

ALABAMA HOUSING FINANCE AUTHORITY  
SINGLE-FAMILY MORTGAGE CREDIT CERTIFICATE PROGRAM  
**Series 1209**

INVITATION TO PARTICIPATE

Because of continuing interest expressed to the Authority in its single family programs, the Authority has decided to proceed expeditiously with its Single-Family Mortgage Credit Certificate Program, Series 1209 (the "Program"). The Authority invites you to apply for participation in the Program. The Authority anticipates issuing approximately \$75,000,000 in MCCs.

Mortgage Loans will be originated by lending institutions participating in the Program as originating lenders (the "Originators") pursuant to the provisions of an Originator Participation Agreement (the "Agreement").

Reservations of funds will be made to Originators on a loan-by-loan basis under the Authority's electronic loan reservation system. See "Reservation System" in the Agreement for a more complete description of the reservation system.

THE AGREEMENT SHOULD BE READ IN ITS ENTIRETY FOR THE DETAILS OF THE PROGRAM. ORIGINATORS SHOULD PAY PARTICULAR ATTENTION TO THE DESCRIPTIONS OF THE RESERVATION OF FUNDS SYSTEM, THE PRIOR APPROVAL PROCEDURES, THE RECAPTURE PAYMENT RULES, THE FEDERAL INCOME AND SALES PRICE RESTRICTIONS APPLICABLE TO BORROWERS. UNLESS OTHERWISE PROVIDED, ALL CAPITALIZED TERMS USED HEREIN SHALL HAVE THE MEANING SPECIFIED IN THE AGREEMENT.

Included below are brief descriptions of the commitment and acceptance procedures for the Program. In addition, there are enclosed herewith the following:

1. Form of Originator Participation Agreement; and
2. Originator Questionnaire:

Each lending institution desiring to participate in the Program as an Originator must submit the following to the Authority:

- (1) A completed Originator Questionnaire; and
- (2) One copy of your most recent audited financial statements; and
- (3) Two executed Signature Pages of the Agreement; and
- (4) One executed Certification Statement.

The material described above should be delivered to the Authority no later than \_\_\_\_\_, at:

Alabama Housing Finance Authority  
7460 Halcyon Pointe Drive, Suite 200  
Montgomery, Alabama 36117  
Attn.: Mike King

After the Authority has accepted an Originator for participation in the Program, the Authority will send to such institution a notice of acceptance (the "Notice of Acceptance"). The Authority will not accept

requests for reservations of funds from an Originator until the Originator has submitted all of the items described above and has been accepted as an Originator under the Program.

The Authority will send a notice to each Originator advising of the availability of funds for the issuance of MCCs. No loan assisted with an MCC may close before March 25, 2010.

The Authority will act as administrator of the Program. Questions concerning the Program should be directed to the Authority c/o Mr. Mike King.

THE DESCRIPTION OF THE TERMS OF THE PROGRAM HEREIN MUST BE READ TOGETHER WITH THE MCC PROCEDURAL MANUAL AND THE AGREEMENT, ALL OF WHICH ARE SUBJECT TO FINAL APPROVAL BY THE AUTHORITY. THE AUTHORITY RESERVES THE RIGHT TO ACCEPT OR REJECT THE PARTICIPATION OF ANY LENDING INSTITUTION.

Thank you for your interest in our Program.

ALABAMA HOUSING FINANCE AUTHORITY

ALABAMA HOUSING FINANCE AUTHORITY  
MORTGAGE CREDIT CERTIFICATE  
ORIGINATOR QUESTIONNAIRE

**PART I  
GENERAL INFORMATION**

1. Legal name of Institution: \_\_\_\_\_

2. Jurisdiction of organization and date of incorporation: \_\_\_\_\_

Form of Organization:

- National Banking Association
- State Banking Corporation
- Federally Chartered Savings & Loan
- Other (Specify) \_\_\_\_\_
- State Chartered Savings & Loan
- Mortgage Banker
- Credit Union

3. (a) Date of qualification to do business in the State of Alabama ("The State"): \_\_\_\_\_

(b) Have you originated single-family residential loans in the State for a minimum of twelve consecutive months prior to the execution of the MCC Originators Participation Agreement?

Yes  No

(c) Have an office in the State?  Yes  No

4. Address and telephone number of principal office:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Name, title, telephone number, and address of person to whom correspondence with regard to this program should be addressed:

\_\_\_\_\_  
\_\_\_\_\_

6. A copy of the most recent fiscal yearend financial statement is to be enclosed with this questionnaire. Are your financial statements audited? By whom? Name and Address:

\_\_\_\_\_  
\_\_\_\_\_

7. Fiscal year ends on \_\_\_\_\_ of each year.

8. Please indicate whether you are, or have received notice or knowledge that you are, on any form of "watch list" or under any program of specified of any regulatory body:

Yes  No

If "Yes," please indicate name of regulatory body involved:

\_\_\_\_\_  
\_\_\_\_\_

NAME OF INSTITUTION: \_\_\_\_\_

ALABAMA HOUSING FINANCE AUTHORITY  
MORTGAGE CREDIT CERTIFICATE  
ORIGINATOR QUESTIONNAIRE

**PART II**  
**GENERAL FINANCIAL STATISTICS**  
FISCAL YEAR 20\_\_\_\_

A. Please provide the following information if your institution is a savings and loan association:

Profit (Loss), year to date ..... \_\_\_\_\_  
Total assets ..... \_\_\_\_\_  
Conventional mortgage loans ..... \_\_\_\_\_  
FHA-VA-RD mortgage loans ..... \_\_\_\_\_  
Deposits ..... \_\_\_\_\_  
Savings Capital ..... \_\_\_\_\_  
Advances (Federal Home Loan Bank) ..... \_\_\_\_\_  
Other borrowed money ..... \_\_\_\_\_  
Net worth ..... \_\_\_\_\_

B. Please provide the following information if your institution is a savings or commercial bank:

Profit (Loss), year to date ..... \_\_\_\_\_  
Total assets ..... \_\_\_\_\_  
Conventional mortgage loans ..... \_\_\_\_\_  
FHA-VA-RD mortgage loans ..... \_\_\_\_\_  
Cash ..... \_\_\_\_\_  
Total capital accounts ..... \_\_\_\_\_  
Total deposits ..... \_\_\_\_\_  
Total capital notes and long-term debt outstanding ..... \_\_\_\_\_  
Net worth (capital, surplus, UP&R) ..... \_\_\_\_\_

C. Please provide the following information if your institution is a mortgage broker/company or mortgage banker:

Profit (Loss), year to date ..... \_\_\_\_\_  
Total assets ..... \_\_\_\_\_  
Conventional mortgage loans\* ..... \_\_\_\_\_  
FHA-VA-RD mortgage loans\* ..... \_\_\_\_\_  
U.S. Government Obligations ..... \_\_\_\_\_  
Construction and development loans  
(nets of possible losses) ..... \_\_\_\_\_  
Foreclosed properties ..... \_\_\_\_\_  
Net worth ..... \_\_\_\_\_

*\*Held for resale*

Please complete OR provide a copy of your most recent audited financial statements.

## CERTIFICATION STATEMENT

It is understood that the information contained in this Originator Questionnaire may be used by the Authority, along with other factors and information (including any data furnished by the undersigned in connection with prior programs of the Authority), in approving Originators for the Program. We hereby authorize such use and certify to the best of our information, belief and knowledge, that the information presented in this Originator Questionnaire is true and accurate to the extent possible give available misrepresented in this Originator Questionnaire, the Authority shall have the right to modify or terminate our participation in its Program. We further certify that as of the date hereof there is no aspect of our financial condition or operations that could reasonably be expected to adversely affect our ability to perform our obligations to the Authority under MCC Originator Participation Agreement applicable to the Program or any prior program of the Authority.

Institution: \_\_\_\_\_  
(Legal Name)

Signed: \_\_\_\_\_  
(Name of Authorized Officer)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ALABAMA HOUSING FINANCE AUTHORITY  
MORTGAGE CREDIT CERTIFICATE  
HOME OFFICE CONTACT FORM

Legal Name of Institution: \_\_\_\_\_

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Home Office contact person and address for updates, memos and future issues:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

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Home Office contact person and address for closed MCC curative information:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

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Home Office contact person and address for IRS reports:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

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Home Office contact person and address for copies of MCCs:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

ALABAMA HOUSING FINANCE AUTHORITY  
MORTGAGE CREDIT CERTIFICATE  
BRANCH OFFICE CONTACT FORM

Name of Institution: \_\_\_\_\_

Website: \_\_\_\_\_

Please list all branches and include the branch manager, address, phone number, fax number and email address. Attach a separate list if necessary.

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COMMUNICATIONS PERMISSION FORM

To: Participating Originators
From: Alabama Housing Finance Authority
Subject: Written Permission to Continue Sending You Fax and/or Email Communications

The Federal Communications Commission (FCC) regulation that created the National Do-Not-Call Registry will also soon prohibit any person or entity, including the Alabama Housing Finance Authority (the Authority), from sending any communications containing an "unsolicited advertisement" to any person without that person's written permission.

Our communications with you are affected by the FCC's regulation because of its very broad definition of an "unsolicited advertisement," which includes "any material advertising the commercial availability or quality of any property, goods or services."

The bottom line is that we will no longer be able to send you any communications that may contain advertisements for our products or services unless you give us your written permission to do so by completing and returning this form.

- I wish to continue receiving communications from the Alabama Housing Finance Authority. This approval includes all fax numbers and email addresses contained in all of our Originator Questionnaires.
I do not want to receive fax or email communications from the Alabama Housing Finance Authority.

Your Company's Name: \_\_\_\_\_

Your Contact Information: All fax numbers and email addresses contained in all of our Originator Questionnaires

Your Name: \_\_\_\_\_ Title: \_\_\_\_\_

Your Signature\*: \_\_\_\_\_ Date: \_\_\_\_\_

\* Please note: FCC regulations require your signature.

We apologize for this inconvenience and thank you for helping us comply with this federal regulation. Please complete and return this form with your Originator Questionnaire.

P.O. Box 242967
Montgomery, AL 36124-2967
FAX: 334/244-9213





MORTGAGE CREDIT CERTIFICATE PROGRAM

ORIGINATOR PARTICIPATION AGREEMENT

ALABAMA HOUSING FINANCE AUTHORITY

MORTGAGE CREDIT CERTIFICATE PROGRAM  
ORIGINATOR PARTICIPATION AGREEMENT

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**MORTGAGE CREDIT CERTIFICATE PROGRAM  
ORIGINATOR PARTICIPATION AGREEMENT**

THIS AGREEMENT DATED \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ is between the Alabama Housing Finance Authority (the Authority), a public corporation and instrumentality of the State of Alabama organized pursuant to Chapter IA of Title 24 of the Code of Alabama, as it may be amended from time to time, and

\_\_\_\_\_  
Hereinafter referred to as the Originator.

**WITNESSED:**

WHEREAS, the Tax Reform Act of 1984 established the Mortgage Credit Certificate (MCC) Program as a means of assisting qualified individuals with the acquisition of new or existing single-family housing; and

WHEREAS, pursuant to Internal Revenue Code of 1986, Section 25(c)(A)(ii) and Section 1.25-4T(c) of the Temporary Regulations regarding MCCs; and

WHEREAS, pursuant to the Code of Alabama (1975), Section 24-1A-5 (21), as it may be amended from time to time, the Authority is authorized to issue MCCs and administer the MCC Program (the Program) for the State of Alabama; and

WHEREAS, by resolution dated June 21, 1989, the Authority established the Program; and

WHEREAS, the Authority has developed a Program within the State of Alabama to provide more adequate residential housing facilities for low- and moderate-income families and persons by issuing MCCs, which program constitutes a valid public purpose under the Act; and

WHEREAS, to be accepted for participation as an Originator in the program, lending institutions must have originated single-family residential mortgage loans in the State, be qualified to do business in the State, and if participating in a previous program of the Authority, be in good standing under such previous program(s); and

WHEREAS, the Authority and the Originator have been authorized to enter into this Agreement;

NOW, THEREFORE, in consideration of the promises and the mutual covenants and consideration provided for herein, the parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS**

The following words and phrases shall have the following meanings:

**Act:** The Code of Alabama (1975), Section 24-1A-1 et sec. as it may be amended from time to time, pursuant to the provisions of which the Authority is organized and whereunder the Authority is authorized to issue MCCs and administer the MCC Program for the State of Alabama.

**Administrator:** The Authority in its capacity as administrator of the Program, and any successor to its duties as administrator of the Program.

**Agreement:** This Origination Agreement dated 12/16/2009 among the Originator(s) and the Authority and all amendments or supplements hereto and where appropriate, the Invitation, Notices of Acceptance, the Notice of Availability of Funds, MCC Procedural Manual and all forms or reports prescribed by the Authority as provided herein.

**Annual Family Income:** The current annualized family income as determined in accordance with the Code and the guidelines provided by the Authority. "Annual Family Income" means, with respect to a person, the "gross monthly income," multiplied by twelve (12), of such person and of any other person who is expected both to live in the principal residence being financed and to be secondarily liable on the Mortgage Loan, all as determined in accordance with Appendix 4 of the MCC Procedural Manual. For purposes of this definition, "gross monthly income" includes the sum of monthly gross pay; and additional income from overtime, part-time employment, bonuses, dividends, interest, royalties, pensions, VA compensation, and net rental income; and other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments).

**Application Fee:** A \$200 nonrefundable fee, collected by the Originator, for processing the MCC request on behalf of the homebuyer.

**Borrower:** The buyer of a Single-Family Residence.

**Code:** The Internal Revenue Code of 1986, as amended, and any rules or regulations promulgated thereunder.

**Commencement Date:** The date to be designated to the Originators by the Authority, beginning on which the Authority will accept requests for reservations of MCCs.

**Commitment Fee:** A fee in an amount equal to \$500 to be paid to the Authority by an Originator for reservation of an MCC.

**Date of Closing:** The date the Originator disburses funds under the Note.

**Date of Issuance:** The issuance date of the MCC will correspond to the date of closing.

**Eligible Borrower and Families:** A person or persons and a family or families (i) intending to principally and permanently reside as a household in a principal residence within a reasonable period (not to exceed sixty (60) days) following the closing of the Mortgage Loan, (ii) whose Annual Family Income does not exceed the limitations contained in Appendix 4 of the MCC Procedural Manual, as such income limitations may be amended from time to time, and (iii) who is a First-Time Homebuyer unless the Single-Family Residence is located within a Target Area.

**Eligible Mortgagor Affidavit:** The certification in substantially the form attached here to as Appendix 11, on which each prospective Buyer must certify certain facts in order to assure compliance with the Code.

**Errors and Omissions Insurance Policy:** A standard form insurance policy acceptable to the Authority, in form and substance as required by the Federal Home Loan Mortgage Corporation or Fannie Mae, insuring against losses from errors or omissions in the conduct of a business.

**Existing Property:** A property which has been previously occupied and/or is more than one year old.

**First-Time Homebuyer:** A buyer of a residence who has not had an ownership interest in a Principal Residence (including personal property) at any time during the three-year period ending on the date the Loan is executed, as more fully described in Section 3.06 hereof.

**Invitation:** The Authority's invitation to Originators to participate in the Program.

**Maximum Family Income:** An amount of income not to exceed the income limitation as described in the MCC Procedural Manual, Appendix 4.

**MCC Reservation Form:** Appendix 2 of the MCC Procedural Manual.

**MCC Procedural Manual:** The Authority's Mortgage Credit Certificate Procedural Manual and all appendices, the same as may be amended or revised from time to time.

**Mortgage Credit Certificate or MCC:** A certificate in substantially the form of Appendix 28 of the MCC Procedural Manual issued by the Authority pursuant to the Code which entitles the holder thereof to receive certain federal income tax credits.

**Mortgage Loan:** A mortgage loan to an Eligible Borrower or Family evidenced by a Note and with respect to which an MCC is authorized.

**New Construction:** Single-family residences less than one year old and never occupied.

**Note:** The written instrument executed to evidence the borrower's obligation to repay the Loan.

**Notice of Acceptance:** The Notice of Acceptance sent to the Originator by the Authority.

**Originator:** A lending institution or entity (i) which has been doing business on a regular basis in the State and is currently participating in the local private home lending market, (ii) which can make the representations, warranties and covenants set forth in Section 2.02 hereof, and (iii) which has agreed to participate in the Program pursuant to the Invitation and this Agreement.

**Originator Questionnaire:** The questionnaire and requests for information (if any) sent to prospective Originators by the Authority and the information inserted thereon or appended thereto by such prospective Originators and delivered by them to the Authority, including financial statements and statistical data, in connection with the requests of such lending institutions to participate in the Program.

**Present Ownership Interest:** All forms of ownership interests other than (a) an ordinary lease, with or without a purchase option, (b) the interest of a buyer under a standard residential purchase contract, (c) an expectancy to inherit property, (d) a remainder interest, and (e) an ownership interest in a residence that is not occupied as a principal residence, e.g., a vacation home, a recreational home or rental property.

**Principal Residence:** An owner-occupied residential dwelling unit located in the State, including stock held by a tenant shareholder in a cooperative housing corporation and manufactured housing which has a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and which is of a kind customarily used at a fixed location, and meeting the specific requirements specified in the MCC Procedural Manual. Also a residence which, in accordance with federal law, in view of all the facts and circumstances of each case, including good faith of the proposed Mortgagor (i) has not been used by the proposed Mortgagor or is not primarily intended by the proposed Mortgagor to be used in a trade or business; (ii) has not been or is not to be used by the proposed Mortgagor as an investment property or as a recreational home; or (iii) is otherwise deemed a "principal residence" under federal law, including the Code. In determining use pursuant to above, (a) any use which fails to give rise to a deduction allowable for certain expenses incurred in connection with the business use of a home pursuant to Section 280A of the Code shall not be deemed used in a trade or business, and (b) if more than ten percent (10%) of the total area of a residence has been used by the proposed Mortgagor or is reasonably expected to be used primarily in trade or business, then such residence shall be deemed to be used in a trade or business.

**Program:** The Authority's Single-Family Mortgage Credit Certificate Program, Series 0409 pursuant to which the Authority will issue Mortgage Credit Certificates to eligible borrowers.

**Seller:** The seller of a single-family residence under the Program.

**Seller Affidavit and Certification:** The certification in substantially as in Appendix 23 of the MCC Procedural Manual, on which each prospective seller must certify certain facts in order to assure compliance with the Code.

**State:** The State of Alabama.

**Sales Price:** The total cost of acquiring the Residence as a completed residential dwelling unit as evidenced by the Affidavit of Eligibility and such other affidavits as may be submitted in connection with the Mortgage Loan, exclusive of (i) all usual and reasonable settlement and financing costs collected pursuant to Section 3.04 of this Agreement, (ii) the value of any services performed by the Mortgagor or members of the Mortgagor's immediate family in completing the Residence and (iii) the cost of land which has been owned by the Mortgagor for at least two years before the date on which construction of the Residence commenced.

**Schedule of Maximum Sales Prices:** The schedule in Appendix 5 of the MCC Procedural Manual, as may be specified by the Authority from time to time, which establishes separate Sales Price limits throughout the Eligible Loan Area for Residences inside and outside Target Areas.

**Target Areas:** Those census tracts and areas of the State which constitute qualified census tracts or areas of chronic economic distress within the meaning of Section 143 of the Code.

**Tax Act:** Section 143 of the Code.

Unless otherwise defined herein, all words and phrases defined in Article I of the Agreement shall have the same meaning throughout the Agreement.

## ARTICLE II REPRESENTATIONS

**Section 2.01.** *Representations, Warranties and Covenants by Authority.* The Authority represents and warrants to, and covenants with the Originator that:

- (a) The Authority is a public body, corporate and politic, created by the Act. Pursuant to the Act and certain resolutions duly adopted by the Authority, the Authority is authorized to promulgate and execute this Agreement.
- (b) The Authority has found and determined that the issuance of MCCs under the terms hereof will further the purposes of the Act by assisting in the alleviation of the existing serious shortage of decent, safe and sanitary residential housing available in the State at prices affordable to persons and families of low or moderate incomes.
- (c) The Authority has complied with all of the provisions of the Constitution and laws of the State, including the Act, and has full power and authority to consummate all transactions contemplated by this Agreement and any and all other agreements, documents and instruments relating thereto.

**Section 2.02.** *Representations, Warranties, and Covenants of Originators.* The Originator represents and warrants to, and covenants with the Authority that:

- (a) The Originator is a corporation duly organized and existing under the laws of the state in which it was incorporated, or is duly chartered or incorporated under federal law, is duly authorized to transact business in the State, and customarily provides service or otherwise aids in financing loans on Principal Residences located in the State.
- (b) During the term of this Agreement, the Originator will remain subject to supervision and examination by State or federal authorities, as may be applicable, and that it will remain in good standing and

qualified to do business under the laws of the United States of America, the state of its organization and of the State, will not dissolve or otherwise dispose of all or substantially all of its assets and will not voluntarily consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it; provided, that the Originator may, without violating the agreement contained in this subsection, consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer to another such entity all or substantially all of its assets as an entirety and thereafter dissolve; provided the surviving, resulting or transferee entity, as the case may be, shall be subject to the supervision and examination of the State or authorities, as may be applicable, and shall assume in writing all of the obligations of the Originator listed below. In case of a sale of all or substantially all of the Originator's assets, the Authority shall release the Originator in writing, concurrently with and contingent upon such assumption, from all liability hereunder.

- (c) The Originator has the power to execute and deliver this Agreement, to accept the terms hereof, to enter into the transactions contemplated hereby, and the acceptance and performance hereof has been duly authorized by all necessary corporate and other action.
- (d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof, conflict with or result in any breach or violation of any of the terms, conditions or provisions of any applicable laws, including regulations, or any agreement or instrument to which the Originator is now a party or by which it is bound, or constitute a default under any of the foregoing.
- (e) The Originator is currently authorized to make loans for the acquisition of Principal Residences in the State.
- (f) The Originator will indemnify and hold harmless the Authority, its directors, employees and agents against liability for all claims, causes of action, costs and expenses (including attorneys fees), judgments or appeals thereof and fines and penalties that may be related to or arise out of any act or omission of the Originator or any violation of law resulting from an act or omission of the Originator hereunder.

**Section 2.03. *Survival of Representations and Warranties.*** It is understood and agreed that the representations, warranties and covenants set forth in this Agreement shall survive the origination of loans by the Originator, and that such representations, warranties and covenants shall inure to the benefit of the transferees and assignees of the Authority. Upon discovery by the Originator of the breach of any of such representations, warranties and covenants which materially and adversely affects the validity of any MCC, the Originator shall give prompt written notice to the Authority and take such other action as may be required hereunder.

### ARTICLE III ISSUANCE OF MCCS

**SECTION 3.01. *Commitment to Issue MCCs.*** The Authority hereby agrees to issue MCCs in substantially the form as Appendix 28 of the MCC Procedural Manual in accordance with this Agreement and the terms of the applicable Invitation.

The Originator understands and agrees that for one year after the date on which the Authority first begins to accept applications for MCCs, 20% of the aggregate amount of MCCs available through the Program shall be set aside by the Authority and allocated in Targeted Areas. The Originator agrees to use reasonable diligence to originate Loans in Targeted Areas. Such reasonable diligence shall include, but is not limited to, periodic advertisements by the Originator in newspapers or other media of the availability of



MCCs and mortgage funds pursuant to the Program to persons intending to purchase Principal Residences in Targeted Areas.

The provisions of the Invitation are incorporated herein by reference and are deemed to be a part of this Agreement; provided, however, that in the event of any conflict or inconsistency between provisions of the Invitation and this Agreement, the provisions of the Agreement shall control.

**SECTION 3.02. *Loan Terms.*** MCCs may be issued only with respect to Loans made to Eligible Borrower(s) and Families, as defined herein, for the purpose of providing assistance for the purchase of a Single-Family Residence, and NOT for the purpose of refinancing any existing loan EXCEPT a construction loan, bridge loan or similar temporary initial financing (with a maximum term of twenty-four (24) months).

**SECTION 3.03. *Independent Verifications by Originator.*** The Originator must undertake the certification procedures described in this Section to determine with respect to each loan that:

- (a) The residence is a Principal Residence and that the Borrower occupies or will occupy the Principal Residence within sixty (60) days from the Date of Closing and thereafter intends to maintain the property as his or her Principal Residence. The Originator must require the Borrower to examine and execute the Eligible Mortgagor Affidavit.
- (b) Unless the related Principal Residence is in a Target Area each Borrower must be a First-Time Homebuyer. The Originator must obtain from each Borrower the Eligible Mortgagor Affidavit and Certification and, in addition, copies of the Borrower's dated and signed tax returns which were filed with the Internal Revenue Service for the three (3) years immediately preceding the execution of the Loan. The Originator must examine such Affidavit and Certification and returns to determine whether the Borrower has claimed a deduction for taxes on real or personal property which was the Borrower's principal residence pursuant to Section 164(a)(1) of the Code, or a deduction pursuant to Section 163 of the Code, for interest paid on a loan secured by real or personal property which was the Borrower's principal residence. If such a deduction was claimed, the Originator must make additional investigations. If the Borrower cannot provide federal income tax returns but was required to file them, copies must be obtained from the Internal Revenue Service. If the Borrower filed Form 1040A or Form 1040EZ but cannot provide such returns, the Borrower must obtain verification from the Internal Revenue Service stating that the Borrower filed Form 1040A or 1040EZ for the year or years in question. If the Borrower was not required to file federal income tax returns for any year, the Borrower must execute an affidavit and certification to that effect (Appendix 17, Income Tax Statement). If the Loan is executed during the period between January 1 and February 15 of any year, and the Borrower has not yet filed his federal income tax return for the preceding year with the Internal Revenue Service, the Originator may rely on an affidavit of the Borrower that he is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his principal residence for the preceding calendar year. If the Loan is executed after February 15, the Borrower must provide tax returns as provided above.
- (c) The Purchase Price Certification stated in the Eligible Mortgagor Affidavit and Seller Affidavit is correct. The Originator must examine such documents and must review a copy of the contract of sale.
- (d) The Annual Family Income stated in the Eligible Mortgagor Affidavit is consistent with other information contained in the loan documents and the Originator knows of no reason why it is inaccurate.
- (e) No part of the loan proceeds are used to acquire or replace an existing loan under which the Borrower is the debtor, and the loan must be made to persons who did not have a loan (whether or not paid off) with respect to the residence securing the Note at any time prior to the execution of the Note; provided that if the Authority so permits, the Borrower may have had a construction period loan, a bridge loan or similar temporary initial financing (the terms of which are twenty-four (24) months or less) with respect to the residence securing the loan and may use the proceeds of the Note to repay

such financing. The Originator must obtain and examine the Eligible Mortgagor Affidavit showing compliance with this requirement.

- (f) The Borrower has stated in the Eligible Mortgagor Affidavit that no person who is related to him has, or is expected to have, an interest as a creditor in the Loan secured by the residence.

**SECTION 3.04. *Origination Fees and Closing Costs.*** In connection with each Loan, the Originator may charge and collect from the Borrower and/or the Seller of a Principal Residence only the following fees, provided they are reasonable:

- (a) Points, origination fees, servicing fees, and other fees in amounts that are customarily charged with respect to loans not provided in connection with MCCs;
- (b) Application fees, survey fees, credit report fees, insurance fees or similar settlement or financing costs to the extent such amounts do not exceed the amounts charged in the area in cases where loans are not provided in connection with MCCs. Specific instructions for the non-refundable MCC fee will be included in the MCC Procedural Manual; and
- (c) Amounts charged for FHA, VA, USDA Rural Development or similar private mortgage insurance on an individual's mortgage are permissible so long as such amounts do not exceed the amounts charged in the area with respect to a similar loan that is not provided in connection with MCCs.

**SECTION 3.05. *Purchase Price of a Residence.*** The Purchase Price of a residence cannot exceed the applicable Maximum Sales Price Limit. The Purchase Price of a residence is the cost of acquiring the residence from the seller as a completed residence and includes the following:

- (a) All amounts paid, either in cash or in kind, by the purchaser (or a related party or for the benefit of the purchaser) to the Seller (or a related party or for the benefit of the seller) as consideration for the residence and any property that is a fixture under local law, such as light fixtures or wall-to-wall carpeting. Whether or not the purchaser purports to separately purchase such items, the cost of those items must be included in the cost of acquisition. On the other hand, property which is not considered a fixture under state law, such as appliances, is not considered part of a residence and the cost of acquiring such items does not have to be included in the cost of acquiring the residence (unless the acquisition costs of such items exceeds their fair market value, in which case the amount of the excess must be included in the acquisition cost of the residence). For example, if the purchaser agrees to purchase the refrigerator, washer and dryer from the Seller for \$1,000 more than the fair market value of such items, such \$1,000 must be included in the cost of acquisition. Similarly, if as part of the purchase of the residence the purchaser agrees to pay or assume liability for a debt of the Seller, the amount of such debt must be included as part of the cost of acquiring the residence.
- (b) If a residence is incomplete, the reasonable cost of completing the residence whether or not the cost of completing construction is to be financed with proceeds of the Loan. Where a Borrower purchases a building which is so incomplete that occupancy of the building is not permitted under local law, the acquisition cost includes the cost of completing the building so that occupancy of the building is permitted. Thus, if a builder normally sell residences with an incomplete recreation room but a completed third floor and a garage, but is selling a residence with no garage and an incomplete recreation room and third floor to a Borrower, the cost of completion of the third floor (but not the recreation room) and the cost of the addition of a garage must be included in the cost of acquisition of the residence. On the other hand, if a Borrower purchases an existing home and then spends \$3,000 to paint it, refinish the floors and make minor repairs, such \$3,000 is not included in the cost of acquisition of the residence.
- (c) Where a residence is purchased subject to a ground rent, the capitalized value of the ground rent will be used. Such value shall be calculated using a discount rate specified by the Authority.
- (d) The cost of acquiring a residence does not include the following:

1. The usual and reasonable settlement or financing costs. Settlement costs include titling and transfer costs, sales tax, title insurance, survey fees or other similar costs. Financing costs include credit reference fees, legal fees, appraisal expenses, permitted origination fee (or "points") which are paid by the Borrower (but not the Seller, even though borne by the Buyer through a higher Purchase Price) or other costs of financing the residence. However, such amounts may be excluded in determining acquisition cost only to the extent that the amounts do not exceed the usual and reasonable costs which would be paid by the Borrower where financing is not provided through the MCC program. For example, if the purchaser agrees to pay to the Seller more than a pro rata share of property taxes, such excess shall be treated as part of the acquisition cost of a residence.
2. The value of services performed by the Borrower or member of the Borrower's family in completing the residence. For purposes of the preceding sentence, the family of an individual shall include only the individual's brothers and sisters (whether by whole or half blood), spouse, ancestors and lineal descendants. For example, whether the Borrower builds a home alone or with the help of family members, the acquisition cost includes the cost of materials provided and work performed by subcontractors (whether or not related to the Borrower) but does not include the imputed cost of any labor actually performed by the Mortgagor or a member of the Borrower's family in constructing the residence. Similarly, where the Borrower purchases an incomplete residence, the acquisition cost includes the cost of material and labor paid by the Borrower to complete the residence but does not include the imputed value of the Borrower's labor or the labor of the Buyer's family in completing the residence.

**SECTION 3.06. *First-Time Homebuyer.*** All Borrowers and Co-Borrowers must occupy the property as their primary residence, Refer to the MCC Procedural Manual for examples of interests which constitute a present ownership interest in a Principal Residence which would result in a potential Borrower(s) FAILING to meet the First-Time Homebuyer requirement.

**SECTION 3.07. *Income Limits.*** To qualify as Eligible Borrowers and Families, such person or persons must have an aggregate Annual Family Income, determined in accordance with the Code and procedures provided by the Authority, which does not exceed the income limitations contained in Appendix 4. (Income Limitations are subject to change by the Authority. Refer to the MCC Procedural Manual for specific information.)

**SECTION 3.08. *Assumption of MCC.*** An MCC MAY NOT be assumed, reissued, transferred or assigned.

**SECTION 3.09. *Procedure for MCC Issuance.*** MCCs shall be issued by the Authority after closing on a Loan. Refer to the MCC Procedural Manual for SPECIFIC instructions which must be followed. Refer to the MCC Procedural Manual for SPECIFIC instructions for Co-Borrower/CoSigner guidelines.

**SECTION 3.10. *Allocation of MCCs.*** The Authority will issue a limited amount of MCCs as specified in the Invitation. MCCs will be issued on a first-come, first-served basis in the following manner, except as provided below, unless such procedure is changed with respect to a particular phase of the Program by the terms of an Invitation.

- A. *Normal Procedure.* The Authority will process applications in the order that they are received. If the application package is complete and in compliance with the provisions of the Code and the applicable Invitation, the Authority will issue MCCs to the extent of the Authority's authority. An incomplete application will not be considered or processed until it is completed. Refer to the MCC Procedural Manual for SPECIFIC instructions.
- B. *Online Reservation Procedure.* Subject to the funding restrictions and applicable reservations, applications for MCCs will be accepted in all of the lending offices of each Originator in the state. This will be on a first-come, first-served, fair and equal basis irrespective of race, color, religion, national origin, age, or sex. Prior to making a reservation of funds, the Originator must have taken a mortgage

loan application from a potential eligible mortgagor. The mortgagor furnishes the Originator an earnest money sales agreement or construction contract entered into by the seller/builder of a residence and the eligible mortgagor. Originators are responsible for making a preliminary determination to see if the potential eligible mortgagor will qualify for the mortgage loan and MCC. The program processing is designed to complement the Originator's regular credit and underwriting procedures. Since the Authority is not part of the credit approval process, no formal notice of rejection of the MCC is required by the Authority under the Equal Credit Opportunity Act. The Authority recognizes the procedural variations among participating Originators.

The following steps are for the reservation and loan processing process:

1. The eligible mortgagor applies for mortgage financing from a participating Originator.
2. The Originator determines if a loan applicant is eligible for the MCC program based on preliminary information obtained on annual income, acquisition cost, prior home ownership, and other factors.
3. All mortgage loans must be Originated in compliance with, and must conform to the provisions of all applicable rules, regulations and limitations of FHA, VA, RD, GNMA, and Fannie Mae, as appropriate.

Each Originator is to assign user names and passwords to designated employees responsible for making requests for Reservations of Funds. There will be no restrictions as to the total number of Reservations of Funds issued to any Originator. Telephoned requests for reservations will be accepted if the [www.lenders.AHFA.com](http://www.lenders.AHFA.com) web site is unavailable for more than 24 hours. In that event, telephone reservations will be accepted temporarily until the site resumes operation. As each request is taken, the Authority will monitor the amount of confirmed requests to comply with the 20% target area requirement. This could result in a non-target reservation request being delayed until the 20% target area requirement has been met.

- B. *Reservation Form.* Beginning on a date designated by the Authority, the participating Originators may request Reservations of Funds online at [www.lenders.AHFA.com](http://www.lenders.AHFA.com). The Originator completes the Reservation Form, Appendix 2, and inputs the required information into the online system, reserving funds. Upon input of the information from the Reservation Form, the online system will automatically issue a commitment number and the expiration date of the commitment. The Originator should place this information on the Reservation Form for future reference and print a copy of the reservation acceptance to include with the Step 1 submission.
- C. *Reservation Document Delivery.* Upon completion of the reservation, each Originator must furnish the Authority with the Reservation Package as stated on the MCC Transmittal Checklist (Step 1), Appendix 1. The Authority must receive these documents within 72 hours (three working days) of receipt of an MCC commitment number. Failure to deliver the requested documentation to the Authority within the time specified may result in cancellation of the reservation of funds.
- D. *Reservation Expiration Date.* The funds are reserved for 45 days. Any extensions must be approved by the Authority.
- E. *Cancellation of Reservation.* If it is determined that the proposed mortgagor does not qualify for the program, the reservation will be canceled. If the Authority determines that a mortgage loan application was taken by an Originator after the date the Originator submitted its request for Reservation of Funds, the reservation will be canceled.

Notification must be sent to the Authority within 72 hours if it is determined that the mortgagors do not meet the guidelines of the MCC Procedural Manual.

These provisions are subject to revision at the discretion of the Authority to ensure fair and orderly distribution of MCC authority.

**SECTION 3.11. *Maintenance of Mortgage Files.*** The Originator shall, at its own expense, maintain a file containing all documents prepared with respect to each Loan. Each such file shall be maintained by the Originator for the longer of (a) six [6] years following the year in which the loan was made or (b) a minimum of three [3] years from the date the loan is fully paid or otherwise terminated. The files shall be kept at the Originator's regular place of business in the State and shall be available for inspection by the Authority at such reasonable times and in such reasonable manner as the Authority shall determine.

**SECTION 3.12. *Defective Documents and Non-qualifying Loans.*** If the Originator discovers that (a) any document or documents constituting a part of an MCC application package are defective in any material respect, (b) a loan is or becomes a Non-Qualifying Loan (as defined below), or (c) there is a breach of any of the representations, covenants and warranties set forth in Section 3.13 below, then the Originator shall immediately notify the Authority and the Originator shall cure the defect or breach within a period of thirty (30) days from the time the Originator discovers such defect or breach or such determination is made known to the Originator (the "Cure Period").

The Originator covenants and agrees that, if any Loans described above cannot be cured, the Originator will notify the Authority and the Borrower and the MCC shall be canceled.

As used herein, the term "Non-Qualifying Loan" shall mean and include any Loan with respect to which an MCC was issued and;

- (a) The Borrowers fail to occupy the related residence as a Principal Residence within sixty (60) days of the Date of Closing or the Borrowers fail to maintain such residence as their Principal Residence;
- (b) The related residence is not a Principal Residence as defined herein;
- (c) The Maximum Sales Price Limitation of the related residence exceeded the applicable purchase price limitation;
- (d) Except with respect to a Principal Residence located in a Target Area, the Borrower is not a First-Time Homebuyer;
- (e) The Borrower is not an Eligible Borrower;
- (f) The Loan is a refinancing of an existing loan except for a construction, bridge or similar temporary financing (with a maximum term of twenty-four (24) months);
- (g) The Loan has been paid or otherwise satisfied.

**SECTION 3.13. *Representations, Warranties and Covenants of Originator Concerning Loans.*** The Originator hereby represents and warrants to and covenants with the Authority that:

- (a) The information set forth in each document submitted will be true and correct at the Closing Date thereof and each Loan satisfies all applicable requirements set forth herein;
- (b) Each Loan, at the time it shall have been made, shall have conformed to all disclosures required to be made by the Real Estate Settlement Procedures Act, the Truth-in-Lending Act, and the Consumer Credit Protection Act and all other applicable State and federal laws and regulations;
- (c) Each Loan at the time it shall have been made shall have complied with applicable State and federal usury laws;
- (d) The Originator shall use its best efforts to secure MCCs on behalf of Eligible Borrowers.

**SECTION 3.14. *Prohibition of Discrimination.*** The Originator must consider all applications in the order in which they are received or in any other manner designated or approved by the Authority on a fair and equal basis, may not arbitrarily reject a Loan application because of the location, and/or age of the property, and may not, in the case of a proposed Borrower, arbitrarily vary the terms of a loan or the application procedures therefore or reject a Loan applicant because of the race, color, religion, national origin, sex or marital status of such applicant or in violation of any State or local law. No Originator shall enter into any agreement or arrangement with any person, firm or corporation to refer any applicant or group of applicants for such loans without the express written approval of the Authority. The Originator shall not directly or indirectly attempt to prohibit a Borrower from seeking financing from any particular Originator, nor attempt to require a Borrower to seek financing from a specific Originator.

**SECTION 3.15. *Necessary Action by the Authority.*** In the event that any action required by the Authority for or in connection with any Loan shall not be timely done or performed by the Originator, and the continuance of any such non-action, in the opinion of the Authority, is not in the best interests of the Authority, the Authority shall promptly undertake such action as they deem proper or necessary in the circumstances in substitution for, and at the reasonable expense of, the Originator, and Originator shall be liable for and shall promptly pay to the Authority all of their expenses and costs (including that of their counsel) as to such action taken by them in such circumstances, and the Authority shall not be liable to the Originator on account of any such action taken by them in good faith and after written notice to the Originator to undertake such required action.

**SECTION 3.16. *Remedies.*** Upon failure by either party to this Agreement to comply with the conditions and terms hereof, the other party may terminate this Agreement. If such termination results from any failure of the Originator to comply with the conditions and terms hereof, the Originator may become ineligible for subsequent participation in any housing program of the Authority.

#### ARTICLE IV ORIGINATOR

**SECTION 4.01. *Liability of Originator:*** The Originator shall be liable only to the extent that obligations are explicitly imposed upon and undertaken by the Originator.

**SECTION 4.02. *Merger or Consolidation of Originator:*** Any entity into which the Originator may be merged or consolidated, or any entity resulting from any merger, conversion or consolidation to which the Originator shall be a party, or any entity succeeding to the business of the Originator, shall be the successor of the Originator listed below without the execution or filing of any document or instrument, except as provided in Section 2.02(b) hereof, or any further act on the part of any of the parties hereto.

**SECTION 4.03. *Limitation on Liability of Directors, Officers, Employees and Agents of Originator:*** No director, officer, employee or agent of the Originator shall be under any liability to the Authority for any action taken or for refraining from the taking of any action in good faith pursuant hereto, or for errors in judgment.

**SECTION 4.04. *Originator Not to Resign.*** The Originator shall not resign from the obligations and duties hereby imposed on it except upon determination that its duties are no longer permissible under applicable law or regulation. Any such determination permitting the resignation of the Originator shall be evidenced by an opinion of counsel satisfactory to the Authority to such effect delivered to the Authority. No such resignation shall become effective until the Authority or a successor shall have assumed the Originator's responsibilities and obligations.

**SECTION 4.05. *Reports.*** The Originator shall file an annual report to the Internal Revenue Service on IRS Form 8329 (or such other form as may be designated by law or regulation) during the period that MCCs

are being issued by the Authority. (Refer to MCC Procedural Manual for specific instructions.) Such annual report must contain:

- (a) the name, address and TIN of the Authority;
- (b) the date on which the Authority elected not to issue Qualified Mortgage Bonds with respect to the MCCs being reported;
- (c) the date of issue of MCCs (Date of Closing);
- (d) the name, address and TIN of the Originator; and
- (e) the sum of the products determined by multiplying the certified indebtedness amount of each MCC issued and outstanding under the Program by multiplying the certified indebtedness amount of each MCC issued and outstanding by the MCC rate.

For six (6) years following the year in which a Loan was made, the Originator shall have available a summary of Loans which includes the following information:

- (a) the name, address and TIN of MCC holder;
- (b) the name, address and TIN of the Authority; and
- (c) the date of Loan, certified indebtedness amount and MCC rate.

## ARTICLE V MISCELLANEOUS PROVISIONS

**SECTION 5.01.** *Access to Certain Documents and Certain Information Regarding the Loans.* The Originator shall provide to the Authority and its examiners and supervisory agents access to the documentation regarding the Loans requested by the Authority, such access being afforded without charge but only upon reasonable request and during normal business hours at the offices of the Originator designated by the Authority.

**SECTION 5.02.** *Severability.* In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 5.03.** *Further Assurances and Corrective Instruments.* To the extent Permitted by law, the Authority and the Originator agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance hereof.

**SECTION 5.04.** *No Rights Conferred on Others.* Nothing herein shall confer any right upon any person other than the Authority and Originator.

**SECTION 5.05.** *Discretion of Authority.* With respect to any disputes between the Authority and the Originator which arise concerning the terms and provisions of this agreement, the judgment of the Authority shall govern.

**SECTION 5.06.** *Originator as Independent Contractor.* In the performance of its duties as the Originator, the Originator shall be an independent contractor acting in its own behalf and for its own account and without authority, express or implied, to act for or on behalf of the Authority, in any capacity

other than that of an independent contractor, save as herein expressly set forth or as may from time to time be authorized by the Authority in writing.

**SECTION 5.07. *Changes in Organization.*** The Originator shall immediately notify the Authority of any contemplated material change in its organization including but not limited to, mergers or consolidations, change of name, or corporate charter. The Originator shall immediately notify the Authority of any voluntary or involuntary preceding which might result in bankruptcy, reorganization, dissolution, liquidation, the appointment of a trustee or receiver, an assignment for the benefit of creditors or the Originator having its activities restricted in any manner related to its performance of material obligations listed below by any governmental agency.

**SECTION 5.08. *Term of Agreement.*** This Agreement shall remain in full force and effect so long as Loans originated pursuant to this Agreement remain outstanding unless terminated by mutual consent of the Authority and the Originator prior to that time or upon termination by the Authority resulting from a breach of the covenants and warranties herein.

**SECTION 5.09. *Indemnity.*** The Originator shall indemnify the Authority and hold it and its officers, employees and agents harmless of and from any and all loss, penalty, fine, forfeiture, reasonable attorney's fees, damage or expense that they may respectively sustain or incur as a result of any failure on the part of the Originator to perform its services, duties and obligations under the terms and provisions of this Agreement, notwithstanding any knowledge, act, or failure to act by the Authority, other than an act or failure to act which prevents the Originator from performing such services, duties and obligations.

**SECTION 5.10. *Assignment of Agreement.*** This Agreement shall not be assignable by the Originator or its successors, including the surviving entity following a merger or consolidation of the Originator, without the written consent of the Authority.

**SECTION 5.11. *Sale of Loan.*** The Originator shall remain obligated upon the sale of a Loan or its servicing to report noncompliance that it discovers in accordance with Section 3.12 and to report program data to the Internal Revenue Service and the Authority in compliance with Section 4.05 hereof.

**SECTION 5.12. *Amendments.*** Amendments to this Agreement may be made upon the written agreement of the parties hereto.

**SECTION 5.13. *Notices.*** Unless otherwise directed by the Authority in writing all notices, certificates or other communications required to be given shall be sufficiently given and shall be deemed given when delivered or mailed to the following address:

Single-Family Administrator  
Alabama Housing Finance Authority  
7460 Halcyon Pointe Drive, Suite 200  
Montgomery, AL 36117

Post Office Box 242967  
Montgomery, AL 36124-2967



MORTGAGE CREDIT CERTIFICATE  
EXECUTION PAGE

IN WITNESS WHEREOF, the parties hereto have caused this MCC Originator Participation Agreement to be duly executed by their duly authorized officers or representatives as of the date first written herein above.

ALABAMA HOUSING FINANCE AUTHORITY

By: \_\_\_\_\_  
Its Executive Director

\_\_\_\_\_  
Originator

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Its: \_\_\_\_\_

(SEAL)