Stimulus Funding Seeks to Improve Energy Efficiency of Multifamily Housing

The American Reinvestment and Recovery Act of 2009 (ARRA)[1] provided unprecedented funding for improving the energy efficiency of housing serving low-income families. The Department of Housing and Urban Development's (HUD's) Green Retrofit Program (GRP) for Multifamily Housing[2] will provide $250 million in grants and loans for building rehabilitation that will reduce utility costs, improve tenant health and provide other environmental benefits. This article describes in detail the Notice[3] HUD recently published to implement the GRP funds.[4] Additionally, the Department of Energy's (DOE) Weatherization Assistance Program[5] will provide $5 billion to states to make homes more energy efficient, and DOE and HUD are working together to ensure that these funds can be used to improve federally subsidized housing.

Eligible Projects

Eligible projects for GRP include Section 202 projects with at least thirty-two units, Section 811 projects with at least eight units, USDA Section 515 projects with at least twenty units, and all other project-based Section 8 projects with at least seventy-two units.[6] Project-based voucher units are not eligible for the GRP. Additionally, projects with Real Estate Assessment Center inspection scores of less than sixty are ineligible.[7]

HUD will limit the number of each type of project units that will be accepted into the program. Approximately 3700 Section 202 units, 350 Section 811 units, 1000 Section 515 units, and 15,000 project-based Section 8 units will be accepted into the program.[8] Further, no more than 3% of all the units initially accepted into the program can be under the control of a single owner.[9] Additionally, HUD is seeking geographical diversity, and no more than 20% of the units accepted into the program will be located in any one HUD region.[10]

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[1]Pub. L. 111-5 (2009), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf.
[2]ARRA div. A, tit. XII.
[3]Green Retrofit Program for Multifamily Housing (GRP), H 09-02 (May 13, 2009) [hereinafter Notice].
[4]For more information about the Green Retrofit Program, visit HUD's Recovery website, which contains a Frequently Asked Questions document and a recording from a presentation HUD conducted on the program on May 13.
[5]ARRA div. A., tit. IV.
[6]Notice at 7.
[7]*Id.* at 9.
[8]*Id.* at 22.
[9]*Id.* at 22-23.
[10]*Id.* at 23.

Eligible Activities

Owners may receive funding for green building rehabilitation projects that conserve energy and water, improve indoor air quality and provide other environmental benefits.[11] A third-party contractor known as a Participating Administrative Entity (PAE) will recommend a green retrofit plan to the owner. In developing the plan, the PAE must conduct a physical condition assessment and a tenant meeting.[12] The PAE must use its "best efforts" to consider the tenants' feedback when developing the plan.

Owners must accept at least 75% of the PAE's recommended green retrofit items. Owners must consider green recommendations in the following areas:

- efficient appliances, heating and cooling systems, water heaters and lighting;
- improvements to windows, doors and insulation;
- indoor air quality improvements, such as fans and low volatile organic compound (VOC) paints, sealants and cabinets; and
- other green features, including landscaping improvements, integrated pest management, recycling programs, hazardous waste collection and green management of construction debris.[13]

Amount and Type of Assistance

HUD will award grants and loans on a first-come, first-served basis and anticipates that between 300 and 350 projects will receive funding. HUD may award up to $15,000 per unit, but the average cost for all units retrofitted under the program cannot exceed $10,000 per unit.[14] Both green retrofit grants and green retrofit loans are available. There are three categories of projects that are eligible for the green retrofit grant: (1) Section 202 projects; (2) Section 811 projects; and (3) projects where the owner is a nonprofit and tenants pay their own utilities for at least heat and lights.[15] All other projects are eligible for the green retrofit loan, which has an interest rate of either 1% or the applicable federal rate at the owner's request.[16]

Extension of Affordability Requirements

To receive GRP funds, owners must agree to extend project affordability use agreements for fifteen years beyond current affordability requirements.[17] Prepayment of the GRP loan does not terminate these affordability requirements. Additional requirements apply to developments with project-based Section 8 contracts that will expire within eighteen months of the date of the GRP application. Once the owner's GRP application has been accepted for processing by HUD, the owner must agree to make a contract renewal request within sixty days.[18] HUD will accelerate the contract renewal process for these developments.

Application Process

HUD began accepting applications for GRP funds on June 15, and it is processing applications in the order that they were received by HUD. It is limiting the initial number of owners whose applications will be processed in order to stay within the $250 million allocated for the program. All other applicants will be placed on a waiting list. At least weekly, HUD will post on its GRP website a summary of all the applications that it is currently processing, as well as the waiting list status of all other applications.[19] This enables advocates to monitor which developments in their communities will likely receive GRP funds.

As part of the application, owners must secure releases from tenants so that HUD can obtain information about tenant utility consumption directly from utility companies.[20] The releases must authorize the utility company to release consumption data to the owner, HUD and any designee of HUD. An owner must obtain releases from at least half of the project's tenants. If the owner fails to do so, it must explain the efforts undertaken to obtain the releases, which must include at least two written communications and two in-person attempts to contact the tenants. After the green retrofits are complete, the data will be used to conduct analyses to determine the amount by which utility usage has decreased in a particular development. Given the GRP program's benefits for tenants, including newer appliances, improved air quality and preservation of affordable units, advocates, tenant organizers and resident leaders should volunteer to assist owners in obtaining these releases.

Once HUD receives an owner's application, it will assign it to a PAE, which will manage the due diligence, underwriting, negotiation and closing of the green retrofit grant or loan. The PAE must close the grant or loan within 120 days after the application is assigned to it.[21]

HUD will begin obligating GRP funds by September 2009, and owners must begin making improvements immediately thereafter. Owners will generally be required to complete rehabilitation within twelve months following the closing of the green retrofit grant or loan.

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[11] *Id.* at 2.
[12] *Id.* at 5.
[13] *Id.* at 20.
[14] *Id.* at 2.
[15] *Id.* at 33-34.
[16] *Id.* at 37.
[17] *Id.* at 14.
[18] *Id.* at 15.
[19] *Id.* at 23. Information on applications received and waiting list status will be posted at http://portal.hud.gov/portal/page?_pageid=153,7973195&_dad=portal&_schema=PORTAL.
[20] *Id.* at 11.
[21] *Id.* at 6.

HUD may extend the deadline for completing the retrofits, but owners must finish the retrofits within twenty-four months.[22]

Owner Incentives

All owners are eligible for four incentives under the GRP. The pre-development incentive will be paid to the owner at the closing of the green retrofit grant or loan to offset the owner's due diligence and out-of-pocket closing costs.[23] The incentive is equal to 1% of the estimated costs of the green retrofits and is capped at $10,000.[24] The efficiency incentive is paid to the owner upon completion of the retrofits.[25] The maximum amount of this incentive is the lesser of 3% of the costs of the retrofit or $30,000.[26] Under the incentive performance fee, owners will receive incentive payments at the end of each year that they participate in the GRP.[27]

Perhaps most significant to advocates is the targeted incentive for job creation. This incentive encourages owners to employ low-income persons residing in the metropolitan area in which the project is located, or to contract with businesses that are owned by or employ such persons.[28] Once the owner completes the green retrofits, it will receive the lesser of 10% of the amounts paid to the low-income persons or businesses, or $25,000. To qualify for this incentive, an owner must comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968[29] and its implementing regulations.[30] Advocates should work with successful GRP applicants to ensure that Section 3 goals are reached and maintained throughout the term of the contract. Owners are required to comply with the Section 3 annual reporting requirements[31] and submit a final Section 3 report indicating the number of employment, contracting and other economic opportunities that were generated.

Utility Allowances

If any utilities at a project are tenant-paid, the owner must agree to re-determine utility allowances within eighteen months after the green retrofits are complete, "in accordance with applicable requirements of HUD."[32] It is unclear at this time whether HUD will issue additional guidance to owners on how to recalculate or implement utility allowances once green retrofits are complete. Due to reduced energy consumption as a result of green retrofits, tenants' utility allowances will likely decrease once the retrofits are finished. Ideally these decreases should be phased in gradually to alleviate any resulting hardship to tenants.

Use of Weatherization Funds in Subsidized Housing

In addition to the GRP, another ARRA-funded program that seeks to improve the energy efficiency of homes is the Department of Energy's Weatherization Assistance Program (WAP).[33] WAP reduces the heating and cooling costs of low-income families by improving the energy efficiency of their homes. Examples of energy efficiency improvements performed through WAP include weatherstripping, caulking, attic insulation, and heating system repair or replacement.

To be eligible for weatherization assistance, a rental unit must be occupied by a family whose income is below 200% of the federal poverty level.[34] At least 66% of the units in multifamily buildings (50% for properties with fewer than five units) must be occupied by families whose incomes fall below this threshold.[35] Income verification procedures under WAP have been burdensome for multifamily owners, and they are duplicative of HUD's procedures for verifying income eligibility for federally assisted housing.

To increase the number of federally subsidized units that are weatherized under WAP, DOE and HUD recently entered into an agreement to streamline WAP income verification procedures.[36] DOE also published a proposed rule on weatherization of public housing, project-based Section 8 developments, Section 202 Supportive Housing for the Elderly, Section 811 Supportive Housing for Persons with Disabilities, and Low-Income Housing Tax Credit properties.[37] The proposed rule would significantly streamline the income verification requirements for owners seeking to weatherize federally subsidized housing. States would be able to rely upon HUD's income verification procedures in WAP determining income eligibility.[38] Under the proposed rule, HUD would provide a listing, to be posted on DOE's website, of all properties that meet WAP income requirements.[39] Comments on the proposed

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[22] *Id.* at 3.
[23] *Id.* at 39.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.* at 40.
[28] *Id.*
[29] 12 U.S.C.A. § 1701u (Westlaw May 26, 2009).
[30] 24 C.F.R. Part 135.
[31] *See id.*
[32] Notice at 39.
[33] 42 U.S.C.A. § 6861 *et seq.* (Westlaw May 14, 2009).
[34] Weatherization Assistance Program for Low-Income Persons, 74 Fed. Reg. 23,804, 23,806 (May 21, 2009).
[35] *Id.*
[36] Memorandum of Understanding Between Department of Energy and Department of Housing and Urban Development, Coordinating Recovery Act Funds for Home Energy Retrofits, May 6, 2009, http://www.hud.gov/recovery/doemoucombined.pdf.
[37] Weatherization Assistance Program for Low-Income Persons, 74 Fed. Reg. at 23,804.
[38] *Id.* at 23,806.
[39] *Id.* at 23,807. The list would be available on the WAP website, www.eere.energy.gov/wip.

rule were due June 22. DOE and HUD are planning to conduct a series of forums across the country to facilitate the use of WAP funds in federally subsidized housing.

Conclusion

Advocates should encourage subsidized owners to apply for GRP and WAP funds. The benefits for tenants include lower utility bills, improved air quality, newer appliances, and warmer housing in the winter and cooler housing in the summer. GRP funds have the additional advantage of extending affordability requirements for fifteen years and expediting contract renewals for project-based Section 8 properties. The benefits for owners include increased property value, extension of the property's long-term viability, and the GRP's financial incentives. ■