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January 3, 2012

Stanley Gimont, Director  
Office of Block Grant Assistance  
U.S. Department of Housing and Urban Development  
Room No. 7286  
451 7<sup>th</sup> Street, SW  
Washington, DC 20410-7000

Re: MDA's response (November 22, 2011) to HUD Management Review  
Report Port of Gulfport Program (B-06-DG-28-0001) (October 25, 2011)

Dear Mr. Gimont:

We represent the Steps Coalition in its ongoing Campaign for a Safe and Healthy Port. We are writing to thank the U.S. Department of Housing and Urban Development ("HUD") for its thorough Management Review Report on the Port of Gulfport Program, dated October 25, 2011 (the "Report"), and to comment on the Mississippi Development Authority's ("MDA's") response thereto, dated November 22, 2011 ("MDA Response"). For the reasons discussed below, we believe that the MDA Response does not adequately comply with certain corrective actions required by the Report. Accordingly, pursuant to 24 C.F.R. § 570.495, we request that HUD advise the State to suspend or terminate disbursement of CDBG funds related to the Port of Gulfport Program, and advise the State to reimburse the CDBG funds related to the Port of Gulfport Program in the amount HUD deems to have been improperly expended.

The purpose of the Report was to determine if MDA "is implementing its actions for the disaster recovery grant in accordance with all applicable regulations, Office of Management and Budget circulars, as well as the pertinent notices and waivers specific to Mississippi."<sup>1</sup> To that end, HUD's Report made the following Finding:

MDA did not have records available to facilitate HUD's review of the Port of Gulfport project for national objective compliance. There was no

<sup>1</sup> U.S. Department of Housing and Urban Development, Office of Community Planning and Development, Letter to Jon Mabry, Chief Operating officer, Mississippi Development Authority, October 25, 2011.

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evidence of a Memorandum of Agreement (MOA) in place between the [Mississippi State Port Authority (“MSPA”)] and its business tenants regarding job creation/job retention. There also does not appear to be a clear methodology developed for tracking job creation.<sup>2</sup>

In addition, HUD laid out the following corrective actions to be taken by the State of Mississippi:

The State must produce a [Memorandum of Agreement, or MOA] between the MSPA and the business tenants, create and implement a method for tracking jobs, and verify whether any jobs have been created or retained. The State should provide proof of its actions within 30 days of this monitoring letter.<sup>3</sup>

The corrective action, therefore, requires four items:

1. An MOA between MSPA and the business tenants;
2. Creation and implementation of a method for tracking jobs;
3. Verification of whether any jobs have been created or retained; and
4. Providing proof of these actions within 30 days of the monitoring letter.

As discussed in more detail below, the MDA Response falls short of these required actions in all four respects.

### **1. MOA Between MSPA and Business Tenants**

The MDA Response notes that “MSPA has drafted a MOA to be executed by its existing tenants regarding the reporting of new hires and to be incorporated into the lease of any new tenant.”<sup>4</sup> However, the MOA has not been signed by any of MSPA’s business tenants. In fact, MDA admits that “MSPA is currently negotiating specific MOAs with the existing business tenants on an individual basis” and further states that the “tenants are expected to execute agreements before the end of the year.”<sup>5</sup> Thus, inasmuch as the MOA is still being negotiated, the terms of the final MOA could differ significantly from the draft provided by MDA.

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<sup>2</sup> Report at 7.

<sup>3</sup> Id. at 8.

<sup>4</sup> MDA Response at 2.

<sup>5</sup> Id.

The MDA Response does not adequately address HUD's required corrective action or Finding. MDA failed to produce an MOA entered into by MSPA and the business tenants as required by HUD. MDA's submission of a draft MOA and its unsubstantiated claim that MSPA is negotiating MOAs on an "individual basis" is not an adequate substitute for the production of an executed MOA. Therefore, HUD's finding that "there [is] no evidence of [an MOA] in place between the MSPA and its business tenants regarding job creation/job retention" remains true and uncorrected. If MOAs that truly address job creation and retention are in place by the end of the year, it is imperative that MDA provide proof of this to HUD.

## 2. Creation and Implementation of a Method for Tracking Jobs

With respect to developing a clear methodology for tracking job creation, MDA summarily claims that the "MOA will allow MSPA to track in detail the essential low/mod job data necessary to demonstrate the program's fulfillment of the national objective."<sup>6</sup> A detailed explanation of how the MOA will allow MSPA to track this information, including specific references to the relevant sections of the MOA, is glaringly absent from the MDA Response. Accordingly, we urge HUD to undertake a thorough review of the draft MOA to determine the veracity and substance of MDA's claim.

Moreover, even if MDA's claim is true, it is only accurate with regards to the *business tenants*, because MDA admits that the MOA will not be used for the trucking companies. Instead, MSPA will use a "survey method to collect and report these numbers."<sup>7</sup> However, MDA does not provide any draft survey with its response. Accordingly, it appears that this additional tracking method has been neither created nor implemented as HUD required in its Report. The same is true for the "unique software program" that "MSPA is developing."<sup>8</sup> In its Report, HUD did not require that MDA merely have a plan or be in the process of developing tracking methods, but that it actually have created and implemented such methods.

Another stark deficiency of the MDA Response is MDA's complete omission of a methodology for tracking construction jobs. MDA claims that the project will "create approximately 2500 construction and construction related jobs."<sup>9</sup> While MSPA is developing a software program and planning to use a survey method to track transportation (*i.e.*, trucking) jobs, it does not appear to have any method in place for tracking non-trucking construction jobs, which constitute a significant portion of new jobs created.

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id. at 2-3.

<sup>9</sup> Id. at 2.

The MDA Response, therefore, is wholly inadequate to establish that the State of Mississippi has created and implemented a method for tracking jobs.

### **3. Verification of Jobs Created or Retained**

The MDA Response states that "MSPA is confident that it has retained the 1,286 direct jobs outlined in the Action Plan, including 55 jobs directly employed by MSPA and 1,231 jobs in the employment of MSPA's tenants, tenant subcontractors, and jobs in the transportation industry linked directly to shipping generated by the port."<sup>10</sup> MDA further claims that the port project "has currently generated 120 design and engineering jobs..."<sup>11</sup> MDA, however, fails to provide any documentation to support these assertions. While MDA may be "confident" in its job creation, HUD should require MDA to provide objective empirical evidence to verify MDA's job retention and creation numbers.

Furthermore, even if MDA's numbers are accurate, which we do not concede, MDA fails to provide information on how many of the 120 new jobs are available to low- and moderate-income people. MDA also does not account for any new construction jobs that may have resulted from the \$45 million in Community Development Block Grant ("CDBG") disaster recovery funds that had been expended on the port at the time of the monitoring visit,<sup>12</sup> not to mention jobs created from funds expended since that time, over four months ago.

### **4. Provide Proof of Actions Within 30 Days**

None of the three actions required by HUD were fulfilled within 30 days. The MOA, though it is in draft form, has not been finalized or signed by any tenants; indeed its terms were still being negotiated, according to the most recent information. MDA has not implemented any methodology for tracking trucking or construction jobs, and the MOAs, the tracking survey, and the "unique software program" are not in place. Lastly, MDA does not provide any evidence of its job retention, or any figures about jobs created from CDBG funds already expended. Consequently, the MDA has not complied with HUD's required corrective actions discussed above.

### **5. Conclusion**

Due to MDA's failure to "produce [an MOA] between the MSPA and the business tenants, create and implement a method for tracking jobs, and verify whether any jobs have been created

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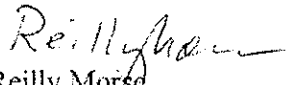
<sup>10</sup> Id.


<sup>11</sup> Id.


<sup>12</sup> Report at 7.

or retained" as HUD required in its Report, HUD should, pursuant to its authority set forth in 24 C.F.R. § 570.495, advise the State to suspend or terminate disbursement of CDBG funds related to the Port of Gulfport Program, and advise the State to reimburse the CDBG funds related to the Port of Gulfport Program in the amount HUD deems to have been improperly expended.

Sincerely,

  
Reilly Morse  
Mississippi Center for Justice

  
Diane Glauber and Joseph Rich  
Lawyers' Committee for Civil Rights Under Law

  
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