

# Now & Next

## Affordable Housing Alert

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### **After preliminary injunction, HUD resumes processing GRRP awards**

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HUD resumes processing Green and Resilient Retrofit Program awards after court issues preliminary injunction, but recipients should act quickly as legal challenges continue.



#### **What's the impact?**

- The court's preliminary injunction requires HUD to process and disburse GRRP funds, but the scope of protection for awardees remains somewhat ambiguous, and the Department of Justice has appealed, creating ongoing legal uncertainty for recipients.
- GRRP award recipients should proactively pursue their funding, as future legal developments could halt or delay disbursements again.

A recent district court decision is predicted to benefit owners who were awarded funding as part of the Green and Resilient Retrofit Program (GRRP), overseen by the US Department of Housing and Urban Development (HUD), which was intended to promote energy efficiency and climate resiliency initiatives. The GRRP had been suspended and there were real concerns about whether it had been terminated altogether as a result of an executive order issued by President Trump and an implementing memorandum from the Office of Management and Budget (OMB)

prohibiting HUD and several other federal agencies and departments from disbursing funds for the GRRP and other programs authorized by the Inflation Reduction Act (IRA) and the Infrastructure Investment and Jobs Act (IIJA).

In April, however, the US District Court for the District of Rhode Island issued a nationwide preliminary injunction, requiring HUD and other agencies to resume processing and disbursing IIJA and IRA funding, including GRRP awards. In the weeks since the order was issued, HUD resumed processing GRRP awards, but the US Department of Justice (DOJ) appealed the Rhode Island court's order. At the moment, the Rhode Island court's order remains in effect, and despite the DOJ's recent appeal, HUD has continued to process GRRP awards. Nevertheless, firms that were awarded GRRP loans and grants should press HUD to finalize their processing to maximize the chances that they will be protected, pending the outcome of the DOJ's challenge to the Rhode Island court's order.

## **HUD halts processing of GRRP awards**

Immediately after the inauguration, the Trump administration issued Executive Order No. 14154, titled "Unleashing American Energy," that ordered all federal agencies to pause disbursement of funds under both the IIJA and the IRA, and directed that funding could not resume until authorized by OMB and the National Economic Council. The freeze included GRRP funds to be disbursed by HUD. According to the court order imposing the nationwide preliminary injunction, the GRRP program "is meant to support investments in energy efficiency, greenhouse gas reductions, and healthy housing in HUD-run housing."<sup>1</sup>

In the weeks that followed the issuance of the freeze, federal agencies, including HUD, stopped processing awards and halted most disbursements under programs covered by the executive order. HUD was largely silent about the GRRP, not making any public statement about the freeze or its impact on the GRRP. At the same time, anecdotal reports indicated that while HUD continued to make payments on GRRP awards that had closed prior to the issuance of the executive order, it stopped processing pending GRRP awards. Owners whose GRRP awards were still pending with HUD when the executive order was issued received no clear information from HUD about the status of their award or when, if ever, HUD would resume processing those awards.

## **GRRP applicants challenge the executive order**

In March 2025, a group of nonprofits filed the Rhode Island Action, challenging the legality of the freeze imposed by the executive order as a violation of the Administrative Procedure Act (APA). One of the plaintiffs was a Massachusetts nonprofit that last year received a \$750,000 grant from

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<sup>1</sup> *Woonasquatucket River Watershed Council v. U.S. Department of Agriculture*, No. 1:250-cv-00097 (the "Rhode Island Action") (D.R.I. April 15, 2025) at 8 (order granting preliminary injunction) (the "PI Order") (internal citations omitted).

HUD under the GRRP but still had to complete follow-up filings that HUD required it to submit before actual funding could begin. Other plaintiffs, who had various awards pending with the US Departments of Agriculture (USDA) and Energy (Energy) and the US Environmental Protection Agency (EPA), reported that processing and payments on their awards were also stalled. On March 17, 2025, the plaintiffs filed a motion claiming that the executive order, OMB directives, and the agencies' action to freeze funding under the IJIA and IRA violated the APA and requesting the court to issue a nationwide preliminary injunction to halt that freeze.

## The PI Order and its aftermath

On April 15, 2025, the district court judge in the Rhode Island Action issued the PI Order, effectively granting the plaintiffs the relief they requested. The PI Order expressly enjoined USDA, Energy, EPA, and HUD "from freezing, halting, or pausing . . . the processing and payment of funding" authorized by the IJIA or the IRA. PI Order at 61. The order also directed those agencies "to take immediate steps to resume the processing, disbursement, and payment of already-awarded funding" appropriated under those acts. *Id.* The scope of the PI Order was somewhat ambiguous, however. Among other things, given the procedurally complicated process for applying for and receiving a GRRP loan or grant, the PI Order neglected to clarify what exactly constituted "already-awarded funding" and who was actually protected by the PI Order.<sup>2</sup>

Despite these ambiguities, HUD immediately responded to the PI Order. The day after it was issued, HUD's Office of Recapitalization distributed a notice alerting awardees about the PI Order. In subsequent weeks, anecdotal evidence indicates that HUD has resumed processing GRRP awards, at least for applicants that had received award letters indicating that the applicant had been selected by HUD for a GRRP grant or loan and that HUD had obligated federal funds to that grant or loan, and that had reached out to urge HUD to resume processing their awards. Whether HUD is resuming processing of all GRRP awards, or only those who had demanded that HUD resume processing their awards, is not clear.

Last week, the DOJ filed an appeal of the PI Order to the US Court of Appeals for the First Circuit. In other cases involving injunctive relief against Trump administration executive orders, the DOJ sought immediate appellate review and asked the appellate court to stay the district court action. But in this case, the DOJ waited two weeks to file an appeal and as of the time of publication of

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<sup>2</sup> In a status report filed last week, the DOJ took the position that the phrase "already-awarded funding" refers to a grant "for which the agency has (1) selected a specific recipient, and (2) obligated funding to that recipient." If so, an applicant that has received an award letter that states that funds have been obligated to its grant or loan would meet this definition and would be protected by the PI Order.

this Alert, has not requested immediate relief to stay the PI Order's effect.<sup>3</sup> The longer the DOJ waits—and the longer that HUD and other federal agencies continue to comply with the PI Order and private parties continue to push for GRRP funding—the more difficult it may be for the DOJ to demonstrate emergency relief is appropriate. Nevertheless, it is still possible that the DOJ will seek a stay of the PI Order and, if it does so, it is not clear how the First Circuit will respond. For the moment, despite the filing of the appeal, reports indicate that HUD is continuing to process GRRP awards

## Navigating pending GRRP awards

The PI Order analyzed the legal issues raised by the plaintiffs, explained why it ruled that the executive order and OMB memorandum violate the APA, and methodically rejected the multiple defenses raised by the DOJ. Nevertheless, as noted, it appears that the DOJ intends to seek some form of relief to stay the Rhode Island Action proceedings pending its appeal, and it is not clear whether the PI Order, and its nationwide injunction, will remain in effect. While HUD appears to be moving forward to process pending GRRP awards in compliance with the PI Order, that situation may change. Firms with pending GRRP awards may benefit by following up with HUD to complete processing those awards and to begin disbursing GRRP funds, especially in light of the potential change in legal circumstances in the near future.

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<sup>3</sup> According to an order entered on May 6 in the Rhode Island Action that followed a May 5 status conference, DOJ had "suggested that it would move to stay further proceedings in [the Rhode Island Action] pending the First Circuit's resolution of its appeal." The judge directed the DOJ to file any such motion by May 19, with any opposition due on May 26. As we read the order, this upcoming filing will only address further proceedings in the Rhode Island Action itself but will leave the effect of the PI Order in place during the pendency of the appeal. Nevertheless, the order is a reminder of the dynamic nature of the Rhode Island Action and the First Circuit appeal, both of which deserve watching.

