Mississippi CDBG Recovery Fund
Report Card and Recommendations

Prepared by the Steps Coalition

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The Steps Coalition is an alliance of non-profit public interest, civic, and faith-based groups that share the goal of a just, equitable, and sustainable recovery following Hurricane Katrina. For more information, go to www.stepscoalition.org.

HUD Excuses MS from Compliance With Overall Benefit Requirement

According to the Governor's Commission Report, Hurricane Katrina "had a particularly devastating impact on low-wealth residents who lacked an economic safety net" but the disaster also "presented a unique opportunity to correct decades of inequitable development."[1] Reflecting these concerns, Congress required the states to spend at least 50% of the $11.5 billion in CDBG disaster recovery funds to benefit primarily persons of low and moderate income (LMI).[2] The U. S. Department of Housing and Urban Development (HUD) adopted regulations implementing this requirement,[3] which will be referred to as the "overall benefit requirement."

Congress and HUD did permit the states to seek a waiver of the overall benefit requirement on a showing of "compelling need," but the only state to have done so is Mississippi, the poorest in the nation. Mississippi asked for a blanket waiver for the first $5 billion it received. HUD refused, but later approved a series of piecemeal waivers that enabled Mississippi indirectly to disregard the overall benefit requirement. All told, HUD has waived the requirement on programs totaling $4 billion out of $5.4 billion in disaster recovery funds. Currently, only 23% of the total CDBG funds is devoted to programs which comply with the LMI benefit requirement.

For the first program, $3.4 billion in Homeowners' Assistance, ("Phase I") Mississippi said it would be impossible to assure beforehand that the program would achieve the precise 50% benefit, but predicted that LMI participation would be significant. Mississippi asked HUD not to require income-screening because it would confuse and exclude many eligible participants.[4] HUD granted the waiver, saying, "experience indicates that it is possible that the actual operations of the grant may produce a result in conformance with the 50 percent overall benefit requirement."[5] Contrary to these expectations, only $255 million (23%) of the $1.1 billion in Phase I

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[1] Governor's Commission on Recovery, Rebuilding, and Renewal, "After Katrina: Building Back Better Than Ever", pp. 60-61. http://mississippirenewal.com/documents/Governors_Commission_Report.pdf

[2] Department of Defense Appropriations Act, 2006, Public Law 109-148, December 30, 2005, 119 Stat. 2680, 2780.

[3] "[T]he aggregate use of CDBG Disaster Recovery funds shall principally benefit low and moderate income families in a manner that insures that at least 50% of the amount is expended for activities that benefit such persons." U. S. Department of Housing and Urban Development, February 13, 2006, 71 FR at 7671.

[4] MDA Phase I Initial Action Plan, Final Version, pp. 17, 20. September 11, 2006. http://www.mississippi.org/content.aspx?url=/page/3623&

[5] Waivers Granted to and Alternative Requirements for the State of Mississippi's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, 71 FR 34457, 34459, June 14, 2006

grants so far has gone to LMI persons.[6] With Phase I nearing completion, this experience indicates that LMI households likely will experience much lower than expected benefit in other programs for which the overall benefit requirement was waived.

Mississippi Falls Short Using Broader Measure of Benefit to LMI Residents

Mississippi officials assert it is unfair to measure LMI benefit only by dollars in programs adhering to the overall benefit requirement, and have complained that the HUD reporting system is too rigid. The State has argued that other programs actually benefit LMI persons along with the remainder of the affected population. However, the State's overall benefit expenditure only rises from 23% to 32% ($1.25 billion to $1.82 billion) using a broader measure of LMI benefit.[7]

The broader measure assumes the general programs will benefit the LMI population to the extent of their 37% proportion to the total population.[8] The broader measure uses a 23% LMI benefit for Phase I as reported by Mississippi to HUD. For Phase II, the broader measure assumes that 2/3 of the funds will benefit LMI households and 1/3 will not. The Port Expansion benefit follows the 10% LMI job rate prior to Hurricane Katrina. The Small Rental and Work Force Housing programs assume the 51% benefit contained in the plans.

The broader measure likely overstates the overall LMI benefit. Both commercial and residential utility and windpool rates were impacted by the utility/windpool programs, which dilutes the benefit to LMI persons. The same is true for sewage and water infrastructure program, which will construct a regional sewage and water backbone for new businesses and subdivisions in the interior of the affected counties. Finally, the economic development, community revitalization, and port expansion funds likely will fund activities without any meaningful benefit for LMI residents.

State Needs $1 Billion to $1.45 Billion to Meet Overall Benefit Requirement

If Mississippi's current programs unfold as proposed, the State will not meet or approach the federal overall benefit requirement. Instead, it will lose the once-in-a-lifetime opportunity to correct decades of inequitable development. To meet the 50% target set by Congress, Mississippi would have to reprogram $1 billion to LMI-benefit activities, if one were to use the broader measure to gauge compliance. The gap

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[6] Mississippi Development Authority, Federal Disaster Recovery Report for Quarter Ending,September 30, 2007 , pp. 27-28. http://www.mississippi.org/content.aspx?url=/page/3622&

[7] See Pro-Rata Calculation of Programs, attached as Appendix 1.

[8] The general programs include $420 million paid to utilities and windpool insurance, $586 million in regional sewage and water infrastructure, $340 million in economic development, and $305 million in community revitalization. http://www.mississippi.org/content.aspx?url=/page/3623&

increases to $1.45 billion if one only counts dollars in existing programs that comply with the 50% LMI benefit requirement.

MDA recently acknowledged that only $100 million of the $5.4 billion in disaster recovery funds remains unallocated.[9] However, MDA excluded $600 million that it wants to shift from housing into expansion of the State Port at Gulfport. Counting this $600 million, a total of $700 million remains unallocated. This $700 million plus an additional $300 million redirected from other programs would be required to close a $1 billion gap under the broader measure of benefit. An additional $450 million would be needed to close the $1.45 billion gap under the narrower measure of benefit.

Mississippi has spent about $1.64 billion as of September 30, 2007.[10] Nearly all of the total is in these programs.

- Phase I home grants ($1.016 billion)
- Utility/Windpool relief ($420 million)
- Phase II home grants ($99 million)
- Program delivery/administrative costs for home grants ($94 million)

Mississippi still has about $3.73 billion allocated but unspent. About $2.48 billion in unspent allocations is contained in these programs.[11]

- Sewage and Water Infrastructure ($641 million)
- Expansion of State Port at Gulfport ($600 million)
- Phase II grants ($601 million)
- Economic development ($335 million)
- Community revitalization ($300 million)

Using the broader measure of benefit, Mississippi has 22% ($1.054 billion) in LMI housing, 32% ($1.562 billion) in higher-income housing, and 46% ($2.271 billion) in other programs. The State has to balance the needs for affordable housing, economic development, and infrastructure repair. Readjusting Mississippi's priorities may upset some business and government expectations but the correct choice is to place the first priority upon unmet needs of Mississippians without any economic safety net.

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[9] Sheila Byrd, "Advocates blast proposal to steer housing funds to port project," Clarion Ledger, September 13, 2007

[10] MDA September 30, 2007 Disaster Recovery Expenditure Overview, http://www.mississippi.org/content.aspx?url=/page/3622&

[11] Id.

Fair Housing Act Issues Loom

Public Law 109-148 prohibits the Secretary of HUD from waiving compliance with requirements relating to fair housing and non-discrimination.[12] Title VIII of the Civil Rights Act of 1968 prohibits housing discrimination on the basis of race, color, religion, sex, national origin, familial status and disability. There are widely accepted correlations of lower income to race, sex, familial status and disability. For example, 24% of African-Americans live in poverty in Harrison County, Mississippi compared to 11.2% of whites.[13] By ignoring or underemphasizing the needs of low to moderate income individuals, Mississippi's overall disaster recovery plan fails to affirmatively further fair housing. For example, Mississippi's Phase I homeowner's assistance program has paid out over $1 billion in grants, but a disproportionately low $255 million to about 5,572 LMI applicants, who are statistically more likely to be African American.[14]

The 2000 Census population for persons with disabilities is 607,570 statewide in Mississippi and 76,650 in the three coastal counties. In addition to being the state with the greatest poverty rate in the nation, Mississippi has the largest per capita population of people with disabilities, the majority of whose incomes fall below the 80% area median income (AMI) category. Persons with disabilities tend to have less income because many are on fixed income, but most also have substantial disability-related expenses not borne by the non-disabled population on fixed income.

As discussed elsewhere, the disaster recovery programs have left substantial financial gaps preventing coastal Mississippians from achieving recovery. The gap widens for elderly populations on fixed incomes, and widens even further for persons with disabilities. Funds are needed to provide access into and throughout their house, especially with the new elevations. Without these funds, many Mississippians with disabilities will not be able to rebuild in their original homes. Some will be torn from their social and health networks and resettled in unfamiliar and inaccessible locations, while others will become homeless. The difficult and important progress toward independent living and community contributions by Mississippians with disabilities is imperiled by lack of access to a safe, healthy residence. While some Mississippians with disabilities have been able to own their residence, many rely on rental units. The physical and financial upkeep of a house can be too much for people with disabilities who do not have a support system. For these reasons, a top priority for recovery going forward should be additional funds towards rental programs that are built according to the

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[12] Department of Defense Appropriations Act, 109 Public Law 148, 119 Stat. at 2780.

[13] 2006 American Community Survey, Poverty Status, African Americans in Poverty to Total African American Population (9,117/37,839) Whites in Poverty To Total White Population (13,385/118,577).

[14] Mississippi Development Authority DRGR Report, September 30, 2007, Grantee Activity ID 05R-Homeowner L/M Phase I. http://www.mississippi.org/content.aspx?url=/page/3622&

protective laws, including the Fair Housing Act, Americans with Disabilities Act, and Section 504.

Unmet LMI Housing Needs and Solutions

Top Down Assessment Mississippi's current programs do not address half the needs of small rental, very-low-income rental, or homeowners who suffered moderate to severe damage from Hurricane Katrina. This assessment is "top-down" because it starts at the top with the total damaged housing units and subtracts the units Mississippi's programs will replace to determine the unmet need.

- MDA's Small Rental plan will restore 6,000 small rental units, leaving 7,798 unrepaired[15]
- GO Zone and regular tax-credit funded developments will restore 1,023 very-low-income apartment units, leaving 10,891 unrepaired. In the six coastal counties, these programs will restore 5,632 low-income units, leaving 9,825 unrepaired.[16]
- Phase I and II will restore 26,000 houses, leaving 33,885 wind-damaged units (estimated 16,942 LMI households) unrepaired. [17]

Bottom Up Assessment Measured by populations still displaced or seeking charitable financial support, Mississippi has almost 30,000 households that are either displaced or without sufficient funds to repair or replace their housing. This assessment is "bottom-up" because it counts the households currently known to be actively seeking housing assistance.

Mississippi's county long term recovery organizations (LTRs) currently have 15,521 open files statewide.[18] Many of these files include homeowners with uncompensated wind damage. A small percentage will be renters seeking assistance with furnishings and personal effects. The LTRs also have 5,778 closed files, which include households who received no relief due to budget constraints. Currently, the LTRs are publicly seeking to raise $300 million in additional funds to "Finish The Job."[19]

Mississippi has 13,022 households currently in FEMA temporary housing programs, of which 11,641 (or 89 percent) are in FEMA trailers. These figures cumulatively represent approximately 35,159 displaced individuals as of January 16,

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[15] Steps Coalition, People Before Ports, slide 7, http://www.slideshare.net/RMorse/unmet-needs-ports-210648/

[16] Id, slide 8; See Mississippi Home Corporation table, September 11, 2007, on file with authors.

[17] People Before Ports, slide 10.

[18] Data obtained from CAN system retrieved December 21, 2007.

[19] See www.finishthejobfund.org .

2008. [20] Eighty-one percent of households in FEMA trailers or receiving other direct assistance are LMI households, yet only 1.3 percent of those who still remain in trailers ever received federal housing assistance prior to Katrina. Nearly half (47 percent) of those receiving direct assistance were renters before the storm and 36 percent of these residents are over the age of 60 and/or have a disability.

Ninety-three percent of the 1,381 households receiving rental subsidy assistance are LMI households. Eighty-eight percent of households receiving subsidies were renters before Katrina, but only seven percent received any federal housing assistance before Katrina. Eleven percent of these households include elderly and/or persons with disabilities.

Very-Low-Income Renters Very low income renters (earning less than 50% AMI) may occupy either small rental units (fewer than 10 units per property) or apartment complexes. 37,105 VLI rental units were damaged, with 11,914 receiving moderate to severe damage, including 1,910 subsidized and 10,004 market rate rentals. Deeply affordable rental units are returning significantly more slowly than the remaining segments of the housing market, according to a recent Rand report.[21]

Small Rental Two-thirds of all Katrina-damaged rental units were single-family dwellings. 13,798 small rentals received moderate to severe damage. MDA's Small Rental program will replace or restore 6,000 units, leaving unrepaired 7,798 moderate or severely damaged units and over 30,000 units with limited damage.

MDA's Small Rental program targets half of the units for persons earning at or below 80% of area median income. The Small Rental program has almost exclusively attracted new construction by professional real estate developers. Permitting and construction will delay the availability of new units, and zoning disputes can delay or even block new development. Another approach is to repair small rental units owned by non-professional local landlords with limited damage. Such a program will have less cost per unit and no zoning delays. Non-professional landlords also may qualify for volunteer labor assistance. This alternative will leverage MDA support, reopen small rental units to LMI persons, and repair the fabric of existing residential communities more quickly than new construction.

MDA should develop or else provide funding to non-profits who have case-managed a Small Rental program targeting non-professional landlords. One example is the Rental Relief Program operated by Lutheran Episcopal Services in Mississippi with

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[20] FEMA, Mississippi 1604, GCRO, IA Global Report No. 23.0, Report Date: 01/16/08: http://www.fema.gov/pdf/hazard/hurricane/2005katrina/ms_iag.pdf: The aggregate number reported uses FEMA's standardized formula of : [# of households x 2.7 (average MS household size) = total aggregate population]

[21] Kevin McCarthy, Mark Hanson ***Post Katrina Recovery of the Housing Market Along the Mississippi Gulf Coast***, Rand Gulf States Policy Institute, p. 72 (finding affordable housing will be "particularly severe for lower-income renters")

support from the Mississippi Association of Realtors. In return for a cash payment of up to $10,000 from LESM to cover materials, the landlord entered into an agreement to rent the apartment at pre-Katrina rates for one year. MDA should provide flexibility in the grant amounts and affordability term to match the landlord's needs. The estimated cost will depend upon the grant size and participation, but an additional $250 million in $20,000 grants could repair and reopen 12,500 units. MDA should consult with housing advocates about solutions that would enable non-professional landlords whose damaged units are currently occupied to qualify for the grant.

MDA should also learn from the Louisiana experience. Louisiana has larger grants (up to $70,000) and incentives for deeper affordability (down to 65% AMI). MDA also should alter the credit requirements for non-commercial small landlords.

Multifamily Rental GO Zone Low Income Housing Tax Credits (LIHTC) are the exclusive federal disaster financing mechanism to restore or replace damaged subsidized apartment complexes. A total of $106 million in credits is forecast to produce 9,214 units, of which 9,168 are low-income units.[22] However, 3,582 of these units are not located in the three coastal counties. A total of $69 million in credits is forecast to produce 5,654 units in the six lower counties, of which 5,632 are low-income units. Only 1,023 units within the GO Zone will be affordable to persons at or below 50% of area median income, which leaves 10,891 moderate to severely damaged units unreplaced or unrepaired. Substantially deeper targeting is required to restore the pre-hurricane supply of deeply affordable rental housing.

Of the 2,055 units awarded Go Zone tax credits statewide in 2006 (eight developments), 556 total units are listed by MHC as "Placed in Service" or available for occupancy. Only one of these complexes with 95 low income units is situated in one of the lower three counties (Harrison). The remaining apartment complexes available for occupancy are located away from the heavily storm damaged counties. Persistent local objections upheld by local governments have blocked reconstruction of most low-income apartment complexes.

Mississippi should augment its Tax Credit programs with CDBG funds in a similar manner to the so-called "piggyback" formula used in Louisiana. Over 11,000 units affordable to populations earning under 60% AMI will be funded as a result of Louisiana's program. Using LIHTC and CDBG funds together could enable Mississippi to reduce the gap between supply and demand for low and very low income rental property.

Wind-damaged Homeowners A rough estimate of the lower-income wind-damaged homeowners with moderate to severe damage is 16,942. Mississippi should add substantial additional funds to the Phase II home grant program to cover wind-damaged homeowners who meet the same income criteria and agree to similar covenants and construction standards. Alternatively, Mississippi should substantially

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[22] Mississippi HOME Corporation table, September 11, 2007.

fund the county LTRs to enable them to cover uncompensated losses to hurricane-damaged homeowners, regardless of the cause of the loss. Mississippi has an opportunity to leverage the millions of dollars of volunteer funds, materials, and labor brought into our community by faith-based and civic groups. Both funds and labor flow through the LTRs. However charitable funds and volunteers are dwindling, putting at risk of loss this important partner in recovery. The need for funding for many who had no insurance on their homes is so great that LTROs have taken the initiative to raise $300 million to be used at the LTROs.

Program Recommendations

1. MDA should accelerate disability accessible housing to the front of the line. The prioritized units should comply with ADA, FHA, and § 504 requirements.
2. MDA, MEMA, and the Governor's Office should condition county and local disaster recovery funding upon removing local zoning and planning barriers to affordable housing. The rationale for tying these together is to strengthen the incentives of local governments to promote inclusive zoning and permitting housing policies.
3. Improve outreach about homeowner grants and small rental programs by engaging directly with community-based organizations. Social networks in churches and civic groups get information out better than on-line forms and door hangers, especially in rural areas and areas without internet access or doors. Intake centers in each community will increase participation by persons with transportation and work-related limitations. Outreach surveys done in Biloxi, D'Iberville, Gulfport, and Hancock County within the past 12 months show that large numbers of persons are not aware that they should apply for homeowner's grants.
4. Improve home grant application and approval process by assigning specific caseworkers to assist applicants in their dealings with MDA and Reznick. In addition, each of the county locations should have a table reserved for community groups to provide support, counseling and advice.
5. Speed up the process of receiving the homeowner's grants. In too many cases, the time from application to closing exceeds one year. Assign caseworkers first to applicants whose files have been open the longest, and solve these problems on a fast-track basis.
6. Extra efforts should be made to contact persons who were rejected as inelgible under Phase I and then relocated before receiving a roll-over letter. Compile a list of roll-over letters returned as undeliverable and trace the recipient's current whereabouts.
7. Maximize the use of plain, non-technical language and make special allowances for special communications needs, including translators for non-English speaking, and persons with disabilities.
8. Streamline and reduce the duplication of benefits process. Persons who are eligible for SBA loans should be allowed to demonstrate need for the SBA funds to complete the recovery process, instead of automatically having the loan

deducted from the grant. This enables credit-worthy people to access their own gap financing.

9. Establish a gap loan fund to enable persons at risk of foreclosure upon their residence due to delays in processing their grant application and increases in personal debt during the interim. Lower-income storm victims face severe problems due to desperation borrowing from sub-prime lenders.
10. Performance audit of state agency and contractors conducting the program delivery of all housing programs, including reporting of statistics that bear on all protected classes under the Fair Housing Act.

Other Sustainable Solutions

A statewide Housing Trust Fund should be established to provide a continuous source of revenue for affordable housing for low-income families in Mississippi. The goals of the Housing Trust Fund should be the following:

- To dedicate funds for housing that is affordable to low-income families;
- To provide a flexible source of funds for communities to address affordable housing needs;
- To help families build wealth and economic stability;
- To revitalize distressed neighborhoods and build healthy, vibrant communities by developing high quality affordable housing;
- To leverage additional private investment in Mississippi communities; and
- To contribute to economic growth through increased housing production, employment, and tax revenues.

- **Revenue**

  The Mississippi Housing Trust Fund should be established with ongoing, permanent, dedicated and sufficient sources of revenue to meet the affordable housing needs of low-income Mississippians. While possible seed funding may include Community Development Block Grant Funds for long-term recovery, an ongoing source is needed to ensure that the Trust fund reaches people across the state while remaining economically viable. Potential ongoing revenue sources researched include a slight diversion of existing state gaming revenues to a housing trust fund or an increase in document filing fees for deeds and related documents for housing. At the federal level, the National Affordable Housing Trust Fund Act of 2007, H.R. 2895, S. 2523, would provide $150 million to Mississippi in its first year to assist with disaster recovery. The source of funds would be dedicated revenue streams from government sponsored entities (GSE) such as Fannie Mae.

- **Eligible Activities:** Housing Trust Fund dollars must be used to provide grants, loans, loan guarantees, and/or loan subsidies to eligible grantees to fund residential housing and/or related services to households that meet the income targeting guidelines. Eligible activities will include but not be limited to: affordable housing projects consisting of new construction of rental or homeownership housing, substantial or moderate rehabilitation of rental or homeownership housing, rental assistance, land acquisition, predevelopment costs, affordable housing preservation, including home repair grants and grants to make homes accessible to individuals with disabilities, homelessness prevention activities, downpayment assistance, housing and foreclosure counseling, technical assistance, or administrative costs for non-profit housing organizations.

- **Income Targeting:** 100% of Trust Fund dollars must be used to serve households with incomes at or below 80% of MFI. At least 60% of the Trust Fund dollars must be used to serve households with income at or below 50% of the MFI. At least 55% of that 60% must be used to serve households with income at or below 30% of MFI. For rural areas, defined as counties outside of U.S. Census designated Metropolitan Statistical Areas, the Median Family Income (MFI) will not exceed 80 percent of the statewide MFI. Within a county within a Metropolitan Statistical Area, the MFI for such county will not exceed 80 percent of the greater of statewide MFI or metropolitan area MFI.

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Appendix 1: Pro-Rata Calculation of LMI Benefit from MS CDBG Programs

	total	% LMI	$ < LMI	$ > LMI
phase I *	$1715	15%	$255	$1460
elevation grant	$250	37%	$92	$157
public housing	$100	100%	$100	$0
utilities/insurance ∞	$439	37%	$162	$277
infrastructure ∞	$585	37%	$216	$369
economic development ∞	$340	37%	$126	$214
community revitalization ∞	$300	37%	$111	$189
port expansion †	$600	10%	$60	$540
phase II **	$750	66%	$495	$255
small rental ††	$250	51%	$127	$123
work force housing ††	$150	51%	$77	$74
subtotal	$5,479		$1,821	$3,658

* Phase I figures for Total and LMI: MDA Q3 2007 report, pp. 27-28.
∞ General Programs With 50% Waivers use 37% estimated LMI benefit
† Port Expansion LMI benefit is estimated at 10%, the pre-storm rate of LMI jobs.
** Phase II divided 2/3 LMI, 1/3 above LMI.
†† Small Rental and Work Force Housing are divided 51% LMI, 49% above LMI.