

**Small Rental Assistance Program Round Two
Clarifications of Policies and Procedures
Version 1.4
April 27, 2009**

In order to keep the public fully informed of all aspects of Round Two of the Small Rental Assistance Program, the Mississippi Development Authority will post this document on its website at www.msdisasterrecovery.com. All interested parties should check this document periodically as it will be periodically updated. Please be aware that these clarifications are subject to change based upon constantly changing conditions on the Mississippi Gulf Coast. This document supplants all previous guidance from all other sources. If you have questions which are not addressed by the Guidebook or this document, you may email them to SRAP2@horne-llp.com for review.

Clarification 1: Unit vacancy at the time of application

For those applicants that have month to month or non-lease tenants, the Mississippi Development Authority wishes to stress that an applicant will not be eligible for the program if a tenant moves out for a short time and then moves back into a unit for the sole purpose of making that unit vacant and eligible for the program.

Clarification 2: Renting units after application, but before closing

As a point of clarification, applicants are allowed to rent their properties to tenants after completing construction or repair of the property.

If an applicant applies for a property and completes repairs or construction AFTER application, but BEFORE closing, the applicant may rent out the units in that property to low to moderate income tenants that would qualify under the program guidelines. The applicant must also charge rent that is acceptable under the program guidelines.

The Mississippi Development Authority does not want to penalize an applicant who completes repairs or construction in a timely manner by forcing that applicant to keep the property vacant while the applicant is waiting for closing. However, please keep in mind the policy relating to environmental eligibility which states that an applicant can complete repairs or construction only under a contract that was entered into prior to the date of application. The applicant should NOT enter into any new contracts until closing is completed. Also, please remember that the unit must still be un-rented at the time of application.

Applicants may utilize a month to month lease for pre-closing tenants if they desire, but they may also rent for a longer lease period if this is required for Section 8 participation or if the applicant wishes to utilize a longer lease period. If the applicant chooses to utilize a longer lease term, the lease term must be for a minimum of six (6) months and the applicant must use the approved MDA lease form. If the applicant

chooses to have a month to month lease prior to closing, the applicant must cease renting month to month and utilize a minimum six (6) month lease after closing. If closing occurs in the middle of a month to month lease period, the applicant must convert the month to month lease to a minimum six (6) month lease after the last month to month lease expires.

Clarification 3: Use of SRAP funds

MDA has clarified that, pursuant to the Guidebook, SRAP 2 funds can be used towards the payment of mortgages which existed prior to the date of application. The SRAP 2 funds must be used on the property which is the subject of the application. They cannot be used to pay a mortgage on another property.

If the applicant self-financed the purchase, construction or repair of the property listed in the application, the applicant may reimburse themselves for that cost. It is the responsibility of the applicant to keep records indicating that all funds were used on the property that was the subject of the application.

It is the responsibility of the applicant to spend all funds on the property even if those funds are not used for the construction, repair or purchase of the subject property. The funds cannot be used for any purpose not connected with the property.

Clarification 4: Completion of construction prior to application

If an applicant completes construction or repairs immediately prior to application and the repairs were completed for the purpose of bringing the property into the SRAP program, the applicant must come in under Option A unless they have not yet obtained a Certificate of Occupancy for the property. If the local building authority will not issue a Certificate of Occupancy for the repairs, the applicant must certify that the repairs were completed immediately prior to the application for the purpose of bringing the property into the SRAP program. In such an instance, MDA reserves the right to waive the Option requirements and bring the property into the Small Rental Assistance Program under program option B, C or D. Such waivers will be granted on a case-by-case basis only, and the applicant must be able to clearly demonstrate that all completed repairs were performed immediately prior to program application and were performed for the purpose of qualifying for the Small Rental Assistance Program.

Completion bonuses will only be paid if some construction or repair is completed AFTER application. If construction is completed after application but prior to closing, the full completion bonus will be paid.

Clarification 5: Property ownership extensions apply to all Options

The 90 day extension and the two 30 day requested extensions for applicants to show proof of property ownership now apply to Options A, B and C as well as Option D.

Clarification 6: Townhomes and other structures with common walls

Units which share a common wall with other units are not eligible for program funding UNLESS the applicant owns the entire structure. For example, if the applicant owns a townhome which shares a common wall with other units which the applicant does not own, then the unit will be disqualified. The applicant must own all units which are attached to one another in a structure. Thus, a duplex, triplex or fourplex is eligible as long as the applicant owns each of the units in the structure.

Applicants that share common walls with commercial structures (loft apartments, second floor apartments over commercial structures, etc.) will be examined on a case by case basis and eligibility will be dependent upon property ownership and the ability of the Mississippi Development Authority to place the required covenants on the property.

Clarification 7: Multiple single family homes located on a single property

Two single family homes located on a single piece of property will be counted as a duplex. Thus, one of the single family homes may be rented to a tenant at the 120% AMI rate while the other single family home must be rented to a tenant at the 80% AMI rate.

Three single family homes located on a single piece of property will be counted as a triplex. Thus, one of the single family homes may be rented to a tenant at the 120% AMI rate while the other two single family homes must be rented to tenants at the 80% AMI rate.

Four single family homes located on a single piece of property will be counted as a fourplex. Thus, one of the single family homes may be rented to a tenant at the 120% AMI rate while the other three single family homes must be rented to tenants at the 80% AMI rate.

This is the same policy that was utilized for Round 1 of the Small Rental Assistance Program.

Clarification 8: Minimum Credit Score

The minimum credit score for participation in this program is 580. A credit score below 580 will require that an applicant complete credit counseling as stated in the Guidebook.

Clarification 9: Maximum Number of Applications for Round 1 and Round 2

Amendment 1 to the Small Rental Assistance Program Action Plan specifically grants MDA the right to adjust the number of properties which are developed by any one applicant, non-profit organization, corporation, or other ownership group. MDA therefore clarifies that this limitation shall apply per round, rather than cumulatively over the life of the program. Therefore, the current limit **per round** is set at 25 properties with a maximum of four units per entity for rental subsidy and/or rehab and repair applicants (for a total of 100 units). New construction projects are limited to 5 properties **per round** with a maximum of four units per property units per ownership entity (for a total of 20 total units).

Participants in ownership entities such as partnerships, corporations and trusts will not be able to circumvent the limitation on the number of applications by becoming members in multiple ownership entities. Also, an individual cannot create an ownership entity in order to circumvent this limitation.

Clarification 10: Priority Scoring

The Small Rental Assistance Program Guidebook states that MDA reserves the right to apply priority scoring and it also states that MDA reserves the right to allocate funding by option and location. Upon the completion of the Application period, MDA will perform an examination of the distribution of the types and locations of the properties which were applied for under Round Two of the Program. Applicants should be aware that a strong preference is being given towards infill properties that are located in existing neighborhoods. Furthermore, if MDA determines that a large number of Option D new construction properties are being located in areas which do not have a sufficient need for rental properties, MDA may not fund those projects. Therefore, MDA strongly urges applicants to thoroughly research the area in which they plan to build and make a well informed determination as to whether the property will be economically viable in that area.

Clarification 11: Organization Requirements

All credit, fraud, and identity checks listed in the application guidebook for individuals also apply to ownership entities. These include, but are not limited to LLCs, partnerships, corporations, non-profit organizations, and trusts. The persons that will be subjected to credit, fraud, and identity checks vary depending on the type of ownership entity. A failure of any one person will disqualify the application. Specifically, these persons are:

- (1) any shareholder, member, limited partner, or general partner who owns a 10% of greater interest in a corporate entity which is the applicant
- (2) any beneficiary who owns a 10% or greater interest in a trust which is the applicants
- (3) any officer or director of a corporation which is the applicant

- (4) any manager of a limited liability company which is the applicant
- (5) any general partner in a limited partnership which is the applicant
- (6) any employee of a corporate entity applicant who exercises control or substantial management authority regarding the business; and
- (7) any trustee of a trust which is the applicant.

Duplication of Benefits checks with SBA, FEMA, and insurance will also apply to these individuals in reference to the property that is subject to the application. Any proceeds paid to any person listed above as compensation for damage to that property will be taken into account in the loan calculation.

For the purposes of the HAP grant Duplication of Benefits check, MDA's policy remains that the person or person(s) who received the HAP grant may not also receive SRAP funding for the same property. If any member of the subject property's ownership entity received HAP funding for the property, the application will be disqualified.

Clarification 12: Homeowner's Assistance Program (HAP) Properties

For Round Two of the Small Rental Assistance Program, MDA clarifies that owners of properties which carry a Homeowner's Assistance Program (HAP) covenant but who were not the recipients of HAP funding for that property are eligible for Small Rental Assistance Program funding.

In order for such property owners to complete Small Rental Assistance Program funding, any HAP covenant carried by the property must be subordinated for a period of the greater of five (5) years or the term of the SRAP loan in order for the Small Rental Assistance Program property covenant to take effect. As such, MDA agrees to temporarily subordinate any HAP covenant placed upon a property that is deemed eligible for Small Rental Assistance Program funding provided that such properties will carry Small Rental Assistance Program covenants in lieu of HAP covenants for a period of greater of five (5) years or the term of the SRAP loan.

Clarification 13: Loan Default and Property Ownership

The Small Rental Assistance Program has strict ownership requirements for SRAP properties and any violation of these requirements can result in loan default. The Mississippi Development Authority has compiled the following non-exhaustive list of events which can cause an applicant to default on a SRAP loan. In particular, developers should be aware that they cannot create co-ownership arrangements with potential applicants to circumvent the property ownership rules since a sale of that property from one co-owner to another after closing would result in default. The following events can result in default. This list is non-exhaustive.

1. Material misrepresentation or fraud regarding any Applicant obligation
2. Written notice by Applicant of intent to withdraw from program
3. Insolvency of Applicant

4. Assignment of property or loan for the benefit of creditors
5. Bankruptcy
6. Other debt related reorganization or arrangement
7. Receivership
8. Liquidation
9. Conservatorship
10. Sale of property
11. Assignment of property
12. Transfer of property in cases other than death or divorce
13. Exchange of property
14. Disposal of property
15. If any of the following changes in corporate ownership are undertaken WITHOUT the written consent of MDA: dissolution, liquidation or termination of the corporation; a change in the legal or beneficial ownership of the corporation; and/or merger or consolidation of the corporation with any other corporate entity.

Clarification 14: Use of MDA Lease Form

All applicants should be aware that they are required to utilize the Mississippi Development Authority lease form which is posted on the Small Rental Assistance Program website located at www.msdisasterrecovery.com. The lease forms can also be obtained at the Round 2 office which is located at 1641 Popp's Ferry Road, Building B, Biloxi, Mississippi 39532.

The only exception to this policy is that an applicant may use an official HUD Section 8 lease form if the applicant is renting to a Section 8 tenant.

Clarification 15: Updated Rental Rates

All applicants should be aware that they are required to charge the rental rates which are updated every year by the Mississippi Development Authority. These updated rental rates are posted on the Small Rental Assistance Program website located at www.msdisasterrecovery.com. The updated rental rates can also be obtained at the Round 2 office which is located at 1641 Popp's Ferry Road, Building B, Biloxi, Mississippi 39532.

The rental rate which must be charged is the rate which is published for the year that the lease is signed by the tenant. Each time that a new lease is prepared and each time that a lease is renewed, applicants must use the rental rates for the year in which the lease is entered into or renewed. Applicants must not use rental rates from previous years for new leases or renewed leases.

Clarification 16: Use of Property At The Time of Hurricane Katrina

For Round 1 of the Small Rental Assistance Program, all units must have been rental property at the time of Hurricane Katrina. It was conceived that this requirement

would be removed for subsequent rounds in order to accomplish the goals of the Program. For the purposes of Round 2 of the Small Rental Assistance Program, units did not have to be rental property on the date of Hurricane Katrina in order to qualify for funding.

Clarification 17: Building Permits

It is the responsibility of each applicant who will be performing work on their SRAP units to consult with their local permitting authority to determine whether a building permit is required for their project. If a building permit is required, the applicant is encouraged to apply for this permit as early as possible. It is also the responsibility of each applicant to make sure that any existing building permits are correct and up to date. Expired building permits will not be accepted. In most cases, building permits can be renewed if a written application for renewal or extension is submitted to the permitting authority prior to the expiration of a building permit.

If a building permit is required for a project, no closing will occur and no funds will be disbursed to an applicant until the building permit is provided to the applicant's individual program analyst. If a building permit is not required, an applicant must provide their individual program analyst with a letter from the local permitting authority which states that a building permit and/or a Certificate of Occupancy or Certificate of Completion is not required for the work which the applicant will be performing.

Clarification 18: New Construction and Compliance with the American's With Disabilities Act

The Small Rental Assistance Program requires that one out of each four newly constructed units in a fourplex must meet accessibility standards defined by the Americans with Disabilities Act. Clarification 7 of this document states that four single family homes located on a single piece of property will be counted as a fourplex. Thus, if an applicant constructs four single family homes which are located on a single piece of property, one of the homes must meet accessibility standards defined by the Americans with Disabilities Act. Please refer to www.ada.gov for requirements.

Clarification 19: Applicants Must Not Have Outstanding Taxes Due to State and Local Agencies

The Mississippi Development Authority will verify that applicants do not owe any outstanding taxes to the Mississippi Department of Employment Security ("MDES") and the Mississippi State Tax Commission ("MSTC"). The Mississippi Development Authority will also verify that applicants do not owe any outstanding ad valorem taxes to the local governing authority in which the applicant's SRAP property is located.

If any taxes are owed by applicant, the Mississippi Development Authority WILL NOT pay the outstanding taxes for the applicant. It is the responsibility of each applicant to fully pay any outstanding taxes. If the Mississippi Development Authority finds that an applicant owes outstanding taxes to any of the entities listed above, the applicant will

be given fourteen (14) days to provide evidence to MDA that the outstanding amounts have been paid. If the applicant fails to provide sufficient evidence to MDA within this period, the applicant will be disqualified from the SRAP program. This time period may be extended at the request of the applicant upon a showing of cause and in the sole discretion of the Mississippi Development Authority.

Clarification 20: Property Ownership

Round Two of the Small Rental Assistance Program requires that the applicant have ownership to the property prior to eligibility analysis. In the event that ownership is evidenced by a deed which includes a mechanism whereby the applicant could be divested of ownership (i.e. title to the property will return to the prior owner as a result of an event or non-occurrence of an event in the future), the applicant will be disqualified from the program. For example, deeds which allow a property to revert back to the ownership of the seller in the event that an applicant is disqualified from participation in the program will not be allowed.

Clarification 21: Transfer of Properties from Individuals to an LLC

Applicants may transfer properties to a single-member LLC after they receive their SRAP loan. In cases of single-member LLCs, the individual owner will be considered one and the same as the single-member LLC. Applicants may not use this rule to circumvent the limitation of the maximum number of properties as listed in the Guidebook.

Clarification 22: Applicant Requested Delay of Closing

Applicants may not request a delay in closing in order to complete construction. In order to facilitate the processing of applications as rapidly as possible, the Mississippi Development Authority will not be able to delay closings so that construction can be completed prior to loan funding. Applicants are reminded that unless a valid construction contract exists at the time of application, construction cannot begin until after the environmental review and closing are completed. Applicants are also reminded that they can expect significant delays in processing if construction is ongoing at the time that the environmental review is conducted.

Clarification 23: Sale of the property

Applicants who sell their property after closing but before the 5 year loan period expires must repay the amount of the loan that has been funded less any amount that has been forgiven pursuant to the forgiveness schedule. Applicants may also be liable for penalties and interest.

Clarification 24: Lien position and Subordination

Small Rental Assistance Program loans will be recorded in the order that they are filed. If the bank loan is already recorded at the time of the Small Rental loan closing, there will not be a requirement to subordinate the bank loan to either the SRAP loan or

covenants. If the bank has not yet recorded a deed of trust, MDA will work with the bank to subordinate our loan to their loans, if requested. Applicants may show this page to their bank as an official statement of Mississippi Development Authority policy regarding subordination.

Clarification 25: Application for Less Than All Units On A Property

Pursuant to the Small Rental Assistance Round Two Guidebook, there may only be four (4) units on a property. Assuming that a property is composed of no more than four (4) units, an applicant may apply for a forgivable loan for less than all the units on a property. Any unit that is not applied for may be occupied at the time of application by either a tenant or the applicant. Only those units applied for by an applicant will be subject to the compliance terms of the Small Rental Assistance Program which related to a unit. Regardless of the number of units applied for, the property will be subject to all compliance terms of the Small Rental Assistance Program which apply to the property, including, but not limited to, elevation requirements and foreclosure of the entire property in the event of default.

Clarification 26: Maximum Number of Units Per Structure

For Round Two of the Small Rental Assistance Program, there must not be more than four (4) units per structure in order for the unit or units to be eligible for the program. This limitation applies to all structures and it cannot be abrogated by situating a structure upon multiple properties.

Clarification 27: Elevation Requirements For All Post-Katrina New Construction

All units with an original construction date later than August 29, 2005 must be elevated to conform to the DFIRM elevation requirements issued by FEMA, pursuant to the National Flood Insurance Program. This includes properties which were rejected in Round One of the Small Rental Assistance Program for a failure to follow elevation guidelines.

Clarification 28: Applicants Must Rent Their Properties Within 90 Days

The Small Rental Assistance Program Round Two Guidebook currently states the following:

“If a unit remains unrented for more than ninety (90) days after loan closing, the applicant is in default. If the applicant makes every reasonable effort to rent the unit and no tenant is available, MDA will consider extending this deadline on a case-by-case basis.”

The Mississippi Development Authority hereby replaces the policy above with the following:

“Applicants must begin renting their units as soon as they are ready for occupancy. If an *Option A* unit remains unrented for more than ninety (90)

days after loan closing, the applicant is in default. If an *Option B, C or D* unit remains unrented for more than ninety (90) days *after the issuance of a certificate of occupancy or its equivalent OR loan closing (whichever is later)*, the applicant is in default. If the applicant makes every reasonable effort to rent the unit and no tenant is available, MDA will consider extending this deadline on a case-by-case basis.”

Clarification 29: Income Limits For “Less Than All Units”

If an applicant applies for less than all units in a structure, MDA will look at the number of units applied for in order to calculate the Area Median Income (AMI) that applies to the units.

If an applicant applies for only one unit in a structure that contains between two to four units, the applicant must rent the unit to tenants with an income at or below 80% AMI.

If an applicant applies for two units in a structure that contains between three to four units, the applicant must rent one unit to tenants with an income at or below 80% AMI. The applicant may rent the other unit to tenants with an income at or below 120% AMI.

If an applicant applies for three units in a structure that contains four units, the applicant must rent two units to tenants with an income at or below 80% AMI. The applicant may rent the other unit to tenants with an income at or below 120% AMI.

Clarification 30: Income Limits For “Less Than All Units” in Multiple Rounds

If an applicant applied for less than all units in a previous round and then brings in additional units in the structure in a subsequent round of funding, the units that are added later will be added to the earlier units. Thus, the cumulative number of units that have been approved for all rounds will determine the rental rates and AMI rates which are applicable.

For example, if an applicant is approved for two units out of a fourplex in Round One and then the applicant is approved for the remaining units in Round Two, the applicant may only rent one of the units in the fourplex to a tenant at the 120% AMI level and for the 120% AMI rental rate.

Clarification 31: 120% AMI Rental Rate

Applicants are reminded that the Action Plan states that applicants are restricted in the rents that can be charged to each tenant based upon that tenant’s income. Thus, the rent for a tenant that earns between 0% to 80% of the listed area median income (AMI) cannot be greater than the 80% rental rate. Tenants that earn between 81% and 120% of the area median income (AMI) are the only tenants that can be charged the 120% rental

rate. Applicants may always charge less than the rental rate for each income group, but they can never charge more.

Clarification 32: Section 8 Leases and Section 8 Rental Rates

Those applicants who participate in the Section 8 program are allowed to use a HUD approved Section 8 lease instead of the SRAP lease which is required by MDA. Additionally, if an applicant is approved for a rent amount by Section 8 which is greater than the rent amount approved by MDA, the applicant may charge the greater rent amount that is allowed by the Section 8 program. A higher rent amount can ONLY be charged by an applicant for units and tenants that were approved by HUD for this higher amount. In the event that a higher rent rate is authorized by HUD, the applicant must contact MDA and provide official HUD documentation showing that the higher rental rate was authorized for the unit and tenants.

All other applicants must continue to use the required MDA lease and rental rates which are posted on www.msdisasterrecovery.com.

Clarification 33: Transfer of Properties from Multiple Individuals to an LLC

In the case where an application has two or more applicants, those applicants may transfer properties to a multiple-member LLC after they receive their SRAP loan as long as all of the applicants are members of the LLC and the LLC only has applicants as members. In cases of multiple-member LLCs, the owners will be considered one and the same as the multiple-member LLC. Applicants may not use this rule to circumvent the limitation of the maximum number of properties as listed in the Guidebook.

Clarification 34: Required Appliances

In order to receive approval for the Small Rental Assistance Program, all units must contain an operating hot water heater, refrigerator, oven, stove or range, heating system, cooling system and bathroom vent if an operable window is not present. Water, electrical, and/or natural gas services must be provided at the time of inspection for MDA representatives to verify that all appliances are in working order. These are the minimum requirements and this list is non-exhaustive.

Clarification 35: Modifications to the MDA Lease or Extra Charges

Applicants may not modify the Small Rental Assistance Program lease in any way, including, but not limited to, the addition of an addendum. Applicants may not charge tenants a rent amount that is greater than the maximums that are published by the Mississippi Development Authority each year. Applicants that charge tenants for any amenities, services, furniture or other items run the risk of being disqualified if the additional charges exceed the maximum rental rates when added to the base rent. There will be no exceptions granted to this rule.

In discussions with MDA, they indicated that they would have no problem if you desired to hire your tenant as your lawn maintenance provider, provided this was done at an arm-lengths-transaction, and under the same terms and conditions as you would hire anyone else to provide this service. The main points to stress with you are:

1. MDA is required to strictly monitor and enforce all HUD guidelines; and
2. Any transaction you have with a tenant must not be tied into, or related in any manner, to the SRAP program or its lease.

This clarification does not affect the ability of applicants to use Section 8 leases and rental rates as stated in Clarification 32 subject to all Section 8 HUD rules and regulations.