Specifically, the law:

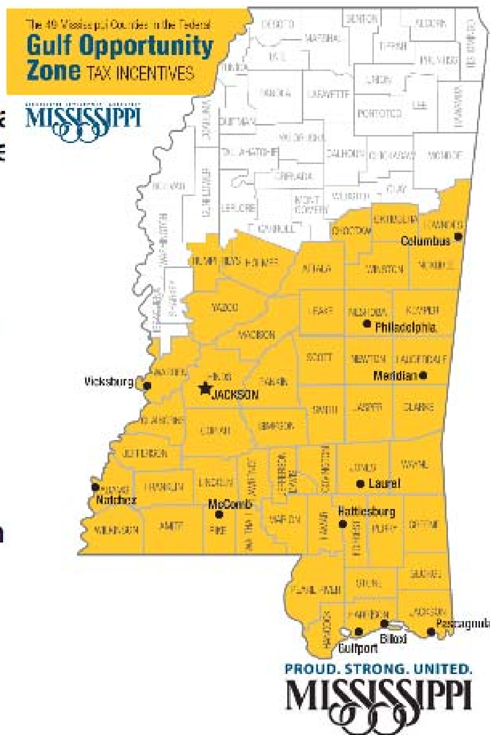
- doubles small business expensing for investments in new equipment from $100,000 to $200,000;
- provides a 50% bonus depreciation for businesses that invest in new equipment and new structures;
- allows additional issuance of tax-exempt private activity bonds;
- doubles Hope Scholarship and Lifetime Learning Credits for students attending colleges and graduate schools in the Gulf Opportunity Zone; and,
- expands the amount of available low-income housing tax credit.

With respect to low-income housing tax credits, the act increases Mississippi's allocation from $1.90 per capita to $18 per capita. Based on final GO Zone population figures, the act will provide $35,429,094 in additional low-income housing tax credits annually to Mississippi for calendar years 2006 through 2008. The map on page 62 shows the GO Zone areas of the state where these credits may be used.

As of March 24, 2006, MHC had committed $11,923,507 of its GO Zone credit authority to fund eligible developments from its 2005 cycle waiting list to expedite the production of affordable housing within those areas, leaving a 2006 GO Zone credit authority balance of $23,505,587.

More than Half the State Eligible

Adams
Amite
Attala
Claiborne
Choctaw
Clarke
Copiah
Covington
Forrest
Franklin
George
Greene
Hancock
Harrison
Hinds
Holmes
Humphreys
Jackson
Jasper
Jefferson
Jefferson Davis
Jones
Kemper
Lamar
Lauderdale
Lawrence
Leake
Lincoln
Lowndes
Madison
Marion
Neshoba
Newton
Noxubee
Oktibbeha
Pearl Rive
Perry
Pike
Rankin
Scott
Simpson
Smith
Stone
Walthall
Warren
Wayne
Wilkinson
Winston
Yazoo



SOURCE: MHC's Low-Income Housing Tax Credit Program Bulletin #06-0324; whitehouse.gov; Mississippi Development Authority's website.

Appendix F: Executive Summary of PEER's 1998 Report *A Compliance Review of the Mississippi Home Corporation's Tax Credit Program*

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 apprises 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.

For More Information or Clarification, Contact:

PEER Committee
P. O. Box 1204
Jackson, MS 39215-1204
(601) 359-1226
http://www.peer.state.ms.us

Senator Ezell Lee, Chairman
Picayune, MS (601) 798-5270

Representative Tommy Horne, Vice-Chairman
Meridian, MS (601) 483-1806

Representative Herb Frierson, Secretary
Poplarville, MS (601) 795-6285

Appendix G: 2004 Housing Credit Utilization by State

Allocating Agency	Per Capita Credits	Total Credits †	Total Allocations	Low Income Apartments
Alabama	$8,101,353	$9,689,261	$9,689,261	1,550
Alaska	$2,075,000	$2,321,145	$2,321,145	149
Arizona	$10,045,460	$11,553,424	$11,464,476	1,663
Arkansas	$4,906,285	$5,353,568	$4,091,515	797
California	$63,872,015	$69,253,801	$69,253,801	4,408
Colorado	$8,191,238	$14,059,126	$9,645,906	905
Connecticut	$6,270,070	$7,799,114	$7,799,114	640
Delaware	$2,075,000	$2,075,000	$2,075,000	282
District of Columbia	$2,075,000	N/AV	N/AV	N/AV
Florida	$30,634,323	$37,332,033	$37,332,033	4,799
Georgia	$15,632,487	$16,196,685	$16,196,685	2,544
Hawaii	$2,263,694	$4,385,015	$4,385,015	354
Idaho	$2,459,398	$2,525,385	$2,525,385	542
Illinois	$22,776,379	$25,765,050	$25,765,050	2,632
Indiana	$11,152,157	$13,068,609	$13,065,998	2,195
Iowa	$5,299,312	$6,704,866	$6,684,580	743
Kansas	$4,902,312	$5,828,772	$5,815,301	1,128
Kentucky	$7,412,089	$9,176,348	$9,168,629	1,226
Louisiana	$8,093,401	$8,633,654	$8,206,984	1,020
Maine	$2,350,310	$3,774,137	$3,766,228	355
Maryland	$9,916,036	$10,405,705	$10,405,705	1,456
Massachusetts	$11,580,160	$13,340,561	$13,340,561	1,313
Michigan	$18,143,973	$21,994,040	$21,961,955	2,128
Minnesota	$9,106,875	$9,760,814	$9,646,112	1,242
Mississippi	$5,186,306	$5,330,182	$5,279,956	743
Missouri	$10,268,071	$10,520,602	$10,431,450	1,255
Montana	$2,075,000	$2,327,295	$2,327,295	230
Nebraska	$3,130,724	$3,694,637	$3,694,637	492
Nevada	$4,034,077	$5,026,090	$4,726,080	456
New Hampshire	$2,317,837	$2,399,649	$2,399,649	185
New Jersey	$15,549,113	$20,650,620	$20,650,620	1,592
New Mexico	$3,374,305	$3,728,473	$3,728,473	519
New York	$34,542,207	$35,778,715	$35,778,715	3,327
North Carolina	$15,133,046	$15,859,530	$15,824,480	2,592
North Dakota	$2,075,000	$3,076,170	$2,405,344	275
Ohio	$20,584,436	$22,356,447	$22,356,447	2,575
Oklahoma	$6,320,758	$7,187,393	$6,564,312	886
Oregon	$6,407,272	$6,557,161	$6,463,525	874
Pennsylvania	$22,257,819	$32,070,294	$32,070,294	4,641
Puerto Rico	$6,981,357	$10,814,444	$8,903,268	1,401
Rhode Island	$2,075,000	$2,374,704	$2,374,704	298
South Carolina	$7,464,874	$8,418,403	$8,045,471	1,212
South Dakota	$2,075,000	$2,580,925	$1,712,258	247
Tennessee	$10,515,146	$11,010,946	$11,010,946	3,046
Texas	$39,813,316	$41,571,704	$41,542,651	6,984
Utah	$4,232,640	$4,596,899	$4,596,899	548
Vermont	$2,075,000	$2,823,640	$602,810	68
Virgin Islands	$2,075,000	$3,279,630	$3,279,630	258
Virginia	$13,295,394	$15,282,897	$15,282,897	2,827
Washington	$11,036,601	$12,865,690	$12,865,690	1,426
West Virginia	$3,258,637	$3,514,452	$3,514,452	547
Wisconsin	$9,850,138	$10,204,734	$10,161,937	1,581
Wyoming	$2,075,000	$3,139,807	$2,585,328	444
Total	$539,413,402	$620,058,246	$605,786,677	75,600

† Equals Per Capita + Returned + Carryover +National Pool Credits
Source: National Council of State Housing Agencies
N/AV - Not Available
Last Updated 8/3/2006

The following are explanations of the column headings on page 65 of Appendix G.

Allocating Agency refers to the state responsible for allocating tax credits.

Per Capita Credits refers to the amount of tax credit authorized to the state based on IRS population estimates.

Total Credits refers to the total credits authorized to the state, which includes the per capita credits, any returned credits from the current or prior calendar year, any carryover credits that were not allocated from the prior year, and any credits authorized to the state from the National Pool Credits. National Pool Credits come from the amount of tax credit that went unused by the states and were not considered returned or carryover credits. The IRS will distribute these tax credits from the national pool to those states that utilize the entire amount of tax credit initially provided.

Total Allocations refers to the total amount of tax credit allocated within the state.

Low-Income Apartments refers to the total number of low-income rental units developed from the allocation of these credits.

SOURCE: National Council of State Housing Agencies.

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

August 3, 2006

BY HAND DELIVERY

Dr. Max Arinder
Executive Director
PEER
501 North West Street, Suite 301-A
Jackson MS 39201

Re: Mississippi Home Corporation Agency Response

Dear Dr. Arinder:

Please accept this letter as Mississippi Home Corporation's ("MHC") response to the Performance Evaluation and Expenditure Review Committee ("PEER") staff's findings regarding the Low Income Housing Tax Credit ("LIHTC") Program in the State of Mississippi.

To reach its opinions, PEER reviewed all LIHTC applications for the years 2003 through 2005. While a relatively small window of applications (the LIHTC program has been administered in Mississippi by MHC since 1987), MHC believes the sampling chosen by PEER provides an accurate representation of the LIHTC program in Mississippi.

MHC places a significant amount of time and resources in achieving excellence in the administration of the LIHTC program, including extensive staff and board training, public comment, and intensive review of submitted LIHTC applications. The LIHTC program was created and is continually funded by the United States Congress. Oversight of the program is vested in the United States Treasury Department, and more specifically the Internal Revenue Service ("IRS"). It is within this framework that MHC operates.

PEER states that the purpose of its review is to follow up on findings contained in PEER's 1998 report entitled *A Compliance Review of the Mississippi Home Corporation's Tax Credit Program,* and to address specific concerns over the LIHTC program that were expressed by a complainant. It is important to note that since the previous PEER report, MHC has been legislatively revamped. In 2000, the legislature dissolved the existing Board of Directors and provided for the appointment of nine (9) new board members.

With regard to PEER's conclusions following up on the 1998 report, MHC responds as follows:

Does the MHC incorporate public review and comment into the Qualified Allocation Plan?

MHC complies with the Public Review Requirements of Section 42. Additionally, MHC receives written and verbal comments on its Tax Credit Program from citizens, developers, governmental authorities, syndicators, tax credit tenants and other allocating agencies throughout the year. MHC attends local governmental public meetings, meets with elected officials and members of local citizens groups and conducts tax credit training sessions throughout the State all during the year. Public comment is received from these meetings and considered for inclusion in a future Qualified Allocation Plan (QAP).

In response to PEER's conclusion that the practice of allowing amendments to the QAP has "the potential to create the appearance of impropriety and could have a negative impact on the perception of fairness of administration of the program;" MHC would show that the QAP allows for the timely incorporation of changes to the program by federal law, most of which are mandated. This language in the QAP provides the opportunity for MHC to get housing units on the ground in the quickest possible manner; for example in response to federal legislation for Hurricane Katrina. Additionally, PEER does not provide any evidence of any impropriety based on the cited language.

Does the administration promote the best use of tax credits to provide low-income housing?

With regard to PEER's conclusion that the developers are allowed to exceed unit costs guidelines contrary to program goals, MHC provides for maximum cost per unit in the QAP. This cost was originally established on very basic housing standards and subsequently has been determined by adding an inflationary cost to the previous year's maximum cost. Housing materials, land costs, and other costs have evolved at a faster pace than the inflationary factor being used; therefore cost overruns have not been unexpected. MHC currently has an architect rewriting these design standards to incorporate present day housing needs such as internet wiring, energy efficiencies, carports and storage. Improved maximum cost per unit will be developed but will probably still trail the market due to the inflationary affect of Hurricane Katrina on the land and material costs.

With regard to PEER's assertion that there is an advantage provided to developers with a record of noncompliance, MHC would show that due to the complexity of the LIHTC program, nearly all developers deal with noncompliance at some point or another. MHC ensures that developers that are in noncompliance correct the deficiencies and that no applicant who is in major non-compliance is eligible for an award of credits. Although MHC admits to awarding previous participation points to developers which may have had a prior instance of noncompliance (it is not MHC's intent to penalize a developer for isolated instances of corrected noncompliance), MHC has never awarded tax credits to a developer who has blatantly failed to comply with tax credit rules and regulations or has outstanding instances of major noncompliance at the time of application. MHC is required to file an IRS form 8823, Statement of Non-Compliance, with the IRS anytime MHC Compliance Monitoring staff determines that the developer is in major non-compliance. A developer may be in major non-compliance due to a fault of the tenant, i.e. tenant disconnected the smoke detector.

Language in the General Policies and Guidelines section of the 2006 Qualified Allocation Plan on pages 3 and 4 states: "An applicant, including all parties associated therewith, must be in compliance with any and all Corporation programs to participate in the application process.

Applications will be disqualified that are proposed by an entity with existing major noncompliance findings for any development in which they are associated.

Finally, in response to PEER's conclusion that MHC failed to monitor developers compliance with debt service ratio requirements throughout the fifteen-year compliance period, MHC would show The National Council of State Housing Agencies (NCSHA) establishes "Recommended Practices," the intent of which is to assist its member organizations in improving the programs offered in the various states. The debt service reserve guideline used in MHC's QAP is such a "Recommended Practice" and not a requirement of the IRS. The debt service reserve guideline is used to determine the long-term feasibility of the development and to provide a basis of initial rent-up to be achieved prior to the issuance of IRS form 8609. MHC does not track the debt service reserve after the issuance of the 8609 as it no longer has an impact on MHC compliance activities or IRS reporting requirements.

Syndicators and investors, who invest in the tax credits from the developer, will track the debt service reserve for their assurance that the development remains financially feasible. Should the development fall below the debt service reserve established by the syndicator/investor the syndicator/investor has an upper tier reserve fund that they can call upon to assist the development through its difficulty.

Additionally, PEER's assertion that MHC's failure to monitor the debt service reserve throughout the 15-year compliance period "creates the potential for developers that comply with the Low-income Housing Tax Credit program application's financial requirements to come out of compliance and thus jeopardize tax credits," is inaccurate. As noted, this is not an IRS requirement and thus, MHC does not have the authority to report nor recapture tax credits claimed on the owner's tax return for a violation. Simply put, noncompliance with the debt service reserve guideline does not jeopardize an owner's tax credits. Should MHC begin to track the debt service reserve over the required 15-year period it would only be for internal purposes and to establish trend lines for a particular developer or market area.

Has MHC distributed LIHTCs to ensure benefit to areas of need throughout the state?

With regard to PEER's conclusions regarding the distribution of LIHTC projects throughout the state, MHC encourages tax credit distribution throughout the State of Mississippi by establishing Congressional District set-a-sides and providing point structures that target certain counties or census tracts. Many areas of the State will not economically or feasibly support a tax credit development, even with the incentives offered by MHC. A development that is not economically feasible will not be purchased by a syndicator therefore tax credits provide no benefit to such areas of the State.

With regard to PEER's conclusions on the status of recent complaints regarding MHC's administration of the LIHTC program, MHC responds as follows:

Does MHC adequately inform citizens of the proposed tax credit projects in their neighborhoods?

MHC's current QAP encourages the developer to (1) hold a public hearing at least 15 days prior to the submission of the tax credit application; (2) the QAP requires that applicants post two

notices in the local paper at least 4 days apart and not more than 20 days or less than 5 days prior to the public hearing; (3) post signage on the proposed site advising the local community of the forthcoming public hearing and proposed development; (4) maintain minutes of the meeting with attendance roster; and (5) advise attendees of the right to submit written comment and maintain those comments for further review.

Following receipt of a tax credit application MHC sends a notice to the local governing authority, (Mayor or President of the County Board of Supervisors), of the receipt of a tax credit application in their area. Additionally, MHC posts on its website a spreadsheet listing each application's proposed site, the type development, developer and other pertinent information concerning the application. Following the award of tax credits by MHC's Board of Directors MHC posts a listing of applications receiving an allocation of tax credits on MHC's website. MHC continually receives written comments from the public, throughout the application cycle and at other times during the year, as a result of these actions and maintains those comments in files for consideration during the review process and for consideration in future QAPs.

Does MHC physically inspect the suitability of proposed sites for tax credit developments prior to project approval?

MHC, as part of its application review process, inspects each site for habitability concerns, i.e. distance to railroads, major highways, airports, shopping facilities, medical facilities, schools, etc. MHC does not have engineers on staff to provide site development construction suitability, which is a developer's responsibility. Concerning the issue with the referenced development, MHC was aware, subsequent to the issuance of a commitment of tax credits for the development, of the site difficulties being addressed by the developer as a result of the 15-month progress inspection. MHC monitored those difficulties as they became more pronounced, aware even that tenants were displaced due to flooding conditions.

MHC was not aware of the referenced Certificate of Occupancy "problem" noted by PEER as the developer had not requested MHC issue IRS form 8609 at the time of such disclosure. MHC would not issue an IRS form 8609 on this development, or any other development, that is not completed physically to MHC's satisfaction and in accordance with the representations reflected by the developer in the application.

Does MHC repeatedly approve developments for and award tax credits to the same developers?

MHC agrees with PEER's conclusions. MHC, in accordance with federal law, does not discourage a developer from submitting an application for tax credits. The QAP does not prohibit a developer from filing multiple applications during an application cycle. MHC reviews and scores each application on its own merit in accordance with the QAP.

Because developers applying to receive LIHTCs contract for their own marketing studies, does this compromise the objectivity of the studies?

MHC agrees with PEER's conclusions.

Does MHC hold developers accountable for maintaining their tax credit developments?

MHC agrees with PEER's conclusions.

Does MHC obtain feedback from the target population of the LIHTC project?

MHC staff requests feedback from residents when conducting on-site monitoring inspections of existing tax credit properties regarding their overall satisfaction with the operation of the development including how responsive the owner and management entities are to their specific requests or concerns. Any problems disclosed to MHC staff are addressed immediately at the time of disclosure. This protocol has an immediate impact on addressing specific problems residents may encounter on a periodic basis and provides immediate accountability for the owner or management agent.

Finally, MHC appreciates the thorough review of the LIHTC program by the PEER staff. Your staff conducted the entire review in a courteous and highly professional manner. We address the recommendations of your staff as follows:

Recommendation 1. MHC is currently in the process of developing the 2007 QAP and is exploring ways in which increased public review and comment may be achieved, such as multiple public hearing sites and more diverse publication of the public hearing notices.

Recommendation 2. MHC currently has an architect revising its design standards and associated costs per unit to be included in the 2007 QAP; however, MHC anticipates cost overruns in applications received from the lower six counties of the State due to infrastructure requirements, land costs, wetlands issues, labor, etc. MHC will make every effort to critically review each request to exceed the maximum cost per unit.

Recommendation 3. Minutes of MHC Tax Credit Committee meetings will be maintained for future meetings.

Recommendation 4. PEER's recommendation as to Developer Experience points is duly noted and will be given consideration in the 2007 QAP.

Recommendation 5. MHC has incorporated this PEER recommended change in its automated spreadsheet.

Recommendation 6. PEER's tracking recommendation of the debt service reserve is duly noted and implementation will be considered for internal trending purposes.

Recommendation 7. MHC has a scoring category in the QAP designed to encourage developers to supply units to areas where the housing stock is poor. Item 3 in the 2006 QAP allows developers up to 5 points for developments proposed in counties based on the percentage of units with at least two conditions of housing distress (defined by Census data). MHC will examine ways to modify this scoring factor to incorporate data available on an annual basis to better track changes in need and supply of low-income rental housing.

Additionally, for a number of years prior to the 2006 QAP, MHC deducted one point from applications proposing developments in counties that had received three or more tax credit awards in the previous two years. MHC will revisit this criterion and the weight it carries to determine if reinstating it could produce a broader distribution of Tax Credit developments from year to year.

Recommendation 8. PEER's recommendation of increased communication with the local governing authority during the construction phase of a development is duly noted. MHC will review implementation of this recommendation as a part of the 15-month inspection process.

Recommendation 9. MHC plans to follow PEER's recommendation to require a "Certificate of Occupancy" when such is available from the local governing authority in lieu of accepting and American Institute of Architects "Certificate of Substantial Completion".

The recommendations and comments by the PEER staff are well taken and will be addressed as quickly as possible. We believe that we have developed a LIHTC program that meets the goals of MHC and more importantly the affordable housing needs of the citizens of Mississippi. As you have learned, the LIHTC program is the most important resource for developing affordable housing in the United States today and MHC is constantly striving to improve its role in the allocation and compliance monitoring of the program in Mississippi.

In closing, we would like to thank PEER for its efforts to review MHC's role in administering a very complex piece of federal legislation. Although we have some differences of opinion, MHC believes that the exercise of internal and external review will provide a tremendous aid in meeting MHC's stated goal of providing safe, decent, affordable housing for the residents of Mississippi.

With best regards,

Dianne Bolen
Executive Director

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