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Office of General Counsel, Regulations Division  
Department of Housing and Urban Development,  
451 7th Street SW  
Room 10276  
Washington, DC 20410-0500  
*Submitted electronically through [www.regulations.gov](http://www.regulations.gov)*

**Re: Docket No. FR-6350-N-01 Request for Information: Green and Resilient Retrofit Program**

The following information is submitted on behalf of the National Housing Law Project (NHLP) and the National Low Income Housing Coalition regarding the Department of Housing and Urban Development's request for information on the Green and Resilient Retrofit Program.

The National Housing Law Project (NHLP) is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 1,900 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families.

The National Low Income Housing Coalition (NLIHC) is dedicated solely to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. Our members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on policy and funding improvements for extremely low-income people who receive and those who need federal housing assistance.

The National Housing Trust (NHT) creates and preserves affordable homes to provide opportunity, advance racial equity, reduce economic disparities, and strengthen community resilience through practice and policy. NHT's team of passionate experts and advocates brings

resident services, lending, policy, sustainability, and development under one roof, giving us the tools to make real change possible.

The Green and Resilient Retrofit Program (GRRP) funding is a critical investment for preserving and improving the HUD Multifamily housing stock. Tenants are the primary beneficiaries of HUD's housing programs and will be the most impacted by how HUD allocates and prioritizes the GRRP funds. HUD tenants still disproportionately live in areas of concentrated poverty and racial segregation. They are also more likely to live in a community experiencing environmental justice issues and in areas with flood maps that have been drafted in a way to harm them.<sup>1</sup> As a result of increased exposure to climate hazards, low-income tenants – especially those served by the HUD housing programs – are often more likely to experience increased burdens, from increased heating and cooling costs and poor internal air quality, to negative health outcomes and even death.<sup>2</sup> Moreover, climate change has disproportionate impacts on subsidized housing residents, who are often members of communities that are hit the hardest with the least ability and resources to recover from natural disasters.

We submit the following recommendations in response to Questions 6 and 7 on what equity considerations HUD should take into account when implementing property retrofits and benchmarking, and how HUD should target multifamily properties for property-level resilience interventions.

#### Question No. 6 - Equity Considerations

##### **Recommendation No. 1 - Require that funding recipients meaningfully engage and consult with tenants.**

As noted above, while tenants are the primary beneficiaries of HUD's assisted housing programs, their expertise and insight into their housing conditions are often overlooked or ignored. HUD tenant's perspectives are a critical way to ensure equity in the GRRP implementation. HUD should ensure that HUD-assisted tenants are part of the decision-making process with regard to what happens to their housing. For example, owners say that they struggle to secure tenant utility data due to privacy concerns of utility providers. Tenant consultation can help to ensure tenants and owners understand what the out of pocket costs of utilities are for a property, and uncover what energy efficiencies can best reduce tenant energy costs.

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<sup>1</sup> A look at GoogleMaps reveals unsettling reality of recovery for Houston renters, Texas Housers Blog (March 19, 2018), <https://texashousers.org/2018/03/19/a-look-at-googlemaps-reveals-unsettling-reality-of-recovery-for-houston-renters/>.

<sup>2</sup> Ari Ephraim Feldman, *Tenant advocates say Bronx fire can be catalyst for stronger housing oversight*, Spectrum News NY1 (Jan. 13, 2022), <https://www.ny1.com/nyc/all-boroughs/news/2022/01/12/tenant-advocates-say-bronx-fire-can-be-catalyst-for-stronger-housing-oversight>.

The GRRP application and review process should take into consideration and plan for the special needs of certain populations currently living in the property. For example, elderly residents or tenants with disabilities may need additional utility allowance payments to cover the costs associated with using medical equipment, larger electrical panels to accommodate that medical equipment, or the installation of central air. The removal of gas appliances is critical for many populations, including residents with respiratory illnesses.<sup>3</sup> With a focus on healthy housing and the improvement of indoor air quality, it is also critical that tenants have the opportunity to weigh in on healthy housing concerns (i.e., mold, pests, water infiltration, etc.) since REAC scores only evaluate 10% of the unit interiors. Owners should have to submit documents confirming tenant consultation as to tenant energy costs and healthy housing needs.

HUD should impose additional requirements for applicants proposing more extensive retrofitting projects as opposed to light retrofitting. HUD should require the owners of extensive retrofit projects to meaningfully engage with tenants to determine how the funds should be used, and inform tenants of the purpose of any funds awarded and the impact that it will have on residents. HUD should require that owners consult with tenants prior to submitting an application to determine what the needs are, again when the funds are awarded, and a further consultation during the construction process so that tenants have notice of any temporary relocation or inconveniences. For example, under the Mark-to-Market program, tenants are consulted as a part of the process to determine the redevelopment needs for the project. The Participating Administering Entity holds tenant meetings, conducts a survey of tenants, and completes an inspection of the property, all with the purpose of ensuring that any redevelopment includes the concerns of tenants. Tenant voices are likewise integral to this, in some cases, once in a decade redevelopment process for many properties as a result of GRRP funds. All notices provided through the program should be written in plain language and tenant consultation should include both in-person and virtual meeting options to maximize tenant participation.<sup>4</sup> HUD should also consider developing a GRRP Plan Template to help funding recipients provide detailed reporting on tenant engagement as well as their retrofit plan.<sup>5</sup>

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<sup>3</sup> Corryn Wetzel, *Gas Stoves Are Worse For Climate and Health Than Previously Thought*, Smithsonian Magazine (Feb. 1, 2022) <https://www.smithsonianmag.com/smart-news/gas-stoves-are-worse-for-climate-and-health-than-previously-thought-1809979494/>.

<sup>4</sup> Similarly, CDBG-DR grantees consult with stakeholders before the development of Action Plans that determine the disaster recovery programs and how funds will be allocated as well as once after the Plan is created and upon any substantial amendments to the Plan. After the Plan is created, the consultation requirements include that it be published, a 30-day minimum public comment requirement, at least one public hearing which must be held “at times and locations convenient to potential and actual beneficiaries” and that are accessible to people with disabilities and LEP individuals. Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG-DR Consolidated Waivers and Alternative Requirements Notice, 87 Fed. Reg. 6364, 6384 (Feb. 3, 2022).

<sup>5</sup> For example, for the Homeowner Assistance Fund, the Treasury Department created a Grantee Plan Template to ensure detailed reporting on needs, engagement, program design, performance goals, readiness, and budget, available at, <https://home.treasury.gov/system/files/136/HAF-Grantee-Plan-Template.pdf>.

To promote transparency, HUD should require that owners make all materials, including the application, final plan (including any relocation plan) and any subsequent amendments to the plan, available to tenants and their representatives, similar to what is required during the 8(bb) transfer process.<sup>6</sup> The documents must be made directly available to the tenants and their representatives upon request, without cost to the tenants or requiring the requester to submit a request under the Freedom of Information Act.<sup>7</sup>

HUD should also require that owners provide written notice to tenants prior to the owner submitting their application for funding, when the funds are awarded and during the construction process. Tenants should be provided the opportunity to submit comments in response to the notices to the owner. Similar to the 8(bb) transfer process, those comments should be included with the owner's application for funding and HUD should weigh those comments in deciding whether to award funding. For any applications that are approved for funding, HUD should institute ongoing monitoring of the projects. HUD should also require that owners provide notice to tenants that clearly identifies the process for and who is responsible for monitoring landlord compliance and handling tenant complaints. With regard to the complaint process, tenants' complaints should receive an expedited review and resolution. Feedback from tenants is critical to the monitoring process and helps to ensure that recipients are complying with the adopted plan and meeting their obligations under civil rights laws.

The tenant engagement and consultation process must be accessible to all tenants, including tenants who are Limited English Proficient (LEP) and tenants with disabilities. Where any of the impacted tenants are LEP or have specific audio or visual needs to ensure effective communication, the notices should be translated into the appropriate languages and formats. Similarly, any in-person or virtual meetings need to be accessible and include translation into the appropriate languages and formats as well as interpretation. While owners should be meeting their language access obligations under Title VI of the Civil Rights Act with regard to serving LEP tenants, these obligations do not necessarily require or guarantee that all impacted LEP tenants receive written translation of vital documents or oral interpretation. As such, it may be necessary for HUD to include additional funding for applicants to meet these LEP obligations.

## **Recommendation No. 2 - Protect tenants from displacement and utility cost increases or inequities.**

*Minimize displacement and relocation as a result of GRRP.* Because relocation can be particularly challenging for certain populations, including individuals experiencing disabilities

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<sup>6</sup> Notice-H-2015-03 (April 3, 2015) at 19-21, <https://www.hud.gov/sites/documents/15-03HSGN.PDF>.

<sup>7</sup> HUD could also contribute to transparency by posting the retrofit plans and related documents online, similar to the Treasury Department's posting of Homeowner Assistance Fund plans and related documents on its web site, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund/plans>.

and families with children, recipients should be encouraged to develop plans that minimize the need for relocation. To the extent that relocation is necessary to complete property improvements, recipients should have to identify specific steps that they will take to ensure tenants are not adversely impacted. HUD must require that owners comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). 42 U.S.C. § 4601, et seq. Owners must submit a relocation plan to HUD for approval, seek approval from HUD for any changes to the relocation plan, and ensure that the required (in kind or direct) financial assistance covers the actual, reasonable moving and related expenses of affected HUD-assisted tenants. 49 C.F.R. §§ 24.205 & 24.301 - 24.306. In addition, HUD must ensure that the relocation assistance provided minimizes the burden of a tenant's move, striving where possible to move tenants within the immediate neighborhood, so as to minimize impact on education, employment, and existing networks. Where rehabilitation requires longer term relocation of tenants, owners should be required, with HUD approval, to pursue either pass-through leases or temporary relocation to existing PBRA developments. HUD must also ensure that tenants are not wrongfully displaced during rehabilitation, through formal or informal evictions or subsidy terminations or by not providing relocation assistance. Such relocations should not be used as an opportunity to re-screen tenants or to permanently displace them.

*Equitable and real assessment of utility and consumption rates are essential.* During the pandemic, energy costs precipitously rose, making most utility allowance schedules out of pace with the out-of-pocket utility costs borne by tenants. As a result, in properties that are already individually metered, HUD should require GRRP funding recipients to properly evaluate prior utility allowance schedules and set new utility allowances before the funding is issued. Tenants should receive rent credits for the period of time the utility allowances were too low. At the same time, HUD should also prohibit GRRP funding recipients from evicting tenants for nonpayment of utilities during the pendency of re-evaluation of utility allowances. HUD should also require GRRP funding recipients to ensure that tenants post-retrofit utility costs are properly measured over at least one year, or potentially a longer period of time in order to account for any significantly unseasonable weather (i.e., heat waves<sup>8</sup> or cold snaps<sup>9</sup>) that would impact consumption rates. In this way, post-retrofit utility allowance schedules are more likely to capture rising consumption rates due to climate change and trigger certain regulatory requirements of project owners. Consumption of those tenants who receive a low-income rate from the utility should not be counted as part of the baseline unless all tenants receive such a rate. As a condition of receipt of GRRP funding, HUD should require project participants to do

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<sup>8</sup> Tom Schuba, *Owner of senior home where 3 women died during hot spell previously cited for lack of heat*, Chicago Sun Times (May 19, 2022), <https://chicago.suntimes.com/2022/5/18/23125981/james-sneider-apartments-rogers-park-hispanic-housing-development-corporation-heat-death>.

<sup>9</sup> Erin Douglas, *Winters get warmer with climate change. So what explains Texas' cold snap in 2021?*, The Texas Tribune (Dec. 14, 2021), <https://www.texastribune.org/2021/12/14/winter-weather-texas-climate-change/#:~:text=So%20what%20explains%20Texas%20cold,messing%20with%20complex%20weather%20proces ses>.

more than what is required under Notice H-2015-04, by providing annual reporting to HUD of utility costs for improved units, and conduct regular audits of projects to ensure that any rent or utility cost increases are not being passed on to tenants. If the utility allowance is to decrease, it should be phased in over three years as post-retrofit consumption and energy rates continue to be analyzed.

*Master metering prioritization.* A key equity principle would be to maintain master metering in existing HUD projects and to allow for the conversion back to master metering in individually metered projects. Project owners are most capable of bearing the costs of utilities and more directly reaping the benefits of energy improvements and efficiency. Master metering also reduces the complex obligations of utility allowance requirements that often led to tenants not receiving sufficient funds to cover their utility costs, which threatens their housing and credit.

### **Recommendation No. 3 - Include a civil rights review of the proposed plan.**

There have been repeated examples of HUD-assisted tenants experiencing civil rights violations during the rehabilitation of their units.<sup>10</sup> These violations have ranged from tenants with mobility impairments being trapped in their units because elevators were taken out of service to rehabilitated units that lacked necessary accommodations and modifications that existed in the unit prior to rehab. Thus, it is imperative that recipients are bound by and monitored for compliance with civil rights laws, starting with the application process until project completion.

HUD can also promote equity and prioritize funding decisions based on whether the applicants certify that they will comply with civil rights laws, including the duty to affirmatively further fair housing, and that they will not take any action materially inconsistent with these obligations. At a minimum, applicants should be required to disclose the existence of any active and open civil rights complaints, regardless of whether there has been a resolution or preliminary finding in the owner's portfolio, and any findings of discrimination against them within the last 2 years.

### Question No. 7 - Criteria for targeting properties and evaluating resilience strategies

### **Recommendation No. 4 - Target funds to improvements that ensure long-term affordability and preservation.**

HUD must also take steps to ensure that awards of GRRP funding for extensive retrofitting projects are coupled with assurances that the projects remain affordable for the long-term. HUD should not approve any plans that would result in a net loss of units. HUD should require owners

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<sup>10</sup>Human Rights Watch, *The Tenant Never Wins: Private Takeover of Public Housing Puts Rights At Risk in New York City* (Jan. 27, 2022), <https://www.hrw.org/report/2022/01/27/tenant-never-wins/private-takeover-public-housing-puts-rights-risk-new-york-city>.

who receive funding awards to agree to a 20-year affordability term beyond the existing stated term. As a condition of receipt of GRRP funds, HUD should require a GRRP use restriction recorded against the property, that states that the owner (and any subsequent owners) will accept all HAP contract renewals offered by HUD for the next 20 years, that tenant rents (which include utilities) are capped at 30% of adjusted income, that the project owner agrees to maintain the housing in decent, safe, and sanitary condition, and that tenants are expressly third-party beneficiaries to the use restriction. A use restriction ensures that this significant windfall of federal funding will be used responsibly and to the benefit of the tenants.

In deciding whether to award GRRP funds, HUD should also evaluate if the owner, buyer, or another entity involved has the capacity to complete the retrofit without an adverse impact on the tenants. As part of this evaluation, if the application involves a troubled property, including a property with a most recent REAC score of less than 60 and with Exigent Health and Safety deficiencies, HUD must evaluate if the owner or buyer has the capacity to successfully own and manage a troubled project and undertake the rehabilitation necessary to address any existing conditions issues. To be eligible for GRRP funding, owners or buyers of troubled properties must execute a HUD approved plan developed in consultation with the tenants to address any deficiencies, and that they demonstrated to HUD's satisfaction that there will be net financial benefits for tenants.

In order to ensure that GRRP also results in long term affordability of HUD's Multifamily portfolio, HUD should prioritize awarding funds in the form of grants to mission-driven, nonprofit owners, who are committed to preserving affordable housing for tenants, but likely have less access to the capital necessary to undertake these improvements on their own.

### **Recommendation No. 5 – Ensure that funding recipients prioritize disaster readiness**

In addition to the implementation of physical mitigation strategies, climate resilience also requires that building owners are prepared to respond during emergencies or disasters. A report released by NLIHC and the Public and Affordable Housing Research Corporation (PAHRC) found that while 32% of federally assisted housing stock are at very high or relatively high risk of negative impact from natural hazards, federally-assisted renter households are less likely to have the supplies and funds necessary to weather a disaster.<sup>11</sup> As a result, HUD must ensure that recipients of GRRP funds are prioritizing disaster readiness internally and among tenant households along with the physical resilience of their portfolio.

To accomplish this goal, HUD should require that applicants submit copies of their emergency preparedness and response plans. HUD should review these preparedness plans to establish that

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<sup>11</sup> National Low Income Housing Coalition, Public and Affordable Housing Research Corporation, *Taking Stock: Natural Hazards and Federally Assisted Housing*, (June 2021), <https://preservationdatabase.org/wp-content/uploads/2021/06/Taking-Stock.pdf>.

the building owner has effective plans to allow for the identification and analysis of potential hazards to its portfolio, the continuity of operations during and after disasters, formal and informal tenant emergency communications before, during, and after a disaster, post-disaster assessment of its housing portfolio, documentation of damages and repair costs, the repair of damaged units and property, apply for assistance from federal agencies beyond HUD, track and rehouse tenants whose units were damaged or destroyed, and ensure tenants are aware of emergency plans and recommendations for the improvement of household-level resilience. HUD should prioritize applicants with robust emergency response plans in line with recommendations made by the agency – such as the Public Housing Agency Disaster Readiness, Response, and Recovery Guidebook.<sup>12</sup>

In addition to evaluating the emergency preparedness and response plans of applicants, HUD should require that such plans be made accessible to tenants as a condition for the receipt of GRRP funds. Should modifications of the plans occur, tenants must be permitted the ability to review and comment on them.

Thank you for your consideration of our comments and recommendations. We look forward to working with HUD and are happy to further discuss our suggestions.

Sincerely,

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<sup>12</sup> U.S. Department of Housing and Urban Development, *Public Housing Agency Disaster Readiness, Response, and Recovery Guidebook*, (September 2022), [https://www.hud.gov/sites/dfiles/PIH/documents/PHA-D3R\\_Guidebook.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/PHA-D3R_Guidebook.pdf).