

HUD Issues Updated Implementation Guidance for Green and Resilient Retrofit Program

By Eric Herrmann and Adam Cohen – January 2024

On January 8th, HUD issued updated guidance ([Housing Notice 2024-01](#)) (the “**Supplemental Notice**”) for the [Green and Resilient Retrofit Program](#) (“**GRRP**”). The Supplemental Notice amends Housing Notice 2023-05 (the “**Initial Notice**”) to add flexibility in response to industry feedback and implement certain administrative changes¹. GRRP is a nearly \$5 billion federal investment authorized under the 2022 Inflation Reduction Act to enhance energy and water efficiency and reduce carbon emissions among HUD’s assisted housing portfolio. To date, HUD has announced grant and loan awards totaling nearly \$295 million across the Elements, Leading Edge, and Comprehensive Award cohorts and additional application windows are open in 2024².

Below we summarize the key changes and clarifications provided in the Supplemental Notice³. These amendments will surely be welcomed by Owners working to close GRRP awards, but some questions and issues remain, as we explain below.

- **Surplus Cash Loan Repayment Terms:** The Initial Notice provided that during the term of a GRRP loan, 25% (Elements Award) or 50% (Leading Edge or Comprehensive Award) of Surplus Cash⁴ must be used to pay principal and interest on the GRRP loan prior to any other payments from Surplus Cash, including other subordinate financing or cashflow contingent fees. This raised questions about whether payments of deferred developer fee would be allowed prior to repayment of the GRRP loan. The Supplemental Notice clarifies that deferred developer fee can be paid prior to making payments on the GRRP loan, but only for the first ten years of payments. The Supplemental Notice also clarifies that Surplus Cash payments toward the GRRP loan begin with the first Annual Financial Statement submission after HUD’s acceptance of the owner’s Completion Certification. While HUD’s clarification allowing priority payment of deferred developer fee is welcome, limiting this to a ten-year period could be problematic for some tax credit projects with larger deferred developer fees, potentially leading to a reduction in eligible basis and tax credit equity.
- **Surplus Cash Loan Maturity Date:** The Initial Notice provided that GRRP loans must mature at the later of (a) the maturity date of the first-lien mortgage loan or (b) 15 years. The Supplemental

¹ HUD has [provided a redlined](#) version of the Initial Notice showing changes made by the Supplemental Notice.

² For a summary of the GRRP Program, including a list of eligible property types and a comparison of award cohorts, see Klein Hornig’s previous [Housing Alert](#) issued in May 2023. For the most current information, please reach out to the authors or refer to HUD’s GRRP website linked in the first sentence of this Alert.

³ Unless otherwise indicated, revisions noted apply across Elements, Leading Edge, and Comprehensive Award cohorts.

⁴ “Surplus Cash” is defined as any cash remaining at the end of an annual fiscal period after (1) the payment of: a) all sums due or currently required to be paid under the terms of any first position amortizing mortgage or note; b) all amounts required to be deposited in reserve for replacements; and c) all other current obligations of the Property unless funds for payment are set aside or deferment of payments has been approved by HUD; and (2) the segregation of: a) all special funds required to be maintained by the Property; and b) all tenant security deposits held.

Notice revises this to allow GRRP loans to mature at the later of (a) the maturity date of the first-lien mortgage loan or (b) **up to** 30 years. This revision gives HUD greater flexibility to address intercreditor issues in cases where a senior lender requires subordinate debt to mature some period of time after the senior loan (a common requirement) or where a longer term is needed to address residual value analysis issues. However, there will still be cases where a 30-year term is not sufficient to address these issues. Furthermore, even if the term of the GRRP loan extends beyond the term of the senior loan, the requirement that GRRP loans be repaid upon any refinancing of the senior loan, absent a waiver from HUD, remains a potential issue for senior lenders.

- **Davis-Bacon Wage Rate Effective Date:** The Initial Notice imposed Davis-Bacon Prevailing Wage requirements on both Leading Edge and Comprehensive Award recipients⁵ unless the Owner submits a Project Labor Agreement executed by the local building trade unions and general contractor. The Initial Notice did not specify when the applicable prevailing wage decision would be “locked in” for GRRP-funded projects. The Supplemental Notice clarifies that the wage rate will be locked in upon HUD’s issuance of the Leading Edge Commitment (“LEC”) or Comprehensive Construction Commitment (“CCC”) provided that construction commences within 90 days of issuance. Should construction commencement extend beyond 90 days of LEC/CCC issuance, the project must use a more recent wage determination if one has been issued. Additionally, should an Owner elect to submit a Project Labor Agreement in lieu of utilizing prevailing wage rates, the Supplemental Notice provides that the Agreement must be executed and submitted to HUD prior to closing and provides additional guidance regarding the contents of such an agreement.
- **Renewable Energy Credits:** Some Leading Edge Qualifying Certifications⁶ may require Owners to purchase renewable energy credits to offset their property’s energy consumption. In cases where Owners achieve a Qualifying Certification through the purchase of renewable energy credits, the Supplemental Notice clarifies the Owner must continue to purchase the credits for the greater of (i) the duration required by the Qualifying Certification, or (ii) a period of three years, unless otherwise approved by HUD.
- **Disbursements of GRRP Funds/Retainage Requirements:** The Supplemental Notice reduces retainage requirements across the three GRRP Award cohorts, allowing for disbursements during the construction period that more closely follow those typically allowed by other financing sources. For Leading Edge Awards, up to 80% (previously 75%) of award funds may now be disbursed at 75% completion. For Elements and Comprehensive Awards, up to 90% (previously 80%) of funds may now be disbursed during the construction period. The Supplemental Notice also removes references to an Escrow Deposit Agreement governing the disbursements of funds for Comprehensive Awards and language requiring that all GRRP awards be disbursed via HUD’s Electronic Line of Credit Control System. Instead, the Supplemental Notice simply provides that the Owner “must follow all instructions provided by HUD in order to make draw requests and access

⁵ While GRRP Elements Awards do not trigger Davis-Bacon Prevailing Wage requirements, projects receiving Elements Awards may nevertheless be subject to Davis-Bacon Prevailing Wage requirements if imposed by a separate financing source.

⁶ To receive a Leading Edge award, owners must develop a scope of work that will achieve an acceptable green building certification (a “Leading Edge Qualifying Certification”, as defined in Exhibit A of the Supplemental Notice).

funding,” and that “[a]dditional information will be provided before closing.” The exact import of this change remains to be seen, but it would seem to give HUD greater flexibility to continue to refine its draw process as the first projects move forward.

GRRP Awards provide a valuable opportunity to make green and resilient upgrades to the affordable housing stock. HUD program leadership has expressed a keen interest in receiving feedback on the issues owners are facing as they seek to secure and close on these funds and have indicated a willingness to be flexible in the implementation of the program. Owners are encouraged to reach out to HUD, and to their consultants and counsel to develop further suggestions for clarifications and improvements to HUD’s guidance that will enhance the efficiency and effectiveness of this critical resource.

Should you have any questions about this KH Housing Alert or require further information, please contact [Eric Herrmann](#) or [Adam Cohen](#).

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