HAP Program 1 Technical Modification Number 6

Background and Scope

State of Mississippi statute (see Section 7-7-43 below) restricts the issuance of any warrant (state check) to anyone indebted to the state. As a result, MDA must withhold from any individual state issued warrant (check) amounts owing to another state agency. Thus, the MDA is required to withhold outstanding Mississippi state tax lien and Mississippi Employment Security Commission lien amounts from the grant award.

§ 7-7-43. Warrants not to be issued to state's debtors; notice for state tax claim; liability for disregard of notice.

(1) The State Fiscal Officer, any chancery or city clerk, or the fiscal officer of any county or separate school district, institution of higher learning, state college, university or state community college, shall not issue any warrant upon any allowance made to, or claim in favor of, any person, his agent, or assignee who shall be indebted to the state, or against whom there shall be any balance appearing in favor of the state; but such officer shall allow such debtor a credit on his account for such allowance or claim.

(2) For state tax claims, the Tax Commissioner is required to furnish the appropriate fiscal officer with notice that state taxes have not been paid. This notice shall serve as a stop order upon any allowance made to, or claim in favor of, any person, his agent, or assignee who shall be indebted to the state, or any political subdivision thereof, or against whom there shall be any balance appearing in favor of the state or any political subdivision thereof. Disregard of the stop order notice shall create a personal liability against such fiscal officer for the full amount of state taxes due, plus interest and penalty.

As part of the process of recording effective Restrictive Covenants Running with the Land (the Covenant Agreement, or Restrictive Covenant) the Mississippi Development Authority (MDA) has been taking measures to ensure the Restrictive Covenants are in the first position on the title. Subordination agreements are obtained from lien holders and past due ad valorem taxes are withheld from the grant amount in those cases where the Lender did not pay the outstanding ad valorem taxes on behalf of the grantee as stipulated in the Grant Agreement and the Opt-in Lender Agreement. Payment of such open liens is necessary in order to prevent the invalidation of the Restrictive Covenants through a tax sale of the property.

Accordingly, MDA must establish a HUD-approved policy on the use of grant proceeds to pay state tax obligations and local ad valorem taxes owed by grantees.

I. Proposed State Tax Lien and Ad Valorem Policies:

1) If a grant recipient owes state taxes, MDA will issue a joint check to the grantee and the state agency in recognition of each of their rights to such proceeds and to ensure compliance with state statute Section 7-7-43. Proceeds would not be restricted by Federal regulations since the withholdings and payments for these tax liens represents the actions authorized by the grant recipient in accordance with their grant agreement and would not be considered by HUD to be restricted by Federal regulations.

This position is based on the fact that grant recipients are giving MDA permission to satisfy their tax obligation with the use of grant proceeds. This is not a condition of the grant, but a post award action that allows the grant recipient to comply with the terms of the grant agreement and Covenant Agreement.

2) If a grant recipient owes ad valorem taxes, we will issue a joint check to the grantee and the respective county clerk. Proceeds would not be restricted by Federal regulations since the withholdings and payments for these ad valorem taxes represents the actions authorized by the grant recipient in accordance with their grant agreement and would not be considered by HUD to be restricted by Federal regulations.

    a) With respect to ad valorem taxes, the grant recipient must ensure that the Restrictive Covenant that runs with the land maintains its first title position. To ensure that this occurs, all ad valorem taxes shall be satisfied and kept current. The withholding of such tax liens and subsequent payment using a "joint check" is both an acknowledgement of the obligation and provides the grant recipient with a practical mechanism for satisfying their ad valorem tax liability with these grant proceeds.

    b) This action requires a clarification modification to reflect the ability to satisfy the tax liability of the grant recipient in order to preserve the Restrictive Covenants.

II. <u>Program Purpose</u>

The Program Purpose and Performance Requirements remain the same, as follows: "the purpose of the Homeowner Grant Assistance program is to provide a one-time grant payment, up to a maximum or $150,000, to eligible homeowners who suffered flood damage to their primary residence as of August 29, 2005 from Hurricane Katrina. In exchange for the grant payment, qualifying homeowners must agree to a place Restrictive Covenants on their property that establish building code, flood insurance, and elevation requirements for them or any future owner of the land. After certain deductions, homeowners have complete discretion of the use of the grant funds, as allowable by State and Federal law, as they work through their personal disaster recovery situation."

The Program Details as defined in the Partial Action Plan also remain the same for Applicant Eligibility and Awarded Grant Homeowner Requirements and as previously stated in the Partial Action Plan, "the Homeowner Assistance Program offers recovery assistance for homeowners who, while outside the flood zone, maintained property insurance and in some cases, flood insurance, but in insufficient amounts. By partially filling the insurance gap with the homeowner grant, eligible homeowners can begin the recovery process – which will help to drive and stabilize economic development crucial to the recovery of the Mississippi Gulf Coast".

III. Summary Conclusion

The process for withholding and paying state tax liens from grant proceeds must be clarified so as to ensure compliance with state statute and Federal regulations. Additionally, clarification is needed on the use of grant proceeds to pay ad valorem taxes; an action that preserves the position of the Restrictive Covenants that runs with the damaged property.

The program did not contemplate the prohibition of using Federal funds to pay state obligations or county ad valorem taxes. Grant proceeds are constructively awarded to the recipient. MDA proposes addressing these issues by designing a clear process by which these state tax liens will be withheld and a "joint check" be made payable to the grant recipient and the applicable state agency. Additionally, ad valorem taxes will be withheld from grant proceeds and a "joint check" be made payable to the grant recipient and the county clerk.

Therefore, the Partial Action Plan Modification Number 6 is to clarify the policies that will be used to ensure the use of grant proceeds to pay outstanding state tax lien amounts. In addition, clarification is needed to ensure the use of grant proceeds to pay ad valorem taxes; an action necessary to ensure a covenant that runs with the damaged property is titled in first position and retains such position.

The MDA has determined that this does not represent a major modification to the plan requiring formal submission to HUD. The nature, purpose, scope and beneficiaries of the Partial Action Plan remain the same subsequent to the modification. Additionally, this technical modification will not negatively impact potential beneficiaries who have applied for assistance under this program.