



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

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**Special Attention of**

**Notice H 09-02**

All Eligible Owners  
All Multifamily Housing Staff  
All Office of Affordable Housing Preservation Staff  
All Participating Administrative Entities

Issued: May 13, 2009

Expires: September 30, 2012



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Cross References

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**SUBJECT: Green Retrofit Program for Multifamily Housing (GRP)**

The purpose of this Notice is to provide guidance on the Green Retrofit Program for Multifamily Housing that is described below.

**Background**

Title XII of Division A of the American Recovery and Reinvestment Act of 2009, P. L. 111-5 (the “Recovery Act”), in the section titled “Assisted Housing Stability and Energy and Green Retrofit Investments” under “Housing Programs”, includes authority for HUD to make loans, make grants, and take a variety of other actions to facilitate utility-saving retrofits and other retrofits that produce environmental benefits, in certain existing HUD-assisted multifamily housing, subject to agreement between HUD and the Owner. These activities are undertaken to further the objectives of the Recovery Act, namely, to provide a necessary boost to our economy in these difficult times and to create jobs, restore economic growth, and strengthen America's middle class. The Recovery Act is designed to stimulate the economy through measures that, among other things, modernize the Nation's infrastructure, jump start American energy independence, and protect those in greatest need.

Green Building is an approach to sustainable development that is designed to result in a property that reduces energy demand, costs less to operate, improves the residents’ quality of life, and reduces its impact on the environment. This Notice uses the terms “Green Retrofit Program” and “GRP” to refer to the various authorities discussed above. Issuance of this Notice implements the Green Retrofit Program.



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### **Program Implementation**

HUD will implement the GRP through the Office of Affordable Housing Preservation (OAHP), using, where appropriate, policy and program approaches developed for OAHP's Mark-to-Market Green Initiative.

The GRP will also use OAHP's existing infrastructure for program management, due diligence, underwriting, closing, and rehabilitation escrow administration. Certain Mark-to-Market participating administrative entities (PAEs) will carry out due diligence, underwriting and negotiation activities, and closing for the GRP pursuant to each PAE's existing portfolio restructuring agreement, as amended.

All materials noted as being available from the GRP web site may be found at <http://portal.hud.gov/pls/portal/url/page/recovery/programs/green> or [www.hud.gov/recovery](http://www.hud.gov/recovery) . References to days in this Notice mean calendar days.

### **Program Summary**

This Program Summary section is a summary of certain key provisions of this Notice. In the event of conflict between any terms or conditions contained in this Program Summary section and those contained in the numbered provisions of the Notice, the terms and conditions in the numbered provisions will control.

In the GRP, HUD will accept applications for a Green Retrofit Grant or Green Retrofit Loan on a first come, first served basis, beginning on June 15, 2009, and subject to allocations for project categories, geographic location and Owner/Affiliate concentration. HUD may offer either a Green Retrofit Grant, or a Green Retrofit Loan repayable from a share of Surplus Cash and from sale and refinancing proceeds, of up to \$15,000 per unit for an individual Eligible Project, and expected to average not more than \$10,000 per unit across all Eligible Projects that are funded, to be used to finance Green Retrofits that will reduce ongoing utility consumption, benefit resident health, and/or



benefit the environment. The Owner's period of performance for completing all Green Retrofits will generally be twelve (12) months, but in no event shall it exceed twenty-four (24) months. The program requirements differ depending on the type of project-based assistance contract and depending on the owner entity (nonprofit or for profit). *See Definitions for Eligible Projects. See Paragraph IV.A for Applicant Pool. See Paragraph V for Green Retrofit Grants. See Paragraph VI for Green Retrofit Loans. See Definitions for Green Retrofits.*

At the closing of the Green Retrofit Grant or Green Retrofit Loan, the retrofit funds will be deposited into a rehabilitation escrow and the Owner will receive a GRP Pre-Development Incentive equal to the lesser of 1% of the estimated cost of the Green Retrofits or \$10,000. All Owners of Eligible Projects are eligible to receive this incentive, including nonprofit Owners. Limited dividend Owners may receive this incentive in addition to any limited dividend. *See Paragraph VII.B for the GRP Pre-Development Incentive.*

Upon satisfactory completion of the Green Retrofits, the Owner will receive the GRP Efficiency Incentive (up to the lesser of 3% of the estimated cost of the Green Retrofits or \$30,000). All Owners are eligible to receive this incentive, including nonprofit Owners. Limited dividend Owners may receive this incentive in addition to any limited dividend. *See Paragraph VII.C for the GRP Efficiency Incentive.*

The GRP involves two assessments of financial feasibility. The owner submits a GRP Application that includes an Initial Feasibility Assessment, annual and year-to-date financial statements, evidence of authority to accept a Green Retrofit Grant or Green Retrofit Loan, due diligence information, owner commitments and required certifications, as detailed below. Passing this Initial Feasibility Assessment is a precondition for commencement of due diligence and underwriting but does not assure that the project will pass the Final Feasibility Assessment and receive an offer for a Green Retrofit Grant or Green Retrofit Loan. After the PAE completes full due diligence and underwriting, the Eligible Project must pass a Final Feasibility Assessment, based on underwritten cash flow. Passing the Final Feasibility Assessment is a precondition for receiving an offer of a Green Retrofit Grant or Green Retrofit Loan. Both Feasibility Assessments are discussed in more detail below. *See Paragraph II for requirements for a complete GRP Application.*

The Initial Feasibility Assessment that the owner provides as part of its GRP Application must be prepared using a template provided by HUD, a copy of which is available from the GRP web site (<http://portal.hud.gov/pls/portal/url/page/recovery/programs/green> or [www.hud.gov/recovery](http://www.hud.gov/recovery) ). It requires the Owner to enter information from the project's annual financial statements to derive key financial ratios which vary by program type. The project passes the Initial Feasibility Assessment in one of two ways:

- If HUD's minimum thresholds for the key financial ratios are met or exceeded. The HUD-prescribed template includes the minimum thresholds, which are calculated from the project's financial statements and are established for each program type; or
- HUD determines that consideration of additional project-specific information provided in the GRP Application would result in the project passing the Initial Feasibility Assessment.

HUD will accept for processing, and authorize the PAE to conduct due diligence and



underwriting, for only those projects that pass the Initial Feasibility Assessment. *See Paragraph II.A for information required in the GRP Application. See Paragraphs IV.E regarding the Initial Feasibility Assessment.*

The Initial Feasibility Assessment is based on historical cash flow plus standard economic assumptions applied to the individual program type under which the project was developed. The Final Feasibility Assessment uses the same minimum thresholds for key financial ratios as the Initial Feasibility Assessment but is based on the PAE's underwriting. If an Eligible Project does not pass the Final Feasibility Assessment, HUD will either decline to offer a Green Retrofit Grant or Green Retrofit Loan; or (for properties eligible for the Mark-to-Market program) will make eligibility for a Green Retrofit Grant or Green Retrofit Loan contingent on the Owner's agreement to a Mark-to-Market debt restructure transaction. *See Paragraph IV.F.4 regarding the Final Feasibility Assessment.*

The GRP will be administered by OAHP, which also administers the Mark-to-Market program. GRP is a distinct new program differentiated from the Mark-to-Market program in several notable ways; the Green Retrofit Program:

- will not involve evaluation of comparable market rents (except that normal contract renewal timing will be accelerated for certain projects; *see Paragraph II.A.15.f*),
- will not involve changes to contract rents,
- will not require the Owner to contribute toward the cost of Green Retrofits (subject to exceptions for partially assisted projects and projects with large project account balances; *see Paragraph IV.F.3*),
- will not involve restructuring of existing project debt,
- will not include a Mark-to-Market program Use Agreement (but will require its own Green Retrofit Program Use Agreement),
- will include the Owner's commitment to elect to renew Expiring Contracts, using any available option (other than opting out), for a period of at least 15 years beyond the existing expiration of affordability requirements on the project,
- will use the Mark-to-Market program underwriting for a project that is currently undergoing debt restructuring and is also accepted for GRP processing; and
- will provide opportunities for the Owner to earn a GRP Pre-Development Incentive at the closing; a GRP Efficiency Incentive upon satisfactory completion of all Green Retrofits; a Targeted Low-Income Jobs Creation Incentive after completion of all Green Retrofits; and a GRP Incentive Performance Fee annually during the term of the Green Retrofit Program Use Agreement.

The Recovery Act requires the payment of not less than prevailing wage rates (Davis-Bacon wage rates) to all laborers and mechanics employed on Green Retrofit construction work. All construction employers will be required to prepare, certify and submit weekly payroll reports for each week work is performed on the project. *See Paragraph IV.I.4 for Davis-Bacon requirements.*

All Owners must make Green Retrofit Owner Commitments and must prepare a GRP Operations & Maintenance (O&M) Plan (for the ongoing Green Operation of the project) as a condition of receiving a Green Retrofit Grant or Green Retrofit Loan. *The template forms of Green*



*Retrofit Owner Commitments and GRP O&M Plan are available from the GRP web site.*

Upon achievement of annual performance benchmarks, and subject to compliance with the Green Retrofit Owner Commitments, Owners become eligible to earn the GRP Incentive Performance Fee (3.0% of collected revenue annually, payable solely from Surplus Cash). If there is insufficient Surplus Cash to pay the entire earned Incentive, the Incentive is partially paid from the Surplus Cash available, up to the full Incentive amount earned. Any Incentive earned but unpaid in a fiscal year cannot be carried forward, accrued, or paid from a future project fiscal year. All Owners are eligible to receive this incentive, including nonprofit Owners. Limited dividend Owners may receive this incentive in addition to any limited dividend. *See Paragraph VII.D for the GRP Incentive Performance Fee.*

HUD anticipates that the GRP will result in future savings, including the reduction of utility allowances for tenant-paid utilities, through a reduced need for future budget-based rent adjustments attributable to a portion of a project's utility costs, and (for projects subject to Green Retrofit Loans) through receiving a share of annual Surplus Cash as an annual payment on the Green Retrofit Loan. There are three categories of Owners of Eligible Projects that HUD, in its discretion, may offer a Green Retrofit Grant or Green Retrofit Loan: (1) Owners of Section 202 projects, (2) Owners of Section 811 projects, and (3) nonprofit Owners of other projects with tenant paid utilities for at least heat and lights. All other Owners of Eligible Projects may only be eligible for Green Retrofit Loans. *See Paragraph VI.G for Green Retrofit Loan payment requirements.*

HUD will limit the number of Eligible Projects that are accepted by HUD for processing, so as not to exceed the funding appropriated in the Recovery Act. Additional applicants will be placed on a waiting list. In the event that HUD decides to discontinue processing of an Eligible Project, HUD will consider assigning an Eligible Project from the waiting list to a PAE. HUD will provide information on application status and the waiting list on the GRP web site at least weekly. *See Paragraph IV.A for discussion of the Waiting List.*

Upon assignment of an Eligible Project to a PAE, the PAE will first verify the Initial Feasibility Assessment provided by the Owner and confirm that HUD's minimum thresholds for GRP participation are met or exceeded (that the property passes the Initial Feasibility Assessment). The PAE will then commission, among other appropriate due diligence, a GRP Physical Condition Assessment (GRPCA) that will evaluate the opportunities for Green Retrofits and Green Operation. The PAE will also conduct a tenant meeting at the project to gain input from the tenants on energy and water conservation measures, indoor air quality, and other items that benefit the environment generally (all items that may be eligible for funding as Green Retrofits). *See Paragraph III for the GRPCA. See Definitions for Green Operation.*

Upon completion of due diligence and underwriting, the PAE will discuss its recommended Green Retrofit Plan with the Owner. HUD expects Owners to find acceptable the recommended Green Retrofits and requires that Owners accept a minimum of 75% of them (by cost). If the Owner fails to do so, HUD may discontinue processing and reject the Owner's GRP Application. If the Owner accepts the minimum or more, the PAE will present the Green Retrofit Plan to HUD for approval. If the Plan is approved, the PAE will prepare a Green Retrofit Plan Commitment that it



offers to the Owner. HUD expects to offer a Green Retrofit Plan Commitment and close the Green Retrofit Grant or Green Retrofit Loan within 120 days after the Eligible Project is assigned to a PAE. The Owner must cooperate timely in providing access to the Eligible Project and in providing all information requested by the PAE or HUD or risk removal from processing without any further opportunity to participate in the GRP.

Green Retrofit Plan Commitments will be executed by HUD subject to availability of funding. Funding will be obligated at the closing. Closing must occur within thirty (30) days after HUD executes the Green Retrofit Plan Commitment. *See Definitions for Green Retrofit Plan and IV.F. See the GRP web site and Paragraph IV.I for the Green Retrofit Plan Commitment. See Paragraph IV for additional discussion of due diligence, underwriting, approval, funding and closing.*

HUD's decisions regarding Initial Feasibility, Final Feasibility, and the Green Retrofit Plan Commitments are final.

### **Legal Documents**

The term "Legal Documents" references all documents determined necessary by HUD or the PAE to effectuate the closing. (On the release date of this Notice, the Legal Documents are pending final Paperwork Reduction Act approval. The GRP web site will be updated with the final documents.)

Legal Documents include, without limitation, the following template legal documents available from the GRP web site, each of which will be used without modification unless the PAE determines, and HUD concurs, that modifications are required in order to comply with applicable State or local law:

- For all projects:
  - Green Retrofit Plan Commitment
  - Green Retrofit Program Rehabilitation Escrow Deposit Agreement
  - Green Retrofit Owner Commitments
  - Green Retrofit Program Use Agreement
- For projects that receive Green Retrofit Loans:
  - Green Retrofit Note
  - Green Retrofit Mortgage
- For projects that receive Green Retrofit Grants:
  - Green Retrofit Grant Agreement

Additional legal documents will be required in order to close a Green Retrofit Loan or Green Retrofit Grant, as required by HUD or applicable state or local law. These additional legal documents include, without limitation:

- Owner's certification and attorney opinion as to authority to accept and close a Green Retrofit Grant or Green Retrofit Loan
- Consent from existing lienholders, where required, and other parties whose consent is required



- Security Agreement with respect to personal property
- Modification to Section 8 contract(s), if necessary to conform to HUD’s financial reporting and physical inspection requirements

## I. **Definitions**

- A. **Mark-to-Market Terms.** The following terms have the meaning given to them pursuant to the Multifamily Assisted Housing Reform and Accountability Act of 1997 as amended (MAHRA) or pursuant to 24 CFR Part 401 as applicable:
1. Applicable Federal rate.
  2. Expiring Contract.
  3. MAHRA.
  4. Participating Administrative Entity (PAE).
  5. Restructuring Plan.
- B. **Other Terms.** As used in this Notice, the term—
1. **Affiliate.** Affiliate means any person or business concern that directly or indirectly controls policy of a principal or has the power to do so. Persons and business concerns controlled by the same party are also affiliates.
  2. **AFS.** AFS means the annual financial statements of a project that HUD requires the owners of certain projects to submit annually.
  3. **Control.** Control means the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of the owner of a project.
  4. **Eligible Project.** Eligible Project means a project that:
    - a. does not have an Ineligible Owner; and
    - b. is not an Ineligible Project; and
    - c. falls into one of the following categories (note that the references below to “Project-based Assistance” does not include project-based vouchers):
      - i. Projects receiving Project-based Assistance pursuant to Section 202 of the Housing Act of 1959 (12 U.S.C. 17012).
      - ii. Projects receiving Project-based Assistance pursuant to Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).
      - iii. Projects receiving Project-based Assistance under Section 8 of the United States Housing Act of 1937 as amended (42 U.S.C. 1437f);
    - d. has at least the following number of multifamily units:
      - i. 32 units for Section 202 projects.
      - ii. 8 units for Section 811 projects.
      - iii. 20 units for Section 8 projects with USDA Section 515 loans.
      - iv. 72 units for all other project-based Section 8 projects.
  5. **Green Operation.** Green Operation is operation of an Eligible Project that complies with the Green Retrofit Owner Commitments. Green Operation includes, without limitation:
    - a. The use of Green Components (as defined in the Green Retrofit Owner Commitments) where prudent and appropriate for operations and replacements;



- b. Materially lower use of chemicals thought to be harmful to humans for cleaning and maintenance;
  - c. Adherence to Integrated Pest Management (IPM) principles;
  - d. Maintenance of a Green property management qualification as required by HUD;
  - e. Providing access to the project and its records for the preparation of any post-closing analyses required by HUD;
6. **Green Retrofit.** Green Retrofit means a retrofit, acceptable to HUD, that has one or more of the following attributes, when compared with the comparable component that would normally be used by owners of similar properties in the same market area:
- a. Materially lower electric / heating fuel / water consumption.
  - b. Materially lower emissions of chemicals thought to be harmful to humans.
  - c. Materially longer useful life.
  - d. Materially more biodegradable.
  - e. Materially more easily recycled.
  - f. Materially lower use of raw materials/materially more recycled content.
  - g. Materially lower transportation costs of products delivered to the project.
  - h. The determination of materiality shall be made in HUD's sole discretion.
7. **Green Retrofit Grant.** Green Retrofit Grant means a grant pursuant to Paragraph V.
8. **Green Retrofit Loan.** Green Retrofit Loan means a loan pursuant to Paragraph VI.
9. **Green Retrofit Owner Commitments.** Green Retrofit Owner Commitments means required commitments by the Owner, acceptable to HUD. HUD will use the template forms of Green Retrofit Owner Commitments and GRP O&M Plan that are available from the GRP web site and may choose to modify those forms as experience is gained in the GRP.
- a. Green Retrofit Owner Commitments are required in order to receive a Green Retrofit Grant or Green Retrofit Loan.
  - b. The Owner must be in compliance with its Green Retrofit Owner Commitments to be eligible to earn the annual GRP Incentive Performance Fee.
  - c. Each participating Owner must develop, for HUD approval, a GRP O&M Plan.
10. **Green Retrofit Plan.** Green Retrofit Plan means a plan pursuant to Paragraph IV.F, acceptable to HUD, based on which HUD will consider making an offer of a Green Retrofit Plan Commitment.
11. **Green Retrofit Plan Commitment.** Green Retrofit Plan Commitment means a written offer pursuant to Paragraph IV.I to the Owner for a Green Retrofit Plan, executed first by the Owner and then by HUD. This is not a valid commitment unless executed by both parties.
12. **GRP Efficiency Incentive.** GRP Efficiency Incentive means the incentive described in Paragraph VII.C.
13. **GRP Incentive Performance Fee.** GRP Incentive Performance Fee means the incentive described in Paragraph VII.D.
14. **GRP Physical Condition Assessment (GRPCA).** GRP Physical Condition Assessment means a project-specific, on-the-ground evaluation by a qualified independent third party(ies) procured by the PAE, pursuant to HUD's requirements, in accordance with Paragraph III.
15. **GRP Pre-Development Incentive.** GRP Pre-Development Incentive means the





- incentive described in Paragraph VII.B.
16. **Ineligible Owner.** Ineligible Owner means any of the following:
    - a. An Owner described in Section 516(a) of MAHRA (with the exception of Section 516(a)(4)).
    - b. An Owner whose project's most recent management review rating is less than satisfactory.
    - c. An Owner whose project's most recent HUD Real Estate Assessment Center (REAC) physical inspection score is below 60.
    - d. An Owner who is not in substantial compliance with applicable performance standards and legal requirements, including, without limitation,
      - i. HUD's determination that the Owner is ineligible, based on information submitted by the owner pursuant to Paragraph II.A.12, the multifamily field office with jurisdiction finds previous participation issues; or
      - ii. Owner is not in compliance with HUD's AFS reporting requirements.
  17. **Ineligible Project.** Ineligible Project means any of the following:
    - a. A project described in Section 516(a)(4) of MAHRA.
    - b. A project whose debt has been restructured pursuant to the Mark-to-Market Green Initiative.
  18. **Initial Feasibility Assessment.** A standard template prescribed by HUD in accordance with Paragraph IV.E, to assess whether the Eligible Project is physically and financially viable and is likely to be maintained and preserved long-term.
  19. **Integrated Pest Management (IPM).** IPM is defined in detail in the Green Retrofit Owner Commitments. It is an approach to pest management focused on preventing the entry of pests and the early detection of infestations, in order to minimize the use of pesticides. IPM also involves selecting the least toxic pesticide that is likely to be effective in combating the identified infestation. IPM does not permit the use of pesticides (including low-toxicity pesticides) unless there is an identified infestation. IPM minimizes the use of fogging and spraying application techniques in favor of baiting techniques. Additional information on IPM is available from the GRP web site.
  20. **Owner.** Owner means the holder of legal title to the project.
  21. **Project-based Assistance.** Project-based assistance pursuant to:
    - a. Section 202 of the Housing Act of 1959 (12 U.S.C. 17012); or
    - b. Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or
    - c. Section 8 of the United States Housing Act of 1937 as amended (42 U.S.C. 1437f).
    - d. Note that the term "Project-based Assistance" does not include project-based vouchers.
  22. **Surplus Cash.** Surplus Cash (profit-motivated Owner) or Residual Receipts (nonprofit Owner) or Excess Cash (USDA Section 515 Owner) means any cash remaining at the end of an annual fiscal period after
    - a. the payment of:
      - i. All sums due or currently required to be paid under the terms of any mortgage or note whose lien position is senior to that of the Green Retrofit Loan ("Primary Indebtedness");



- ii. All amounts required to be deposited in the reserve fund for replacements;
  - iii. All obligations of the project other than the Primary Indebtedness unless funds for payment are set aside or deferment of payments has been approved by the Secretary of the federal agency or the state housing finance agency; and
- b. the segregation of:
- i. an amount equal to the aggregate of all special funds required to be maintained by the project; and
  - ii. all tenant security deposits held.

## II. GRP Application.

- A. **Required Information.** An Owner's GRP Application must contain each of the following:
1. **Initial Feasibility Assessment Template.** The Initial Feasibility Assessment template (available from the GRP web site), completed with applicable information regarding the project.
  2. **For Projects That Do Not Pass Initial Feasibility.** If the template indicates that the project does not pass the Initial Feasibility Assessment, the Owner must also include project-specific reasons that if considered, would result in the project meeting or exceeding HUD's minimum thresholds. See Paragraph IV.E.5.
  3. **Evidence of Authority.** Closing a Green Retrofit Grant or Green Retrofit Loan will create a new encumbrance, will require a Use Agreement extending affordability at least 15 years, will create new incentives, and will modify the Eligible Property's cash distribution provisions. Accordingly, HUD expects that many Owners will need to obtain the consent of parties holding ownership interests, and that many Owners will need to obtain the consent of other parties such as lenders and lienholders, in order to enter into a Green Retrofit Plan Commitment and close the transaction. HUD requires this consent prior to the time of application. Each of the following are required to be provided in the GRP Application (HUD's requirements for each of the following are attached to this Notice):
    - a. A certification, acceptable to HUD, from an authorized representative of the Owner, that either:
      - i. No consent is required from any party having an ownership interest or from any lender or other party; or
      - ii. Each party whose consent would be required has executed a consent or certification acceptable to HUD. The executed documents must be included in the GRP Application; and
    - b. An opinion of counsel acceptable to HUD regarding the consents necessary to consummate the GRP transaction and regarding the authority of the Owner's designated representative.
  4. **Owner Preferences.** The Owner must indicate:
    - a. Whether the Owner prefers a Green Retrofit Grant or a Green Retrofit Loan, and the reasons for such preference, but the determination of which to offer is at HUD's discretion. This requirement does not apply to Owners who are only eligible for a Green Retrofit Loan pursuant to Paragraph V.B. HUD's



determination on offering Green Retrofit Grants or Green Retrofit Loans is made in order to ensure that both HUD and the Owner benefit from utility savings. The Owners with a choice of the Green Retrofit Grant or Green Retrofit Loan will be able to change their preference after acceptance of their application.

- b. Whether the Owner will consider each of the optional Green alternatives described in Paragraph III.C.2.
- c. Any potential Green Retrofits in which the Owner is particularly interested.
5. **Three Years' Annual Financial Statements.** The annual financial statements for the most recent three project fiscal years (audited if required by the existing business and legal agreements). This requirement is not applicable if the project has filed its AFS electronically with HUD for the past three years.
6. **Current Year Unaudited Financial Statements.** Unaudited financial statements for the project, for the current project fiscal year, as of a date not more than 90 days prior to the date of the GRP Application. The Owner will provide updated financial statements if the PAE so requests.
7. **Accounts Payable.** If the project has negative Surplus Cash as of the date of the most recent financial statement, the Owner must identify in the GRP Application any payables owed to the Owner, its Affiliates, the managing agent, or its Affiliates, that are older than (60) days and agree to place those in a residual receipts note acceptable to HUD. If proforma negative Surplus Cash remains, the Owner must provide a complete list of all accounts payable for HUD's review and approval.
8. **Flood Insurance.** HUD requires that flood insurance be maintained, where applicable, in accordance with Section 102(b)(2) of the Flood Disaster Protection Act. See Paragraph IV.I.5 for more information. The Owner must state in its GRP Application that it has flood insurance, it will obtain flood insurance acceptable to HUD prior to closing, the property is not in a Special Flood Hazard Area (SFHA) designated by the Federal Emergency Management Agency (FEMA), or the property is in an SFHA community that does not participate in the National Flood Insurance Program but less than one year has passed since the FEMA notification regarding such hazards.
9. **Description of Existing Components.** A standard template form, available from the GRP web site, containing information on each major building system (e.g., roofs, refrigerators, windows, and exterior walls) indicating when existing components were installed and a description of existing components including energy efficiency (e.g., annual electric consumption for refrigerators, SEER rating for air conditioners).
10. **Utility Releases (Owner Paid Utilities).** With respect to each utility paid by the Owner, a release form signed by the Owner, in a form acceptable to the applicable utility providers, authorizing the PAE or its designee to obtain utility consumption data with respect to all utility accounts in the name of the Owner.
11. **Information with Respect to Tenant Paid Utilities.** If any utilities are paid by tenants:
  - a. A list of tenants who have lived in the property for at least twelve months, showing name, move-in date and unit type.
  - b. Release forms signed by tenants as discussed in subparagraph 15.g, in order to allow the PAE to obtain utility consumption data for tenant-paid utilities.
  - c. Any explanation required under subparagraph 15.g.(vi), if the Owner provides less than 50 percent of the number of possible tenant releases.



12. **Previous Participation Information.**
  - a. The Owner must provide evidence there are no flags raised in the Active Partner Performance System (APPS), also known as “2530 Clearance”. This evidence must be in writing from the HUD field office or appropriate USDA Rural Development office (for a USDA Section 515 project).
  - b. The Owner must provide a certification of ownership entity. This certification requires the following attachments:
    - i. The partnership agreement (or other governing documents) including all amendments.
    - ii. A description of the formal consent process, if any that is required under the ownership entity’s governing documents to extend the term of the ownership entity.
    - iii. A description of the formal consent process, if any, that is required in order for the ownership entity to close a Green Retrofit Loan or Green Retrofit Grant (e.g., if a vote of partners is required, what percentage of the ownership interests must vote in favor).
    - iv. Identification of the persons who are authorized to sign a Green Retrofit Plan Commitment on behalf of the Owner and the persons who are authorized to sign the Legal Documents.
13. **Data Universal Numbering System (DUNS) Number.** The Owner must provide a current Data Universal Numbering System (DUNS) number in the GRP Application. The Owner who does not have a DUNS number must obtain it before submitting the GRP Application. HUD will reject GRP Applications that do not have a DUNS number. There is no charge for obtaining a DUNS number and it can be obtained online or by telephone:
  - a. The Owner can visit this website and provide the necessary information – <http://fedgov.dnb.com/webform>.
  - b. The Owner can call 866-705-5711 toll free.
  - c. The information required for the DUNS number includes: legal name, trade style/ doing business as/ or other name the organization uses, physical address, mailing address, telephone number, contact name, Standard Industrial Classification (SIC) code (line of business), number of employees, and headquarters name and address (if applicable).
  - d. The Owner can seek online assistance at the following web site: [http://www.dnb.com/US/duns\\_update/](http://www.dnb.com/US/duns_update/) or phone assistance at the following number: 888-814-1435 (Monday through Friday, 8am-6pm EST).
14. **Central Contractor Registration (CCR).** The Owner must provide a CCR (CAGE) number in the GRP Application. If the Owner does not have a current CCR (CAGE) number, the Owner must register in the CCR system available at the following web site - <http://www.ccr.gov/StartRegistration.aspx> (note that both the DUNS number application and CCR can be completed through this web site).
  - a. If the Owner is obtaining a DUNS number and a CCR number, the DUNS number must be obtained at least 24 hours before the CCR registration can be initiated.



- b. The information required for the CCR registration includes: DUNS number, tax identification number (TIN) and taxpayer name, average number of employees, and average annual receipts.
  - c. The Owner can contact the CCR Assistance Center, 24 hours a day, 7 days a week, at 888-277-2423 or 269-961-5757, or visit the web site at [www.ccr.gov](http://www.ccr.gov).
15. **Required Certifications.** The Owner must certify to HUD that to the best of the Owner's knowledge and belief:
- a. All materials submitted with the GRP Application are accurate, complete, and not misleading.
  - b. If the Owner is subject to a requirement to file AFS with HUD, the Owner must be current with filing of AFS, and all findings, if any, must be resolved as of the date of the GRP Application.
  - c. The project meets the requirements of at least one of the categories listed in the Definitions for Eligible Project.
  - d. Neither the Owner, the management agent, or any Affiliate of the Owner or management agent, is debarred or suspended. For further information see 2 CFR Parts 180 and 2424 as well as 48 CFR Parts 9 and 2409.
  - e. Neither the Owner, the management agent, or any Affiliate of the Owner or management agent, is subject to a Limited Denial of Participation. For further information see 2 CFR Part 2424, Subpart J.
  - f. The Owner is not an Ineligible Owner.
  - g. The project is not an Ineligible Project.
  - h. There is no litigation or other claim pending or threatened against the Owner or the Project other than as disclosed in the GRP Application.
  - i. The Owner has not received, applied for, and is not pursuing, any other funding pursuant to the Recovery Act with respect to the Eligible Project; except as fully disclosed in the GRP Application.
  - j. The Owner has not received, applied for, and is not pursuing, any other funding with respect to the Eligible Project (including, without limitation Low Income Housing Tax Credit funding); except as fully disclosed in the GRP Application.
  - k. There is no judgment lien against the Eligible Project for a debt to the United States. See 28 U.S.C. Section 3201(e).
  - l. Neither the Owner nor any Affiliate of the Owner has a delinquent federal debt.
  - m. Regarding debts to Owner, Affiliates of the Owner, management agent, or Affiliates of the management agent, either:
    - i. No secured creditor of the Owner is an Affiliate of the Owner or management agent or is under Control of the Owner or management agent; or
    - ii. Each such secured creditor has given its consent to be subordinate in lien priority and/or payment priority as applicable, to a Green Retrofit Loan or Green Retrofit Grant and associated documents as required by this Notice.
  - n. The Owner is in compliance with Fair Housing and Civil Rights Laws and that each of the following is true. The Owner
    - i. has not been charged with an ongoing systemic violation of the Fair Housing Act.



- ii. is not a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination.
  - iii. has not received a letter of findings, identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974.
  - iv. if applicable, has resolved, to HUD's satisfaction, the charge, lawsuit, or letter of findings referenced in subparagraphs (i), (ii), or (iii) before submitting the GRP Application.
  - o. The Owner must include the completed and executed Byrd Amendment Certification and the Form SF-LLL Lobbying Disclosure with the GRP Application. These forms are available on the GRP web site.
16. **Required Commitments.** The Owner must make commitments to HUD that:
- a. The Owner and management agent will cooperate with HUD pursuant to Paragraph IV.G regarding Green Retrofit Plan Development.
  - b. The Owner acknowledges that the Recovery Act requires that each recipient of a Green Retrofit Loan or Green Retrofit Grant provide at least an additional 15 years of affordability running from the end date of the current affordability restricted period, understands that any offer of a Green Retrofit Plan Commitment will include such a requirement, is prepared to accept such a requirement, and is prepared to execute binding Legal Documents to effectuate such a requirement.
  - c. The Owner will provide the expiration date of all affordability requirements on the Eligible Project. The discussion below encompasses affordability requirements of every sort, including without limitation: affordability requirements under a project based rental assistance contract (e.g., project based Section 8, Rent Supplement, Rental Assistance Program, USDA Rental Assistance, ...), affordability requirements pursuant to a mortgage loan (e.g., a Section 236 loan or a USDA Section 515 loan), affordability requirements pursuant to a grant (e.g., a Section 202 capital grant), affordability requirements pursuant to a use or affordability agreement (e.g., a HOME program affordability agreement or a Mark-to-Market Use Agreement), and affordability requirements pursuant to a deed restriction or covenant (e.g., the land is leased or was purchased from a redevelopment authority and carries affordability restrictions). The Owner agrees to specify all such applicable affordability/use agreements, and to provide true and complete copies of applicable documents timely if the PAE or HUD so requests.
  - d. If the Eligible Project is on leased land, the Owner will provide the expiration date of the lease in the GRP Application. Further the Owner will provide a true and correct copy of the lease(s), including all amendments in the paper application.
  - e. The Owner has reviewed, understands, and is prepared to execute at closing without changes, the draft forms of the GRP Legal Documents. Final Paperwork Reduction Act approval is pending and the final documents will be posted on the GRP web site when available.



- f. The Owner has reviewed, understands, and agrees to carry out the responsibilities described below with respect to certain projects with project-based Section 8 contracts expiring within eighteen (18) months. This provision does not apply to the following categories of Eligible Projects: Section 202, Section 811, USDA Section 515, projects with first mortgage financing provided by a State housing finance agency, and projects whose debt has been restructured pursuant to the Mark-to-Market program or the Portfolio Reengineering Demonstration program (section 210 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996, 110 Stat. 1321). It does apply to all other Eligible Projects having a mortgage loan that is insured or held by the Secretary and having an Expiring Contract whose expiration date falls eighteen (18) months or less after the date of the GRP Application. For such projects, Owners, HUD and contract administrators will avoid potentially duplicative due diligence, underwriting and processing costs by accelerating the contract renewal process. Upon acceptance of the Eligible Project for processing by HUD, and upon notification of such acceptance from PAE to the Owner:
- i. The Owner must agree to make a contract renewal request (including, if required, a rent comparability study), within 60 days after the PAE so requests, and to provide copies thereof to OAHP and the PAE.
  - ii. The contract renewal process for such Expiring Contract will be accelerated; with renewal being approved by the party designated to do so under the Section 8 Renewal Policy Guide (e.g., contract administrator), and with any resulting renewal contract having an effective date not later than the closing date. The PAE and OAHP will review any rent comparability study only if the Eligible Project is eligible for the Mark-to-Market program. The Owner is required to complete the early contract renewal process regardless of whether a Green Retrofit Grant or Green Retrofit Loan is offered by HUD. The Expiring Contract will be terminated when the early renewal contract term begins.
  - iii. The Owner must indicate whether the Eligible Project is an “eligible multifamily housing project” under MAHRA (note that projects whose debt has been restructured pursuant to the Mark-to-Market program or the Portfolio Reengineering Demonstration program are not M2M eligible), and if not, the reason(s).
  - iv. Failure to provide the early renewal request, including any required rent comparability study, timely constitutes grounds for rejection under Paragraph IV.H.
- g. If utilities are tenant-paid, the Owner shall use best efforts to obtain tenant releases so that the PAE can obtain information about actual tenant utility consumption directly from each utility company.
- i. For tenants in occupancy twelve months or more, releases shall be sought from all tenants whose names appear in the list discussed in Paragraph II.A.15.



- ii. Releases shall authorize the utility company to release the needed information to the Owner, HUD and any designee of HUD.
  - iii. The needed information is the actual utility consumption and expense for the tenant for the most recent twelve months.
  - iv. The Owner shall use a form of permission / release that is acceptable to the utility company.
  - v. The signed permission / release forms must be attached to and submitted with the GRP Application.
  - vi. If the Owner is unable to obtain at least 50 percent of the possible tenant release forms, the Owner must provide a discussion of the efforts undertaken to obtain releases, and such efforts must include written communication to each tenant on at least two different occasions, an on-site tenant meeting following the first written communication, and at least two in-person attempts to contact each tenant that did not provide a release form after being requested to do so.
- h. The Recovery Act requires transparent reporting of the use of all funds. The approved Green Retrofits will be available through a public website. The Owner must provide bids/cost estimates for proposed Green Retrofits, within a time period reasonably prescribed by the PAE (generally within fifteen (15) days), from sources that are not the Owner, an Affiliate of the Owner, the management agent, or an Affiliate of the management agent. It is the Owner's responsibility to ensure that contractors are properly licensed and have the capacity to complete the work properly and timely. The PAE may recommend to HUD that an Owner, management agent, or one or more of their respective Affiliates may complete the Green Retrofits, but the bids/ cost estimates must be supported by arms-length bids/cost estimates. HUD requires the Owner obtain bids/cost estimates whenever the Green Retrofit costs are of a certain size, are uncertain, or are subject to change. Specifically, at least one bid/cost estimate is required for any item costing from \$10,000 to \$50,000; and multiple bids/cost estimates are required for any item costing \$50,000 or more. In addition, bids may also be required for any of the following reasons:
- i. For any item that is subject to significant price fluctuations, and/or
  - ii. For any item that is unique or not immediately available from established vendors, and/or
  - iii. For any item that is only available from a limited number of suppliers, and/or
  - iv. For any item that should be supported by a bid, at the discretion of the Owner, and/or
  - v. For any significant item that should be supported by a bid, at the discretion of the PAE.
- i. The Owner understands that Eligible Projects that are partially assisted, as that term is defined in this Notice (see Paragraph IV.F.3.a), Eligible Projects with large project account balance (see Paragraph IV.F.3.b), and Eligible Projects requiring improvements that cannot be funded by the GRP (see Paragraph IV.F.3.c), will require an owner contribution. The Owner agrees to provide the





source of the contribution, approved by all other parties who must consent, upon request by the PAE.

- B. GRP Application Submission Instructions.** Applicants must follow these instructions for submitting their GRP Application to HUD. There are two sets of instructions, one for emailing the EXCEL spreadsheet component of the GRP Application and one for mailing the paper components of the GRP Application. Both sets of instructions must be satisfied in order to submit a GRP Application.

- 1. Emailing the EXCEL Spreadsheet.** The GRP Application includes an EXCEL spreadsheet with two worksheets, one being the Application Form and the other being the Initial Feasibility Assessment. The Owner must email the completed EXCEL file, named “[project]\_[last four numbers of REMS number].xls” or in the event the project does not have a REMS number, “[project]\_[citystate].xls” to GRPAPPLICATION@HUD.GOV. This portion of the GRP Application will be accepted for processing if received on or after June 15, 2009. Earlier submissions will be rejected.

**Mailing the Required Documentation.** The Owner must print the completed Application Form from the EXCEL spreadsheet component of the GRP Application, sign it, and include it as the cover page for the required documentation that is mailed to HUD. All other documents required to be submitted should be included in the order they are referenced in this Notice. The mailing should be sent to HUD using any service to ensure it is received within seven (7) days after the date of emailing the EXCEL spreadsheet as instructed in subparagraph 1. However, HUD advises that Owners who plan to use regular mail delivery through the U.S. Post Office should allow an additional five days for that delivery to arrive at HUD (effectively providing the Owner no more than two (2) days after emailing the EXCEL spreadsheet to mail the paper submission). If for any reason whether or not in the Owner’s control HUD has not received the mailing within seven (7) days after the date of receiving accompanying email spreadsheet, the GRP Application will be rejected. Owners are encouraged to use a service that can track receipt of the mailing at HUD. The mailing must be addressed to:

U.S. Department of Housing and Urban Development  
Office of Affordable Housing Preservation  
Green Retrofit Program for Multifamily Housing  
ATTN: GRP Application Delivery  
451 7<sup>th</sup> Street, SW, Room 6222  
Washington, DC 20410

- 2. Rejected GRP Applications.** HUD will notify applicants when the GRP Application has been rejected and the reasons for rejection but will not return any files or documentation submitted to HUD. Applicants whose GRP Application was rejected for failure to follow the submission instructions may resubmit the entire application. The requirements for emailing and mailing the resubmitted GRP Application are identical to those for the original delivery, as described in subparagraph 1 and 2 above. Resubmissions shall be processed based on the validated date and time of receipt of the resubmission.



C. **Threshold Requirements.**

1. **Complete Application.** Incomplete applications will be rejected and HUD will notify the applicant of the rejection but will not return any files or documentation submitted to HUD. Applicants notified of incomplete or non-responsive applications may resubmit revised applications. Resubmissions shall be processed based on the validated date and time of receipt of the resubmission.
2. **Authorized Representative.** The required certifications discussed in subparagraph A must be made by an authorized representative of the Owner. These certifications may not be made by the management agent or by a consultant or contractor.
3. **Compliance with Fair Housing and Civil Rights Laws.** If any of the conditions listed below are applicable, the application will be rejected. If the owner:
  - a. Has been charged with an ongoing systemic violation of the Fair Housing Act; or
  - b. Is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or
  - c. Has received a letter of findings, identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, and the charge, lawsuit, or letter of findings referenced in subparagraphs (a), (b), or (c) above has not been resolved to HUD's satisfaction before submitting the GRP Application, the application will be rejected.

III. **GRP Physical Condition Assessment (GRPCA)**

- A. **In General.** Each GRPCA shall include an assessment of traditional replacements, an assessment of potential Green Retrofits, an energy audit, an IPM inspection, a 20 year projection of capital needs, and such other components as HUD may require.
- B. **GRPCA Requirements.** The requirements for the GRPCA and the requirements for the qualifications of the GRPCA providers are available from the GRP web site.
- C. **Assessment of Traditional and Green Alternatives.** The GRPCA shall include the provider's assessment of, and recommendations concerning, Green alternatives (incorporating Green Retrofits) to traditional replacement strategies. The GRPCA shall take the following into account in developing its analysis of traditional and Green alternatives.
  1. **Required Green Alternatives.** The GRPCA provider shall recommend the following (the Secretary may waive any of the following requirements upon a showing by the PAE that the requirement is unnecessary or impractical):
    - a. **Products and Appliances.**
      - i. If not currently installed: low-flow faucet aerators, low-flow shower heads, and low-flush toilets. The GRPCA shall recommend low-flow faucets if faucets need to be replaced.
      - ii. ENERGY STAR rated refrigerators, for existing refrigerators having 15 percent or less remaining useful life.



- iii. ENERGY STAR rated dishwashers, for existing dishwashers having 15 percent or less remaining useful life.
- b. Heating and Cooling.
  - i. Recommended HVAC unit sizes and efficiency ratings determined by the GRPCA provider using methodology acceptable to HUD.
  - ii. ENERGY STAR rated HVAC systems, for existing systems having 15 percent or less remaining useful life. However:
    - A. The GRPCA provider may recommend evaporative cooling in lieu of air conditioning for Eligible Projects in appropriate climate zones.
    - B. If the Eligible Project has Packaged Terminal Air Conditioner (PTAC) units, the GRPCA provider may recommend Packaged Terminal Heat Pumps, PTAC units, or conversion to central air conditioning.
- c. Water Heaters. High efficiency domestic hot water heaters, for existing hot water heaters having 15 percent or less remaining useful life. If natural gas is used for domestic hot water heating, the GRPCA provider shall recommend ENERGY STAR rated natural gas fired hot water heaters. Otherwise, the GRPCA provider shall recommend the highest efficiency units that are cost-justified for the Eligible Project, using analytical methods approved by HUD.
- d. Building Envelope.
  - i. ENERGY STAR rated windows, for all existing single-pane windows and for any other existing windows having 15 percent or less remaining useful life.
  - ii. ENERGY STAR rated sliding glass doors, for all existing sliding glass doors having 15 percent or less remaining useful life.
  - iii. ENERGY STAR rated storm doors, for all existing storm doors having 15 percent or less remaining useful life, but not when used with ENERGY STAR rated exterior doors.
  - iv. ENERGY STAR rated exterior doors, for all existing doors opening to unheated/uncooled areas having 15 percent or less remaining useful life, but not when used with ENERGY STAR rated storm doors.
  - v. Additional insulation in accessible areas, to the current new construction code requirement. If additional insulation beyond the new construction codes requirement can be cost-justified, using analytical methods approved by HUD, the GRPCA provider shall recommend such addition insulation.
- e. Lighting.
  - i. ENERGY STAR rated interior compact fluorescent light bulbs.
  - ii. Replacement of lighted exit signs with LED fixtures.
- f. Ventilation and Indoor Air Quality.
  - i. ENERGY STAR rated ceiling fans, for all existing ceiling fans having 15 percent or less remaining useful life.
  - ii. Bath and kitchen exhaust ducted to the outside, if practicable.
  - iii. ENERGY STAR rated bath and kitchen exhaust fans to replace existing ducted fans having 15 percent or less remaining useful life.



- iv. No or Low-volatile organic compound (no/low-VOC) cabinets, or sealing open surfaces and cut edges, when replacing kitchen cabinets and bath vanities.
- v. Use of no/low-VOC paint and sealants for interior applications.
- vi. Carbon monoxide alarm on each occupied floor of the unit, near the bedroom, if there is a nearby combustion source.
- g. Other Green Features.
  - i. Any recommended landscaping improvements are required to evaluate practical water conservation measures including xeriscaping.
  - ii. Any physical changes needed to facilitate integrated pest management approaches.
  - iii. Up-front changes to facilitate recycling of household wastes, if practicable considering the property configuration and the local recycling options.
  - iv. Maintenance of a collection point within the Eligible Project for hazardous wastes (e.g., electronic equipment, computer printer ink, compact fluorescent bulbs, lithium batteries) of tenants and of the Eligible Project, and environmentally sound disposal of such wastes, if the Owner determines that to do so is operationally practicable and financially reasonable.
  - v. Green management of rehabilitation/construction debris.
- 2. **Optional Green Alternatives.** In the interest of simplifying implementation of the GRP, HUD provides participating Owners with the option for the GRPCA not to evaluate certain advanced and/or high-cost Green alternatives that the Owner is not seriously interested in pursuing. When the Owner applies to participate in the GRP, the Owner may indicate its willingness to consider each of the optional Green alternatives listed below. More information on each of these optional Green alternatives is available from the GRP web site, and HUD encourages Owners to carry out their own due diligence as well. The GRPCA will evaluate each optional Green alternative only if the Owner states a serious willingness to consider it:
  - a. Combined heat and power (“CHP”, sometimes also referred to as co-generation). CHP utilizes a generator to produce electric power for use in the building, and captures the resulting heat for use to heat the building. Ideal candidates for CHP are large buildings, with central hot water generation, that can or could utilize centrally generated hot water for heating, in areas with electricity costs above 10 cents per kilowatt hour.
  - b. Green energy. Solar, wind or geothermal system installations that would provide an alternate energy source for the Eligible Project. Solar installations are photovoltaic panels that convert sunlight into electricity. Wind installations are windmills or wind turbines which, in areas with frequent wind activity, convert wind into electricity. Geothermal installations take advantage of the near constant temperature below ground and use that as a source of heat in the winter and cooling in the summer.
  - c. Fuel Cells. Fuel cells owned by a property to produce electricity from natural gas or hydrogen are becoming less expensive and can be an efficient source of electric power.



- d. Vegetative roof (sometimes referred to as a green garden roof). Vegetative roofs are flat roofs that utilize a cover of grass or other vegetation, providing additional insulation, reducing the “heat island” effect of traditional roofs, and improved storm water management.
  - e. Reflective metal roof. Reflective metal roofs are pitched roofs in lighter colors that reduce the “heat island” effect of traditional roofs. Reflective metal roofs have a significantly higher initial cost but also have a significantly longer useful life, by comparison to standard roof systems. Reflective metal roofs may be ENERGY STAR rated.
  - f. Roofing shingles. ENERGY STAR qualified roof products reflect more of the sun's rays. This can significantly lower roof surface temperature, decreasing the amount of heat transferred into a building. These products can also help reduce the amount of air conditioning needed in buildings.
  - g. Floors. Conversion of carpeted surfaces to smooth-and-cleanable surfaces such as linoleum to reduce allergens or to make thorough cleaning easier.
  - h. Siding. Replacement of existing siding with cementitious (cement fiber) siding.
  - i. Compact fluorescent lighting (CFL) or light emitting diode (LED) fixtures. ENERGY STAR rated interior CFL or LED fixtures.
  - j. Porous Pavers. Porous pavers can be used to reduce water run-off or preserve grassy areas in rarely used access routes.
  - k. Retention Ponds. Retention ponds reduce and manage water run-off and can be used as an irrigation source. They are generally more effective than detention ponds.
  - l. Greywater Recycling. Greywater recycling refers to re-use of minimally contaminated water from sinks and washing machines for irrigation water.
3. **Cost-Effectiveness.** In the interest of cost-effectiveness, HUD places the following limits on additional cost for Green alternatives:
- a. The GRPCA shall analyze the optional Green alternatives discussed in subparagraph 2 above only if the Owner indicates willingness to consider such Retrofits and HUD concurs.
  - b. However, the PAE may contract with the GRPCA provider to provide analysis of the optional Green alternatives discussed in subparagraph 2 on a case by case basis.
  - c. Other than as discussed above regarding combined heat and power, solar, and wind systems, the GRPCA shall not consider the addition of electric power generation systems.
  - d. With regard to other Green Retrofits that are intended to reduce utility consumption, if the potential Green Retrofit exceeds the cost of the traditional alternative by more than the greater of (1) \$1,000 per unit or (2) 30%, the GRPCA will not consider or recommend it.
4. **Recovery Act Section 1604 Restrictions.** The GRP proceeds (whether Green Retrofit Grant or Green Retrofit Loan) cannot be used for, and the GRPCA shall not include any proposed Green Retrofit which will directly benefit, any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.



- D. **Energy Audit.** The purpose of the energy audit is to have a qualified energy specialist identify the most promising opportunities for reducing utility costs, and to make estimates of potential utility consumption savings and utility cost savings if each of those candidates is implemented. The scope of the energy audit is described in the GRPCA scope of work.
- E. **Integrated Pest Management (IPM) Inspection.**
1. **IPM Inspection Generally.** The IPM inspection includes placing and retrieving glue traps to determine whether any infestation currently exists, inspecting for evidence of infestations, identifying opportunities to seal pest entry points, and identifying opportunities to make landscaping changes to discourage pests from entering the buildings.
  2. **Includes Evaluation of Pest Management Practices.** The IPM inspection also includes evaluation of current pest management practices and identifying opportunities to incorporate IPM principles into the property's pest management approach.
  3. **Owner's IPM Commitment.** Each Owner who receives a Green Retrofit Grant or Green Retrofit Loan agrees to adhere to IPM practices in the ongoing operation of the Eligible Project for the life of the Green Retrofit Program Use Agreement.
- F. **Environmental Screen.** The GRPCA will include completion of a standard template form available from the GRP web site that will assist HUD in completing its environmental review. See Paragraph IV.K.

#### IV. **Commitments and Funding**

- A. **Applicant Pool.** HUD will limit initial acceptance for processing to Eligible Projects having a total number of units not exceeding the estimated funding capacity of the GRP.
1. **Application Period.** No GRP Applications will be accepted until June 15, 2009. Applications received after on and after that date will be evaluated on a first come, first served basis for potential assignment to the applicant pool.
  2. **Size of Pool.** Initially, HUD will accept for processing Eligible Projects having not more than 20,000 units in total.
  3. **Caps by Project Category.** Subject to the actual mix of applications, HUD has calculated the initial applicant sub-pools in proportion to the number of units in that program type likely to be eligible for the Green Retrofit Program to further its goal of encouraging diversity in applicants:
    - a. Section 202 Projects - 18.4% of units initially accepted for processing which is approximately 3,700 units.
    - b. Section 811 Projects - 1.7% of units initially accepted for processing which is approximately 350 units.
    - c. USDA Section 515 Projects with Project Based Section 8 - 5.1% of units initially accepted for processing which is approximately 1,000 units.
    - d. Other Project-Based Section 8 Projects - 74.8% of units initially accepted for processing which is approximately 15,000 units.
  4. **Other Caps.**
    - a. Projects Under Control of Owner or Affiliates - No more than 3.0% of units



- initially accepted for processing in projects under control of Owner or Affiliates.
- b. By HUD Region - HUD will seek geographic diversity in the Applications. Initially, no more than 20% of units accepted for processing will be located in any one HUD Region.
5. **Projects in Multiple Categories.** Each project will be counted in each applicable category. For example, in order for a Section 202 project in Region 7 to be placed in the initial applicant pool, there must be room to accommodate the project within the limit on Section 202 Projects and within the limit on projects in Region 7.
  6. **Waiting List.** HUD will establish a waiting list from which to select further projects in the event that funding is available after the initial applicant pool has been processed.
    - a. Applications that are not complete will be rejected without further review.
    - b. Each additional Eligible Project that is not initially selected for the applicant pool will be placed on the waiting list in the order the Owner's complete GRP Application was received by HUD.
    - c. Eligible Projects will be selected from the waiting list in waiting list sequence without regard to the limitations discussed in subparagraphs 3 and 4 above. Those limitations apply only with respect to initial assignments to PAEs.
  7. **Application List on GRP web site.** At least weekly, HUD will post a summary of applications on the GRP web site, showing total units by project category for Eligible Projects selected for the applicant pool, and showing waiting list status for all other Eligible Projects.
- B. **No Re-Application.** If a property is accepted for processing in the GRP and its participation does not result in a Green Retrofit Plan Commitment that is executed by both the Owner and HUD, the Owner may not re-apply to participate in the GRP.
- C. **HUD's Offer for Funding.** Making application for a Green Retrofit Grant or Green Retrofit Loan does not impose an obligation on HUD to process, assign to a PAE, approve or fund the requested transaction. HUD shall make any offer for a Green Retrofit Grant or a Green Retrofit Loan in writing, and such offer will include all conditions to such offer. HUD does not reserve funding until such time as both the Owner and HUD have executed the Green Retrofit Plan Commitment.
- D. **Green Retrofit Plan Commitments, Execution, and Funding.**
1. **Offer of Green Retrofit Plan Commitment.** HUD shall offer a Green Retrofit Plan Commitment, for execution by the Owner, subject to the availability of funding.
  2. **Owner Execution of Green Retrofit Plan Commitment.** The PAE must receive the executed Green Retrofit Plan Commitment no more than ten days after the date of the commitment. The Owner must execute and return the commitment to the PAE by fax and by overnight delivery service.
  3. **Funding Reservation.** HUD shall reserve funding for a transaction when HUD executes the Green Retrofit Plan Commitment.
  4. **Funding Obligation.** HUD shall obligate funding for a transaction at the closing.
  5. **Expiration of Commitment.** A Green Retrofit Plan Commitment shall expire, and any funds reservation shall be canceled, if the proposed transaction has not closed 30 days



following HUD's execution of the Green Retrofit Plan Commitment.

6. **When Available Funding is Reserved or Obligated.** Once all appropriated funds have been reserved:
  - a. HUD shall maintain a waiting list of transactions with approved Green Retrofit Plan Commitments executed by the Owner, not executed by HUD, and for which no funding is available. This is distinct from the waiting list (to be assigned to a PAE) discussed in Paragraph IV.A; this is a separate waiting list of approved projects that are waiting for potential funding.
  - b. As previously reserved funding is recaptured, HUD shall execute the Green Retrofit Plan Commitment and reserve funding in the order in which the Owner executed the commitment.
  
- E. **Initial Feasibility Assessment.** The Recovery Act requires that HUD determine that each property proposed for funding is physically and financially viable and is likely to be maintained and preserved long-term. To meet this requirement, HUD and the PAE will make an Initial Feasibility Assessment, to determine whether the project, after the proposed Green Retrofits have been completed, is likely to be maintained and preserved long-term.
  1. **HUD Template.** The Initial Feasibility Assessment will be made using a template prescribed by HUD. The template will use amounts reported in the AFS (without adjustment), will use formulas and standards prescribed by HUD, and will not require or allow judgment or adjustment by the Owner, HUD or PAE. The initial feasibility assessment template is available from the GRP web site. An Eligible Project will be rejected unless it passes the Initial Feasibility Assessment.
  2. **Requirements to Pass Initial Feasibility Assessment.** An Eligible Project can pass the Initial Feasibility Assessment in either of the following two ways:
    - a. HUD's minimum thresholds for debt service coverage ratio and operating cushion are met or exceeded. The minimum thresholds vary by program type. The minimum thresholds are calculated, and program type is determined, in the HUD-prescribed template.
    - b. HUD determines that project-specific information provided in GRP Application supports a presumption that, if a PAE completed a due diligence and underwriting assessment, the project would pass the Final Feasibility Assessment, and on that basis the project should be deemed to have passed the Initial Feasibility Assessment.
  3. **Owner Completes the Template Initially.** The Owner will provide a copy of the HUD template, completed with information on the project, at the time of the GRP Application.
    - a. If, based on the owner's information, the Eligible Project passes the Initial Feasibility Assessment; HUD will assign the project to a PAE to validate the Initial Feasibility Assessment.
    - b. If, based on the owner's information, the project does not pass the Initial Feasibility Assessment, the Owner must include with its GRP Application, a discussion of project-specific reasons that if accepted would result in the project meeting or exceeding HUD's minimum requirements. See subparagraph 5 for additional information on such potential project-specific reasons.





4. **PAE's Validation of Initial Feasibility Assessment.** Upon assignment of a project to a PAE for processing, and prior to ordering any due diligence materials, the PAE will verify the Owner's information contained in the Initial Feasibility Assessment.
  - a. If, based on the PAE's verification, the project passes the Initial Feasibility Assessment; the PAE will proceed with processing, will order the GRPCA and other appropriate due diligence materials, and will proceed with development of a proposed Green Retrofit Plan.
  - b. If, based on the PAE's verification, the Eligible Project does not pass the Initial Feasibility Assessment, the PAE will discontinue processing and HUD will reject the GRP Application. The Owner will be notified but no files or materials submitted by the Owner will be returned by HUD.
5. **Potential Project-Specific Reasons That May Support Being Deemed to Have Passed the Initial Feasibility Assessment After Failing It.** For example, the Owner might be able to show that:
  - a. The existing first mortgage debt has been refinanced to reduce monthly payments; or
  - b. The existing first mortgage debt will mature and be extinguished soon enough to allow the project to be feasible; or
  - c. The project is currently undergoing a Mark to Market restructuring, or simultaneous with the GRP Application has made the election to enter the Mark to Market program, and the expected restructuring will reduce monthly payments and operating expenses;
  - d. A grant or soft loan has been obtained, that will be used to reduce the needed Reserve for Replacements deposit; or
  - e. An analysis of capital replacement costs included in the historical operations and maintenance expenses shows that a greater reduction in these expenses is likely than is assumed in the HUD feasibility template; or
  - f. The Owner may be able to show that some expenses incurred historically will not be needed in the future (for example, that a one-time expense due to a water leak should be removed from the historical expenses for purposes of feasibility analysis).
  - g. The most recent actual real estate tax payment and/or insurance premium is lower than the level shown in the Initial Feasibility Assessment.

In general, information about actions that the Owner plans to take (but has not actually taken) will not be considered persuasive. In general, suggestions that historical costs can be reduced will not be considered persuasive unless the Owner has actually entered into a new contract(s) providing for such lower costs.

- F. **PAE's Development of Proposed Green Retrofit Plan.** The PAE will make at least the following determinations, in the process of preparing a proposed Green Retrofit Plan:
  1. **Financial and Underwriting Analysis.** The PAE will use an electronic underwriting model prescribed by HUD (a copy of the underwriting model is available from the GRP web site) to carry out financial and underwriting analysis as required by HUD including without limitation:
    - a. Financial evaluations of potential Green Retrofits.



- b. An adequate ongoing monthly deposit to the Reserve for Replacements, assuming that Green Retrofits are made, in accordance with subparagraph N.
  - c. Estimated pro forma cash flow, if Green Retrofits were made.
  - d. A Final Feasibility Assessment, based on the preceding, in accordance with subparagraph 4 below.
  - e. Note that the PAE may use the Mark-to-Market program underwriting for a project that is undergoing debt restructuring and is accepted for GRP processing. In the event of any conflict between this Notice and the Mark-to-Market Operating Procedures Guide, the Secretary will determine the governing requirements.
2. **Recommended Green Retrofits.**
- a. The Green Retrofits that the PAE determines are most appropriate for the project, taking into account the long-term physical and financial viability of the project, potential reductions in energy and water usage, potential benefits to resident health, and potential benefits to the environment. In making this determination, the PAE shall give the Owner an opportunity to comment on the GRPCA, for example to point out issues that may affect the practicability or cost of particular alternatives, and shall consider the tenant comments provided at the tenant meeting.
  - b. Recommended Green Retrofits shall be prioritized, and the reasons for the priority sequence shall be discussed.
3. **Required Owner Contribution.** The Owner will not be required to make a contribution toward Green Retrofits except for partially assisted projects and large project account balance projects as described below. In the event a project is both partially assisted and has a large project account balance, HUD will require the larger of the two possible owner contributions:
- a. Partially Assisted Projects - Green Retrofits must be made in all units of an Eligible Project, however, the Green Retrofit Loan or Green Retrofit Grant cannot be used to fund Green Retrofits for non-assisted units except as follows: The requirement for owner contribution is limited to Eligible Projects having fewer than 100% of the units subject to a contract for Project-Based Assistance, net of non-assisted units that are utilized for Project benefit such as community room, property manager housing, rental office, etc., not to exceed the lesser of 10% of the total number of Eligible Project units, or 5 units. For such projects, at the time the Owner requests to participate, the Owner must agree in advance that at the closing the Owner will deposit with the rehabilitation escrow administrator an amount based on the following formula:
    - i. Determine the number of units that cannot be funded by the Green Retrofit Grant or Loan by subtracting from the total Eligible Project units, all units subject to a contract for Project-Based Assistance and all non-assisted units that are utilized for Project benefit (using the lesser of 10% of the total number of Eligible Project units, or 5 units). This difference is the number of units that cannot be funded in the GRP. Multiply the number of units that cannot be funded in the GRP by the total estimated amount of the Green Retrofit Grant or Loan (Owner is to assume \$10,000 per unit in its



- GRP Application but the Owner will be responsible for the actual costs up to \$15,000 per unit);
- ii. For Eligible Projects with mortgage loans from, or insured by, the Secretary, the required deposit may be made in whole or in part from project funds only if the multifamily field office with jurisdiction gives its advance approval in writing and if HUD determines that remaining project funds are adequate for purposes of the Final Feasibility Assessment. Any such approval must be provided together with the GRP Application.
  - iii. Example: the project has 120 units, of which 84 (70%) are subject to a contract for Project-Based Assistance. The 36 non-assisted units include 6 non-assisted units for various Project benefit purposes. For a Project with a total scope of retrofits equal to \$10,000 per unit, the Owner would be required to deposit \$310,000 at the closing (120 units less 84 assisted units, less 5 non-assisted units (using the lesser of 10% of total units or 5 units) = 31 units that cannot be funded in the GRP) x \$10,000 per unit = \$310,000.
  - iv. At the time the Owner submits the GRP Application, the Owner must demonstrate to HUD's satisfaction that the Owner has a source of funds for the required contribution, estimated at \$10,000 per unit, and that the funds are committed.
- b. Projects with Large Project Account Balances - This requirement is limited to Eligible Projects having combined Reserve for Replacements and Residual Receipts balances in excess of \$5,000 per unit. The balances shall be measured as of the date of most recent audited financial statements of the Eligible Project as of the date of the GRP Application. For such projects, at the time of the GRP Application, the Owner must agree to deposit with the rehabilitation escrow administrator, at the closing, an amount equal to the lesser of the amount by which such balances exceed \$5,000 per unit; and the following:
- i. The total estimated in accordance with Paragraph V.E.1 through 7, or V.I.E.1 through 7 as applicable;
  - ii. Times 50%.
- The required deposit shall be made in whole from such project account balances, subject to the written approval of the multifamily field office with jurisdiction.
- c. The Green Retrofit Grant or Green Retrofit Loan is only available for energy or green retrofits. In the unlikely event that installation of the Green Retrofits requires tenant relocation, those relocation expenses cannot be funded by the Green Retrofit Grant or Green Retrofit Loan. For items identified in the GRPCA as non-functioning and requiring repair and that are not Green Retrofits:
- i. Exigent health and safety items must be mitigated immediately by the Owner. Within 72 hours from the date of the inspection, the Owner must submit a certification to the field office that these items have been mitigated successfully. Failure to mitigate and provide the certification within the time period will constitute grounds for a determination that the project is an Ineligible Project pursuant to Paragraph IV.H.
  - ii. Other items must be repaired by the Owner within sixty days after notice from the PAE or HUD. Failure to complete these repairs within that time



period will constitute grounds for a determination that the project is an Ineligible Project pursuant to Paragraph IV.H. No offer for a Green Retrofit Loan or Green Retrofit Grant will be issued until such items have been repaired.

4. **Final Feasibility Assessment.** The PAE determines whether the Eligible Project will be physically and financially viable and is likely to be maintained and preserved long-term, after implementation of a Green Retrofit Plan, based on full due diligence and underwriting.
    - a. The Final Feasibility Assessment will be made using the electronic underwriting model prescribed by HUD.
    - b. The Final Feasibility Assessment will use the same threshold requirements for debt service coverage ratio and operating cushion as the Initial Feasibility Assessment.
    - c. If the PAE determines that the Eligible Project passes the Final Feasibility Assessment, the PAE will develop a proposed Green Retrofit Plan.
    - d. If the PAE determines that the Eligible Project does not pass the Final Feasibility Assessment, the PAE will recommend to HUD that no Green Retrofit Plan Commitment be issued to the Owner. If HUD determines that no Green Retrofit Plan Commitment should be issued:
      - i. If the property is eligible for a Restructuring Plan, HUD shall not offer a Green Retrofit Grant or Green Retrofit Loan except in conjunction with a Restructuring Plan.
      - ii. Otherwise, HUD shall elect in its sole discretion either to not offer a Green Retrofit Grant or Green Retrofit Loan; or to offer a Green Retrofit Grant or Green Retrofit Loan contingent upon the Owner curing, at the Owner's expense from non-project funds, the factors causing the Eligible Project not to be viable long-term.
  5. **Owner's Proposed GRP O&M Plan.** The acceptability of the Owner's proposed GRP O&M Plan;
  6. **Recommended Terms of Green Retrofit Grant or Loan.** The amount and other terms of the proposed Green Retrofit Grant or Green Retrofit Loan as applicable; and
  7. **Recommended REDA.** A proposed Green Retrofit Program Rehabilitation Escrow Deposit Agreement setting forth each Green Retrofit together with appropriate specifications and other performance criteria.
- G. **Cooperation with Owner and Management Agent and Comments from Residents in Green Retrofit Plan Development.** A PAE must use its best efforts to seek the cooperation of the Owner and management agent in the development of the Green Retrofit plan, and to obtain comments from the Owner and management agent, and to consider comments provided by residents in the required tenant meeting, when developing the PAE's recommendations.
- H. **Rejection of a Request for a Green Retrofit Plan Because of Actions or Omissions of Owner or Affiliate or Project Condition.** Notwithstanding an initial determination to accept the Owner's request for a Green Retrofit Plan, the PAE is responsible for a further, more



complete and ongoing assessment of the eligibility of the Owner and project while the Green Retrofit Plan is being developed. If any of the grounds for rejection below exist, HUD may elect not to permit continued processing toward (or consideration of) a Green Retrofit Plan. HUD will advise the PAE if at any time HUD becomes aware that any of the grounds for rejection listed below exist. The PAE must advise HUD if at any time the PAE becomes aware that any of the grounds for rejection listed below exist.

1. **Suspension or Debarment.** At any time before a closing, the Owner is debarred or suspended under 2 CFR Parts 180 and 2424 as well as 48 CFR Parts 9 and 2409.
2. **Other grounds. If:**
  - a. An Affiliate is debarred or suspended under 2 CFR Parts 180 and 2424 as well as 48 CFR Parts 9 and 2409; or
  - b. The Owner, the management agent, or any Affiliate of the Owner or management agent is subject to a Limited Denial of Participation under 2 CFR Part 2424, Subpart J; or
  - c. HUD or the PAE determines that the Owner is an Ineligible Owner; or
  - d. HUD or the PAE determines that the project does not meet the physical condition standards in 24 CFR Part 401.558 and that the poor condition of the project is not likely to be remedied in a cost-effective manner through the Green Retrofit Plan; or
  - e. The PAE has determined that the Owner and/or management agent has failed to cooperate with the PAE's requests for information pursuant to Paragraph IV.G.

I. **Proposed Green Retrofit Plan Commitment.** After the PAE obtains HUD's approval of the Green Retrofit Plan, the PAE submits a proposed Green Retrofit Plan Commitment to HUD for approval, prior to submitting the commitment to the Owner for execution. The template form of Green Retrofit Plan Commitment is available from the GRP web site. The proposed Green Retrofit Plan Commitment must be in a form approved by HUD, incorporate the Green Retrofit Plan, and include the following:

1. **Green Retrofit Grant or Green Retrofit Loan.** HUD will determine what form of GRP funding to offer the Owner, taking into consideration the Owner's preference and HUD's requirements at Paragraph V.B. If HUD offers a Green Retrofit Grant, the commitment will include the amount of the grant. If HUD offers a Green Retrofit Loan, the commitment will include the amount of the loan and the interest rate, term and payment provisions of the loan.
2. **Recommended Green Retrofits.** The Green Retrofits recommended by the PAE, in sufficient detail to allow the Owner to obtain bids.
3. **Fair Housing and Civil Rights Compliance.** The Owner must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a).
4. **Prevailing Wage Requirements.** The Recovery Act requires the payment of not less than prevailing wage rates (Davis-Bacon wage rates) to all laborers and mechanics employed on Green Retrofit construction work. Additional information about Davis-Bacon wage and reporting requirements can be found at HUD Office of Labor Relations web site, [www.hud.gov/offices/olr](http://www.hud.gov/offices/olr) and at the Department of Labor (DOL) web site, [www.dol.gov/esa/whd/contracts/dbra.htm](http://www.dol.gov/esa/whd/contracts/dbra.htm). HUD Labor Relations staff are available to provide technical assistance. A list of the staff, their contact information,



and the jurisdictions they serve are on the Labor Relations web site (see above). See also HUD Handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs.

- a. The DOL determines locally prevailing wage rates which are published in Davis-Bacon wage decisions. Wage decisions may be accessed at [www.wdol.gov](http://www.wdol.gov).
  - b. Owners will be required to incorporate form HUD 2554, Supplementary Conditions of the Contract for Construction, and the applicable Davis-Bacon wage decision in all Green Retrofit construction contracts.
  - c. All construction employers, including the owner where the owner's own employees perform covered construction work, will be required to prepare, certify and submit to the owner weekly payroll reports for each week work is performed on the project. Owners must collect and submit these payroll reports to HUD or its designee. Construction employers are encouraged to use optional Payroll form WH-347. This form and instructions are available online at [www.dol.gov/esa/whd/forms/wh347instr.htm](http://www.dol.gov/esa/whd/forms/wh347instr.htm).
  - d. Inspectors at the property on behalf of HUD will conduct interviews with laborers and mechanics employed in the construction work. The interviews will be taken in confidence and documented on form HUD-11, Record of Employee Interview. Information collected during these interviews will be compared to the corresponding payroll reports to evaluate compliance.
5. **Flood Insurance.** If an Eligible Project is located in a Special Flood Hazard Area (SFHA) designated by the Federal Emergency Management Agency (FEMA), a Green Retrofit Grant or Green Retrofit Loan may be provided only if
- a. The Owner has the necessary flood insurance and provides evidence of it at closing;
  - b. The Owner does not have the necessary flood insurance and will obtain it and provide evidence of it prior to closing; or
  - c. The property is in an SFHA in a community that does not participate in the National Flood Insurance Program but less than one year has passed since the FEMA notification regarding such hazards.
6. **Rehabilitation Escrow Management.** The template form of Green Retrofit Program Rehabilitation Escrow Deposit Agreement is available from the GRP web site.
- a. Rehabilitation escrow arrangements, which shall include placing all Green Retrofit Grant and Green Retrofit Loan funds in escrow to be administered by a rehabilitation escrow administrator selected by HUD, upon such terms and conditions as HUD may require.
  - b. A requirement to commence rehabilitation within 60 days following the closing.
  - c. A condition that the Owner ensure its contractors and subcontractors are in compliance with the Davis-Bacon requirements in Paragraph IV.I.4 prior to the rehabilitation escrow administrator approving the Owner's request for reimbursement/payment.
  - d. A requirement to complete rehabilitation within 12 months following the closing.
  - e. A prohibition on disbursements from the escrow, except to disburse the remaining balance to HUD, beginning twenty-four (24) months following the closing.



- f. A provision that HUD, in its sole discretion, may extend the deadline for completion of rehabilitation, but not beyond twenty one (21) months following the closing, so as to allow at least 3 months for final inspections and reimbursements.
  - g. A requirement that any funds remaining in the rehabilitation escrow after payment of all eligible costs be returned to HUD and that the original amount of the Green Retrofit Grant or Green Retrofit Loan as applicable be reduced through a modification to the Legal Documents.
7. **Estimated Sources and Uses.** A schedule setting forth all sources and uses of funds to implement the Green Retrofit Plan.
8. **Required Owner Commitments.** Green Retrofit Owner Commitments in accordance with current guidance from HUD. The most current version of the Green Retrofit Owner Commitments is available from the GRP web site.
9. **Recommended O&M Plan.** A GRP Operations and Maintenance Plan that has been proposed by the Owner and is acceptable to the PAE (the most current version of the GRP O&M Plan is available from the GRP web site).
10. **OMB Reporting Requirements.** The Owner's agreement to comply with any requests from HUD, the PAE or the rehabilitation escrow administrator regarding applicable reporting requirements imposed by the Office of Management and Budget, with respect to the Green Retrofit Loan or Green Retrofit Grant. Specifically:
  - a. Recipients of Federal funding under the Recovery Act are required to comply with extensive reporting requirements. The reporting requirements outlined in this Notice may be further amended by the Office of Management and Budget (OMB) or other government authorities.
  - b. These reporting requirements apply to the Owner, who will have responsibility for compiling and submitting the required reports down to the first tier sub-recipient (i.e., contractors, but not subcontractors).
  - c. If Recovery Act funds are combined with other funds to fund or complete projects and activities, Recovery Act funds must be accounted for separately from other funds and reported to HUD or any federal web site established for Recovery Act reporting purposes.
  - d. **Required Data Elements.** The Owner and each contractor engaged by the Owner are required to submit the following information to HUD:
    - i. The total amount of funds received from HUD. This is the amount of funding actually received from the rehabilitation escrow administrator.
    - ii. The amount of recovery funds received that were obligated and expended for projects or activities. This is the total amount of funding provided, including the amount of funds for the Green Retrofits and incentives.
    - iii. A detailed list of all projects or activities for which recovery funds were obligated and expended, including the name of the project or activity; a description of the project or activity; an evaluation of the completion status of the project or activity; and an estimate of the number of jobs created and the number of jobs retained by the project or activity.
  - e. **Reporting Deadlines.** Reports are due to HUD ten days after the end of each calendar quarter beginning July 10, 2009.



11. **Post-Rehab Utility Baseline Analyses.** The Owner's agreement to provide updated utility releases (for the Owner and for tenants) in connection with any post-rehab utility baseline analyses commissioned by HUD.
  12. **Other.** Other terms and conditions prescribed by HUD.
- J. **Review of the Proposed Green Retrofit Plan.** Prior to presenting the recommended Green Retrofit Plan to HUD for its review and approval, the PAE will present the recommended Green Retrofit Plan to the Owner for its acceptance. This recommendation will include consideration of all Optional Green Alternatives selected by the Owner in the GRP Application.
1. **Owner Must Accept 75% of Recommended Green Retrofits By Cost.** HUD expects that the PAE's recommended Green Retrofits will be found acceptable by the Owner. The Owner may, however, decline up to 25 percent, by cost, of the originally recommended Green Retrofits.
  2. **If Owner Declines.** If the Owner chooses not to accept at least 75 percent of the recommended Green Retrofits, by cost, the PAE will recommend that HUD remove the project from the GRP.
  3. **Review and Approval by HUD.** After obtaining the Owner's acceptance, the PAE will submit the proposed Green Retrofit Plan (indicating for each recommended Green Retrofit whether the Owner accepted), to HUD for its review and approval. HUD will complete the Environmental Review described in subparagraph K prior to its approval of the Green Retrofit Plan and/or the Green Retrofit Plan Commitment.
  4. **Green Retrofit Plan Commitment.** Based on HUD's decision regarding the proposed Green Retrofit Plan, the PAE will prepare a Green Retrofit Plan Commitment for HUD's review and approval.
- K. **Environmental Review.** Before approving a Green Retrofit Grant or Green Retrofit Loan, and before approving a Green Retrofit Plan Commitment, HUD will perform an environmental review on the proposed Project, in accordance with 24 CFR Part 50, as evidenced by HUD's execution of a completed Form HUD-4128. Owners may not undertake work, or commit funds for work, that is proposed to be funded with a Green Retrofit Grant or Green Retrofit Loan, from the time HUD receives the Owner's GRP Application until HUD notifies the Owner that the Green Retrofit Grant or Green Retrofit Loan has been approved following the HUD environmental review. The proceeds of a Green Retrofit Grant or Green Retrofit Loan cannot be used to remediate environmental issues except if the costs are incidental to the approved Green Retrofit (such as removing lead-based paint on window frames when windows are being replaced as a Green Retrofit).
- L. **Execution of Green Retrofit Plan Commitment.** After HUD approves the Green Retrofit Plan, the PAE prepares the Green Retrofit Commitment and delivers it to the Owner for execution. After the Owner executes it, the commitment is returned to the PAE, who in turn provides it to HUD for execution.
- M. **Closing Conducted by a PAE.** After HUD has executed the Green Retrofit Plan Commitment, a PAE shall arrange for a closing in no more than thirty days, to execute all





documents necessary for implementation of the Green Retrofit Plan. The PAE must use standard documents approved by HUD, each of which will be used without modification unless the PAE determines, and HUD concurs, that modifications are required in order to comply with applicable State or local law.

- N. **Reserve for Replacements.** A Reserve for Replacements sufficient to ensure the property's long-term physical and financial integrity is integral to maintaining the property as affordable housing in decent, safe, and sanitary condition meeting the standards of the Uniform Physical Condition Standards in 24 CFR Part 5 subpart G.
1. **If No Reserve for Replacements.** If the Eligible Project does not have a Reserve for Replacements requirement, the Green Retrofit Plan approved by HUD shall recommend such reserve be established.
  2. **Annual Inflation Adjustment.** Unless already required in existing agreements, the Green Retrofit Plan Commitment shall require the Owner to initiate adjustment of the deposit to the Reserve for Replacements annually for inflation following the closing of the GRP transaction.
  3. **Best Efforts to Make Project Feasible At Current Monthly Reserve Deposit Level.** To the extent practicable, the PAE shall recommend Green Retrofits so that, after implementation, the 20-year capital needs of the project would be able to be met through the existing Reserve for Replacements balance, existing deposit to the Reserve for Replacements (with future inflation adjustments), and a reasonable allowance for interest income.
  4. **Required Increase to Monthly Reserve Deposit Level, If Needed.** If the PAE determines that 100% of 20-year capital needs cannot be met through the Replacement Reserve unless the existing deposit is increased, OAHF may, in consultation with the HUD multifamily field office, USDA Rural Development office, or State housing finance agency, as appropriate, recommend an increased deposit to the Reserve for Replacements.
  5. **Green Retrofit Grant or Loan Funds May Not Be Deposited to the Reserve for Replacements.** A deposit to the Reserve for Replacements is not an eligible use of GRP funding.
  6. **Existing Monthly Deposit is More Than Adequate.** If the existing monthly deposit to the Reserve for Replacements is greater than needed, OAHF may, in consultation with the HUD multifamily field office, USDA Rural Development office, or State housing finance agency, as appropriate, recommend a reduction in the existing deposit to the Reserve for Replacements.
- V. **Green Retrofit Grant**
- A. **Statutory Authority.** HUD's offer of a Green Retrofit Grant shall be made under the authority granted to the Secretary under the GRP to specify alternative requirements and will not use any existing HUD grant program.
  - B. **Eligibility.** There are three categories of Owners of Eligible Projects that HUD, in its discretion, may offer a Green Retrofit Grant or Green Retrofit Loan: (1) Owners of Section



202 projects, (2) Owners of Section 811 projects, and (3) nonprofit Owners of other projects with tenant paid utilities for at least heat and lights. All other Owners of Eligible Projects may only be offered a Green Retrofit Loan, except the incentives funded as part of the transaction will be evidenced by a grant pursuant to Paragraph VI.E.5.

- C. **AFS Required.** This requirement is applicable to Eligible Projects that are not currently subject to a requirement to file AFS to HUD, that are not USDA Section 515 projects, and that are not State housing finance agency financed projects. For such projects, each project-based Section 8 contract shall be modified to provide that
1. **Requirement.** The Owner shall comply with the Uniform Financial Reporting Standards of 24 CFR Part 5, Subpart H, including any changes in the regulation and related directives.
  2. **Current and Successive Contracts.** This obligation shall apply during the current term of such contract and for each successive renewal term.
  3. **Term.** This obligation shall apply during the term of the Green Retrofit Program Use Agreement.
- D. **Physical Inspection Required.** If the Eligible Project is not currently subject to such a requirement, each project-based Section 8 contract shall be modified to provide that
1. **Inspection Requirements.** The Owner shall comply with the Physical Condition Standards and Inspection Requirements of 24 CFR Part 5, Subpart G, including any changes in the regulation and related directives.
  2. **Other Requirements.** The Owner shall comply with HUD's Physical Condition Standards of Multifamily Properties of 24 CFR Part 200, Subpart P, including any changes in the regulation and related directives.
  3. **Current and Successive Contracts.** This obligation shall apply both during the current term of such contract and during each successive renewal term.
  4. **Term.** This obligation shall apply during the term of the Green Retrofit Program Use Agreement.
- E. **Amount of Green Retrofit Grant.** The amount of the Green Retrofit Grant shall be the sum of:
1. **Green Retrofits.** The estimated cost of the Green Retrofits, as approved by HUD, and less any owner contribution required pursuant to Paragraph IV.F.3;
  2. **Contingency.** A 10 percent contingency;
  3. **GRP Pre-Development Incentive.** The GRP Pre-Development Incentive of the lesser of 1 percent of the estimated cost of the Green Retrofits or \$10,000;
  4. **GRP Efficiency Incentive.** The GRP Efficiency Incentive of the lesser of 3 percent of the estimated cost of the Green Retrofits or \$30,000;
  5. **Targeted Low-Income Job Creation Incentive (If Applicable).** The estimated amount of any Targeted Low-Income Job creation incentive pursuant to Paragraph VII.E:
  6. **Rehabilitation Administration Fee.** Any fee for administration of the rehabilitation escrow deposit agreement; and
  7. **Utility Baseline Fees.** Any fees for completing:



- a. A baseline analysis of the Eligible Project's utility consumption (including utilities paid by tenants) prior to making Green Retrofits.
- b. One or more post-closing baseline analyses, after making Green Retrofits.

## VI. Green Retrofit Loan

- A. **Statutory Authority.** HUD's offer of a Green Retrofit Loan shall be made under the authority granted to the Secretary under the GRP to specify alternative requirements, and will not use any existing HUD loan program.
- B. **Eligibility.** Any Eligible Project may be offered a Green Retrofit Loan, at HUD's discretion.
- C. **AFS Required.** This requirement is applicable to Eligible Projects that are not currently subject to a requirement to submit AFS to HUD. For such projects, each project-based Section 8 contract shall be modified to provide that
  1. **Requirement.** The Owner shall comply with the Uniform Financial Reporting Standards of 24 CFR Part 5, Subpart H, including any changes in the regulation and related directives.
  2. **Current and Successive Contracts.** This obligation shall apply during the current term of such contract and for each successive renewal term.
  3. **Term.** This obligation shall apply during the term of the Green Retrofit Program Use Agreement.
- D. **Physical Inspection Required.** If the Eligible Project is not currently subject to such a requirement, each project-based Section 8 contract shall be modified to provide that
  1. **Inspection Requirements.** The Owner shall comply with the Physical Condition Standards and Inspection Requirements of 24 CFR Part 5, Subpart G, including any changes in the regulation and related directives.
  2. **Other Requirements.** The Owner shall comply with HUD's Physical Condition Standards of Multifamily Properties of 24 CFR Part 200, Subpart P, including any changes in the regulation and related directives.
  3. **Current and Successive Contracts.** This obligation shall apply both during the current term of such contract and during each successive renewal term.
  4. **Term.** This obligation shall apply during the term of the Green Retrofit Program Use Agreement.
- E. **Amount of Funding.** The amount of the funding shall be the sum of:
  1. **Amount of Green Retrofit Loan.**
    - a. The estimated cost of the Green Retrofits, as approved by HUD, and less any required owner contribution pursuant to Paragraph IV.F.3;
    - b. A 10 percent contingency;
    - c. Any fee for administration of the rehabilitation escrow deposit agreement; and
    - d. Any fees for completing:
      - i. A baseline analysis of the Eligible Project's utility consumption (including utilities paid by tenants) prior to making Green Retrofits.



- ii. One or more post-closing baseline analyses, after making Green Retrofits.
2. **Amount of Green Retrofit Grant for Incentives.** Simultaneous with the closing of the Green Retrofit Loan, the Owner will be offered a grant for the GRP incentives which at closing would be deposited to the rehabilitation escrow and earned and distributed as described as noted below:
  - a. The GRP Pre-Development Incentive of the lesser of 1 percent of the cost of the Green Retrofits or \$10,000 (see Paragraph VII.B);
  - b. The GRP Efficiency Incentive of the lesser of 3 percent of the cost of the Green Retrofits or \$30,000 (see Paragraph VII.C); and
  - c. The estimated amount of any Targeted Low-Income Job creation incentive (see Paragraph VII.E).

F. **Security.**

1. **Real Property.** The repayment of the Green Retrofit Loan shall be secured by a recorded mortgage or deed of trust.
2. **Subordination Requirements for Affiliate Indebtedness.** If any existing indebtedness is secured by the Eligible Project and is held by a party that is an Affiliate of the Owner or management agent, any Green Retrofit Plan Commitment shall include a provision requiring that:
  - a. The lien of such existing indebtedness be subordinated to the lien of the Green Retrofit Loan; and
  - b. Payments toward any such existing indebtedness shall be limited to the share of Surplus Cash, if any, that is distributed to the Owner.
3. **Personal Property.** The repayment of the Green Retrofit Loan shall also be secured by a security agreement and appropriate Uniform Commercial Code filings with respect to property other than real property.

G. **Payments from Surplus Cash.**

1. **Legal Documents Control.** The following is a summary of relevant provisions of the Legal Documents. In the event of conflict between this Notice and the Legal Documents, the Legal Documents shall control.
2. **Surplus Cash Distribution Sequence.** During the term of a Green Retrofit Loan any Surplus Cash shall be distributed annually as described below. NOTE: The definition of Surplus Cash considers accounts payable. HUD recognizes that accounts payable that were not paid or subordinated to the Green Retrofit Loan must be paid or otherwise, funds must be set aside, prior to this distribution sequence.
  - a. First, to HUD, in the amount of 50% of the Surplus Cash, as a payment toward the Owner's obligation under the Green Retrofit Loan;
  - b. Second, to the Owner, to pay any GRP Incentive Performance Fee earned with respect to such fiscal year;
  - c. Third, any remaining Surplus Cash shall be distributed (or deposited into the residual receipts account, as applicable) in accordance with the otherwise applicable provisions of the governing documents of the project.

H. **Acceleration.** HUD may declare the remaining balance of the Green Retrofit Loan



immediately due and payable and exercise any and all remedies provided in the Legal Documents if any of the following occurs:

1. **Rejection of HUD's Renewal Offer.** The Owner fails to request to renew an Expiring Contract, for a period of time that was established in the Legal Documents.; or
  2. **Refinancing.** Any debt secured by the project, with a lien position senior to that of the Green Retrofit Loan, is refinanced, terminated, accelerated, or paid in full, except as approved by the holder of the Green Retrofit Loan; or
  3. **Sale.** Ownership of the project is transferred and the Green Retrofit Loan is assumed by any subsequent purchaser, unless HUD agrees to such assumption pursuant to Paragraphs VI.K and VI.L.
  4. **Default of Business and Legal Documents.** The owner is in default under any document that evidences or secures the Green Retrofit Loan, or any other document executed by Owner in connection with the Green Retrofit Loan including, without limitation, the Green Retrofit Program Use Agreement.
- I. **Interest Rate.** The Green Retrofit Loan will accrue interest at a simple rate of interest (not compounded) unless the Owner requests otherwise and HUD agrees. HUD, in consultation with the Owner, may set the interest rate for the Green Retrofit Loan at either:
1. **One Percent.** 1 percent per year; or
  2. **AFR.** The Applicable Federal Rate.
- J. **Loan Term.**
1. **Minimum and Maximum Term.** HUD, in consultation with the Owner, may set the loan term for the Green Retrofit Loan at no less than 15 years and no more than 35 years.
  2. **Required Affordability Period.** In accordance with the Recovery Act requirement for an affordability period of at least fifteen years beyond any pre-existing affordability period, prepayment of a Green Retrofit Loan does not terminate the Green Retrofit Program Use Agreement or the affordability restrictions therein.
  3. **Due at Maturity.** The full unpaid balance, including any accrued but unpaid interest, is due and payable at maturity.
- K. **Subsequent Modification.** At the request of a project Owner, HUD may take any or all of the following actions with respect to a Green Retrofit Loan, any time more than two years after its origination, if HUD determines in accordance with subparagraph L that such modifications are in the interest of HUD:
1. **Modify Rate.** Modify the interest rate.
  2. **Extend Maturity.** Extend the maturity to a date that is no more than 35 years from the date of extension.
  3. **Modify Payment Provisions.** Modify the payment priority, payment amount, and/or other payment requirements.
  4. **Subordinate.** Subordinate the lien priority and/or payment priority of the Green Retrofit loan to new indebtedness, or otherwise modify the lien or payment priority of the Green Retrofit loan.
  5. **Allow Assumption.** Agree to allow assumption of the Green Retrofit loan by a



purchaser.

- L. **HUD's determination that modifications are in the interest of HUD.** The Secretary shall determine that the proposed actions are in the interest of the Secretary only if each of the following requirements is satisfied:
1. **Recapture of Excess Reserves.** Any Reserve for Replacements balance in excess of project needs, as determined by HUD, is repaid to HUD as a partial prepayment, up to the full unpaid balance, including any accrued but unpaid interest, of the Green Retrofit Loan; and
  2. **Other Applicable HUD Requirements.** The proposed refinancing or sale meets all applicable requirements of HUD other than requirements pursuant to this Notice; and
  3. **HUD Share of Proceeds (Sale).** If a proposed sale transaction involves a proposed equity payment to the seller and/or proposed compensation to the purchaser, HUD will require a lump sum partial prepayment of the Green Retrofit Loan equal to 50 percent of such seller and purchaser proceeds, as determined by HUD, up to the full unpaid balance, including any accrued but unpaid interest, of the Green Retrofit Loan, in addition to any prepayment necessary to meet the requirements of subparagraphs 1 or 5; and
  4. **HUD Share of Proceeds (Refinancing).** If a proposed refinancing transaction involves a proposed equity pay-out, HUD will require a lump sum partial prepayment of the Green Retrofit Loan equal to 50 percent of the proposed equity pay-out, as determined by HUD, in addition to any prepayment necessary to meet the requirements of subparagraphs 1 or 5, up to the full unpaid balance, including any accrued but unpaid interest of the Green Retrofit Loan; and
  5. **Note Value Test.** The proposed actions are in connection with a proposed refinancing of the first mortgage debt, and/or with a proposed sale of the project; and either:
    - a. the expected value to HUD of the future stream of repayments, on a net present value basis, would not be decreased as a result of the proposed actions, taking into account any proposed payment to be made at the closing of the proposed refinancing or sale (other than a prepayment pursuant to subparagraphs 1, 3 or 4); or
    - b. the expected value to HUD of the future stream of repayments, on a net present value basis, would not be decreased by more than 25 percent as a result of the proposed actions, taking into account any proposed payment to be made at the closing of the proposed refinancing or sale (other than a prepayment pursuant to subparagraphs 1, 3 or 4), and the proposed actions include a Use Agreement pursuant to MAHRA (or affordability and use restrictions that are determined by HUD to be equivalent as to level of affordability and level of enforceability), with a term extending at least 30 years from the closing of the proposed refinancing or sale and at least 10 years beyond the term of any existing MAHRA Use Agreement.

## VII. Other GRP Features



- A. **Re-determination of allowances for tenant-paid utilities.** If any utilities are paid by tenants, the Owner will agree, by executing the Green Retrofit Plan Commitment, to re-determine tenant utility allowances at least twelve (12) months and not more than eighteen (18) months following completion of the Green Retrofits, and periodically thereafter, in accordance with applicable requirements of HUD.
- B. **GRP Pre-Development Incentive.** The GRP Pre-Development Incentive will be payable to the Owner at the closing of the Green Retrofit Grant or Green Retrofit Loan. By offsetting owner's due diligence and out-of-pocket closing costs, HUD ensures Owners can timely consummate the GRP transaction and that will minimize the number of projects that are unable to close due to associated costs. For transactions subject to Green Retrofit Plan Commitments executed by HUD on or before the expiration date of this Notice, the amount of the GRP Pre-Development Incentive amount shall be the lesser of:
1. \$10,000; or
  2. 1 percent of the estimated cost of the Green Retrofits.
- C. **GRP Efficiency Incentive.** The GRP Efficiency Incentive is time-based, incentivizing timely completion of retrofits. Timely completion creates jobs, purchases materials, improves the properties and communities, and accesses future efficiency savings, more quickly.
1. **Maximum Amount.** For transactions subject to Green Retrofit Plan Commitments executed by HUD on or before the expiration date of this Notice, the maximum GRP Efficiency Incentive amount shall be the lesser of:
    - a. \$30,000; or
    - b. 3 percent of the estimated cost of the Green Retrofits; or
    - c. funds remaining in the rehabilitation escrow after paying the actual cost of all items except for the GRP Efficiency Incentive.
  2. **Based on Estimated Cost.** The GRP Efficiency Incentive amount will not be adjusted based on the actual cost of the Green Retrofits.
  3. **Potential Reduction Based on Delayed Completion of Rehab.** The actual GRP Efficiency Incentive will be a percentage of the maximum incentive as follows:
    - a. 100% if all repairs are completed within twelve (12) months after the closing, as verified by the Rehabilitation Escrow Administrator.
      - i. The PAE's recommended Green Retrofit Plan may provide a period longer than twelve (12) months based on exceptional factors such as an extremely short building season.
      - ii. After closing, this twelve (12) month limitation may be extended at HUD's sole discretion based upon a showing that the Owner commenced rehabilitation timely and that delays occurred that were beyond the Owner's reasonable control.
    - b. Less 10% for each month or partial month by which the completion of repairs exceeds twelve (12) months.
    - c. No GRP Efficiency Incentive will be earned or paid if less than all Green Retrofits are completed, or if any Green Retrofits are completed more than 21 months after the closing, as verified by the Rehabilitation Escrow Administrator.



- D. **GRP Incentive Performance Fee.** The GRP Incentive Performance Fee recognizes the demands on the Owner to continually realize efficiencies and savings, maintain a healthy environment for residents, and continually provide opportunities for staff, contractors and residents to practice green building principles. Successful completion of those activities contributes to HUD's ability to maximize the return on the Green Retrofit Loans.
1. **Projects Not Already Eligible for a Mark-to-Market Incentive Performance Fee.** For transactions subject to Green Retrofit Plan Commitments executed by HUD on or before the expiration date of this Notice, the GRP Incentive Performance Fee amount shall be 3.0% of the Effective Gross Income derived from the property.
  2. **GRP Projects Referred to Mark-to-Market Because of Infeasibility.** For transactions determined infeasible and referred to Mark-to-Market, any Incentive Performance Fee will be in accordance with applicable provisions of the Mark-to-Market program.
  3. **Eligible Projects Already Eligible for a Mark-to-Market Incentive Performance Fee.**
    - a. Green Initiative projects are not eligible. See the definition of Ineligible Project.
    - b. For other M2M debt restructure projects, the Green Retrofit Plan Commitment will provide that the existing M2M IPF percentage will be increased by 50% (e.g., a 3.0% IPF will be increased to 4.5%).
  4. **Pre-Conditions.** The Owner must satisfy pre-conditions, including physical, managerial and financial soundness, as further described in the Legal Documents, in a manner acceptable to HUD, to earn the GRP Incentive Performance Fee.
  5. **Duration.** The Owner shall be eligible to receive the GRP Incentive Performance Fee with respect to each project fiscal year ending during the term of the Green Retrofit Program Use Agreement.
- E. **Targeted Incentive for Job Creation (optional).** The Recovery Act provides that HUD could offer a targeted incentive to Owners to encourage job creation for low-income and very low-income (as those terms are defined in the applicable Eligible Program) individuals. This incentivizes owners to contract with Eligible Residents and Eligible Business Concerns for completion of Green Retrofits. It creates jobs, training, and builds future job opportunities in the emerging green sector.
1. **Incentive Based on Actual Rehab Payments.** The incentive described in this paragraph is for making actual payments from Green Retrofit Grant and Green Retrofit Loan funds to "Eligible Residents" and "Eligible Business Concerns" that equal or exceed the levels discussed in this paragraph. Payments may be for labor, materials, or both.
    - a. An "Eligible Resident" is: a low- or very low-income person residing in the metropolitan area or Non-metropolitan County in which the Eligible Project is located.
    - b. An "Eligible Business Concern" is a business that can provide evidence that it meets one of the following:
      - i. 51 percent or more owned by Eligible Residents; or





- ii. At least 30 percent of its full time employees include persons who are currently Eligible Residents, or within three years of the date of first employment with the business concern were Eligible Residents.
- 2. **Amount of Incentive.** If the incentive is earned, the incentive amount will be the lesser of:
  - a. 10 percent of amounts actually paid to Eligible Residents and Eligible Business Concerns; or
  - b. \$25,000.
- 3. **Requirements to Qualify for the Incentive.** In order to qualify for this incentive, the Owner who elects to pursue it must comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations found at 24 CFR Part 135. Additional information on these requirements can be found at [www.hud.gov/section3](http://www.hud.gov/section3).
  - a. Requirements. Owners must comply with the “Recipient Responsibilities” found in Subpart B of 24 CFR Part 135, and to ensure the compliance of any contractors, developers, or sub-recipients of covered funding.
  - b. Reporting Requirements. Owners are required to comply with the Section 3 annual reporting requirements found at Subpart E of 24 CFR Part 135.
  - c. Final Reporting. Owners shall submit a final Section 3 summary report to HUD after completing the Green Retrofits indicating the amount of employment, contracting, and other economic opportunities were generated by the expenditure of these funds.
- 4. **Minimum Amount Paid to Eligible Recipients.** An Owner will earn the incentive if all Green Retrofits are completed, the Owner is otherwise in compliance with the requirements hereof, and the actual amount paid to Eligible Residents and Eligible Business Concerns equals or exceeds the level indicated below.

<b>Amount of Green Retrofit Grant or Loan</b>	<b>% of Total Paid to Eligible Residents and/or Eligible Business Concerns</b>
Up to \$600,000	4.0% of total
\$600,001-\$800,000	3.5% of total
\$800,001-\$1 million	3.0% of total
Above \$1 million	2.5% of total

**VIII. Implementation of the Green Retrofit Plan After Closing**

- A. **Monitoring and Compliance Agreements.** During the term of a Green Retrofit Grant Use Agreement or Green Retrofit Loan, HUD will regulate the operations of the mortgagor through the terms and conditions of recorded documents and other agreements entered into in conjunction with the GRP but which are not recorded.
- B. **Servicing of Green Retrofit Grants and Green Retrofit Loans.** HUD or its designee will be responsible for servicing the Green Retrofit Grant or Green Retrofit Loan, as applicable, including determining the amounts receivable by the Owner for the GRP Efficiency Incentive



and GRP Incentive Performance Fees, and including determining the amounts receivable by HUD pursuant to Paragraph VI.G.2.b.

- C. **Post-Closing Utility Baseline Analysis.** The Green Retrofit Plan Commitment will include the Owner's agreement to provide an updated utility baseline analysis, acceptable to HUD, for a twelve month period beginning as soon as practicable following completion of the Green Retrofits to the satisfaction of the Rehabilitation Escrow Administrator (i.e., beginning approximately thirteen months following the closing).

If you have any questions concerning this Notice, please visit the GRP web site or OAHP's Resource Desk, at [www.oahp.net](http://www.oahp.net), where there is a Question & Answer feature.

Sincerely,

Brian D. Montgomery  
Assistant Secretary for Housing -  
Federal Housing Commissioner

Attachments:

Requirements for Owner's Evidence of Authority



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

## Green Retrofit Program for Multifamily Housing (“GRP”) Requirements for Owner’s Evidence of Authority

### OVERVIEW

Each Owner must include in its GRP Application evidence of authority to accept a Green Retrofit Plan Commitment and to close a Green Retrofit Loan or Green Retrofit Grant. This document provides further guidance on obtaining the necessary consents and certifications to comply with the requirements.

### REQUIREMENTS FOR GRP APPLICATION

The requirements are detailed in Paragraph II.A of the Notice. Failure to meet these requirements will result in HUD rejecting the application.

### DOCUMENTATION REGARDING OWNERSHIP CONSENTS (II.A.3.A)

**Option (i): No Consent Required.** If the Owner’s representative needs no further consent to enter into and consummate a GRP transaction:

I certify that, under the [describe organizational documents] of [name of ownership entity], I have the authority without the need to obtain the consent of any other party to execute a Green Retrofit Plan Commitment on behalf of the Owner and to execute the Legal Documents at the closing on behalf of the Owner.

**Option (ii): Consents Required.** If the Owner’s representative needs consent to enter into and consummate a GRP transaction:

I certify that, under the [describe organizational documents] of [name of ownership entity], consent of the following parties having ownership interests will be required before I will have the authority to execute a Green Retrofit Plan Commitment on behalf of the Owner and to execute the Legal Documents at the closing on behalf of the Owner: [describe parties whose consent is required, e.g. limited partners holding at least 60% ownership interest, or at least x of y members of the Board of Directors]. I certify that I have requested the consent of each such party and that I have provided to each such party information about the potential Green Retrofit transaction sufficient to allow such party to understand the nature of the transaction and specifically discussing at least the following: new encumbrance, new use agreement, repayment requirements, new incentives, future commitments and responsibilities, and changes to cash distribution provisions. I further

certify that I have received certifications in a form acceptable to HUD from [list]. A copy of each such certification is attached hereto. I certify that, if such certifications were converted to binding consents, that would be sufficient to authorize me pursuant to the organizational documents referenced above to consummate the Green Retrofit transaction on behalf of the Owner.

**Acceptable Certification Language (Ownership).** If consent is required, the party holding an ownership interest must offer the following certification:

I certify that I have received information about the potential Green Retrofit transaction for [identify the Eligible Project] sufficient to allow me to understand the nature of the transaction and specifically discussing the following: new encumbrance, new use agreement, new incentives, future commitments and responsibilities, and changes to cash distribution provisions. I further certify that I have no objection to the potential Green Retrofit transaction, and that I am prepared to give my binding consent to such transaction within ten (10) days of a request to do so.

DOCUMENTATION REGARDING LENDER OR OTHER PARTIES CONSENTS (II.A.3.A)

**Option (i): No Consent Required.** If the Owner's representative needs no further consent to enter into and consummate a GRP transaction:

I certify that [either] [there are no lender or lienholder or other parties that do not hold an ownership interest who must consent] [or] the following is a list of all lienholders with respect to [identify the Eligible Project]: [list of lienholders]. I certify that no consent is needed from any party listed herein or any other party other than a party holding an ownership interest in order for [name of ownership entity] to execute a Green Retrofit Plan Commitment and execute the Legal Documents at the closing.

**Option (ii): Consents Required.** If the Owner's representative needs consent to enter into and consummate a GRP transaction:

I certify that the following is a list of all lenders or lienholders and all other parties (other than parties holding an ownership interest) with respect to [identify the Eligible Project whose consent is required before [name of ownership entity] can execute a Green Retrofit Plan Commitment and/or execute the Legal Documents at the closing: [list parties whose consent would be required]. I certify that I have requested the consent of each such party and that I have provided to each such party information about the potential Green Retrofit transaction sufficient to allow such party to understand the nature of the transaction and specifically discussing at least the following: new encumbrance, new use agreement, repayment requirements, new incentives, and changes to cash distribution provisions. I further certify that I have received certifications in a form acceptable to HUD

from each of them. A copy of each such document is attached here to as [attachment x]. I certify that, if such certifications were converted to binding consents, there would be sufficient binding consents under the terms of the organizational documents to authorize me to consummate the Green Retrofit transaction on behalf of the Owner.

**Acceptable Certification Language (Other Than Ownership).** If consent is required, the party holding an ownership interest must offer the following certification:

I certify that I have received information about the potential Green Retrofit transaction for [identify the Eligible Project] sufficient to allow me to understand the nature of the transaction and specifically discussing the following: new encumbrance, new use agreement, repayment requirements, new incentives, and changes to cash distribution provisions. I further certify that I have no objection to the potential Green Retrofit transaction, and that I am prepared to give my binding consent to such transaction timely within ten (10) days of being requested to do so.

#### LIENHOLDER CERTIFICATIONS INVOLVING HUD

If the loan documents require the consent of the lender, evidence of the lender's consent is required to be submitted with the GRP Application. Where an FHA-insured lender is a lienholder, the lender may assume that FHA will consent upon request

Where HUD or FHA itself is a lienholder (e.g., a Section 202 direct loan, or a HUD-Held loan), the Owner may assume that HUD will consent upon request, and no evidence of HUD's consent is required to be submitted with the GRP Application.

#### OPINION OF COUNSEL (II.A.3.B)

Counsel giving the following opinion must be licensed in the jurisdiction in which the ownership entity is organized. The opinion must state that, on the assumption that any certifications (in a form acceptable to HUD) that the Owner has received were converted into binding consents prior to closing:

1. all consents that would be required in order to consummate the Green Retrofit transaction have been received; and
2. the party signing the GRP Application on behalf of the Owner has been legally authorized to do so and to bind the Owner in accordance with its terms without any further approvals or consents being obtained.