July 13, 2026

SUBMITTED VIA THE FEDERAL RULEMAKING PORTAL AT
WWW.REGULATIONS.GOV

Re: Docket OMB–2026–0034
Proposed Rule: Regulation for Federal Financial Assistance

To Whom It May Concern:

The Council of Large Public Housing Authorities ("CLPHA") and Reno & Cavanaugh, PLLC ("Reno & Cavanaugh") hereby submit comments regarding the proposed rule titled "Regulation for Federal Financial Assistance," published in the Federal Register on May 29, 2026 (the "Proposed Rule").[1] The Proposed Rule was issued by the Office of Management and Budget ("OMB") along with several federal grant-making agencies, including the U.S. Department of Housing and Urban Development ("HUD"). References to OMB in these Comments collectively refer to OMB and all agencies that joined in issuing the Proposed Rule.

CLPHA and Reno & Cavanaugh are **strongly opposed** to the Proposed Rule. It not only severely jeopardizes affordable housing in this country; the Proposed Rule binds the affordable housing industry to conditions unrelated to the funding itself, conditions that courts across the country have repeatedly found unlawful. At best, the Proposed Rule conditions the ability of public housing authorities ("PHAs") across the country to deliver affordable housing to their communities on whether such efforts advance or are otherwise in line with the President's policy priorities. CLPHA and Reno & Cavanaugh therefore oppose the Proposed Rule and call for its withdrawal.

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. Our membership of eighty-five large PHAs own and manage nearly half of the nation's public housing program, administer more than a quarter of the Housing Choice Voucher program, and operate a wide array of other housing programs. They collectively serve over one million low-income households.

Reno & Cavanaugh PLLC has represented hundreds of PHAs throughout the country and has worked with its clients on housing issues for many years. Founded in 1977, Reno & Cavanaugh has developed a national practice that encompasses the entire real estate, affordable housing, and community development industry. Although our practice has expanded significantly over the past nearly five decades to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh's original goal of providing quality legal services dedicated to improving housing and communities remains at the center of everything we do.

The Proposed Rule is not OMB's first attempt to exercise sweeping authority over the executive branch without statutory authorization. On January 27, 2025, the Director of OMB issued a

[1] 91 F.R. 32198 (May 29, 2026).

Memorandum (the "OMB Memorandum") ordering federal agencies to review their federal financial assistance programs for consistency with the President's Executive Orders[2] and freezing all federal financial assistance under open awards.[3] OMB's nationwide funding freeze was enjoined by multiple federal courts.[4] These courts opined on the scope of OMB's legal authority and concluded that because OMB's role is "supervisory, rather than directly active," OMB is not authorized to exercise sweeping control over federal agencies and claim powers of vast economic and political significance.[5]

The Proposed Rule does exactly what courts across the country have found to be illegal: it grants to OMB an exercise of direct authority and sweeping control over federal agencies, claiming powers of vast economic and political significance at the direction of the Administration and in advancement of the President's policy priorities. As explained in further detail herein, CLPHA and Reno & Cavanaugh oppose the Proposed Rule and call for its immediate withdrawal, as the Proposed Rule not only jeopardizes affordable housing in this country, but also:

i. Would destabilize the funding on which PHAs and their development partners rely by authorizing mid-award changes, suspensions, and discretionary terminations, while imposing significant new administrative burdens;
ii. Grants OMB control over all federal financial assistance that exceeds its statutory authority, contradicts legislative history, and displaces HUD's authority over its own programs;
iii. Violates numerous federal court orders, effectively rendering injunctions of federal recipients across the country meaningless; and
iv. Violates the Administrative Procedure Act ("APA") because OMB fails to provide valid justifications for the Proposed Rule, relies on Executive Orders, curtails the regulatory flexibility of federal agencies, and violates HUD's rulemaking requirements.

I. The Proposed Rule Ignores Grantees' Reliance Interests, Imposes Unworkable Administrative Burdens, and Severely Jeopardizes Affordable Housing Delivery

As OMB and HUD are aware, PHAs across the country have endured chronically low funding levels and pro-rations for their rental assistance and other housing programs. This trend is projected to continue or worsen based on the Administration's recent budget requests that, among other things, do not prioritize affordable housing in this country. The scale of this underfunding is documented in HUD's own records. In Fiscal Year 2024, HUD reported $605 million in total

[2] After taking office, President Trump issued a series of Executive Orders ("EOs") designed to advance his Administration's agenda on diversity, equity, and inclusion; gender identity; abortion; and other sociopolitical issues. These EOs directed federal agencies to impose conditions on recipients of federal funding to accomplish the Administration's agenda. *See, e.g.*, Exec. Order 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025); Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025); Exec. Order No. 14182, 90 Fed. Reg. 8751 (Jan. 24, 2025).
[3] OFF. OF MGMT. AND BUDGET, Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs, M-25-13 (Jan. 27, 2025).
[4] *Nat'l Council of Nonprofits v. OMB*, 775 F. Supp. 3d 100, 127 (D.D.C. 2025) ("The scope of power OMB seeks to claim is 'breathtaking,' and its ramifications are massive."); *New York v. Trump*, 769 F. Supp. 3d 119 (D.R.I. 2025).
[5] *Nat'l Council of Nonprofits*, 775 F. Supp. 3d at 126.

Operating Fund shortfall, against which Congress appropriated only $25 million.[6] For Fiscal Year 2026, Congress lowered operating formula funding and was compelled to provide $337 million in emergency shortfall assistance, a twelvefold increase over the prior year, simply to keep PHA operating accounts at three months of reserves.[7] The Housing Choice Voucher ("HCV") program fares no better: in its 2026 Budget Management Letter, HUD advised PHAs that renewal funding, even at a high proration factor, may not fully support every current participant; acknowledged that it "cannot guarantee that funding will be available to resolve all shortfall needs"; and encouraged PHAs to cease issuing new vouchers altogether.[8]

Insufficient funding has had detrimental effects on the public housing and the HCV programs. Low-income individuals across the nation have borne the brunt of these challenges as PHAs have been forced to reduce the size of their programs, resulting in fewer families served and fewer critical resources provided to those in need of housing assistance. Put simply, PHAs' ability to carry out their core missions of providing affordable housing to the nation's most vulnerable populations is in jeopardy.

A. <u>The Proposed Rule Destabilizes Funding on Which PHAs and Their Partners Rely</u>.

Notwithstanding this reality, the Proposed Rule threatens all discretionary funding streams by seeking to give federal agencies, like HUD, expanded authority to: (i) unilaterally add or remove award conditions during the period of performance,[9] (ii) temporarily suspend Federal awards for up to ninety (90) days,[10] and (iii) terminate a Federal award "in part or its entirety if the Federal agency or pass-through entity determines that a termination is in the interest of the Federal agency or pass-through entity, including if a Federal award no longer effectuates program goals, Federal agency priorities, or the national interest as they exist at the time of the termination."[11]

There can be no serious dispute about the stakes: a rule governing more than $1 trillion in annual federal financial assistance, spanning housing, health care, transportation, research, and defense, is an assertion of powers of vast economic and political significance, undertaken, as discussed in Section II below, without the clear congressional authorization such an assertion requires.

The Proposed Rule also threatens to eliminate fixed-amount awards and subawards altogether unless specifically authorized by statute. Absent clear guidance from HUD about whether the Choice Neighborhoods Initiative ("CNI") or similar programs are exempted, we anticipate that this provision would directly target the competitive, discretionary programs on which PHAs rely to transform severely distressed public housing, most notably CNI, whose implementation grants

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[6] CLPHA, NAHRO, PHADA, MTW Collaborative, & LHAC, *Fiscal Year 2026 (FY26) Public Housing and Section 8 Program Funding Needs* (June 2025), https://clpha.org/sites/default/files/FY26%20Public%20Housing%20Industry%20Budget%20Request.pdf.

[7] Department of Housing and Urban Development Appropriations Act, 2026, Pub. L. No. 119-75, 140 Stat. 389 (2026); U.S. DEP'T OF HOUS. & URB. DEV., Notice PIH 2026-10 (Apr. 20, 2026) (administering $337 million in Operating Fund shortfall assistance and defining financial shortfall as reserves below three months of operating expenses).

[8] U.S. DEP'T OF HOUS. & URB. DEV., 2026 Budget Management Letter (Feb. 2026), https://www.hud.gov/sites/default/files/PIH/documents/2026-Budget-Management-Letter.pdf.

[9] Proposed 2 C.F.R. § 200.208.

[10] Proposed 2 C.F.R. § 200.340(e).

[11] Proposed 2 C.F.R. § 200.340(a)(2).

are awarded as fixed amounts and have historically leveraged nearly eight dollars of private and other capital for every federal dollar spent. Converting these programs to actual-cost reimbursement mid-stream, or foreclosing them entirely, would unwind financing structures years in the making and chill the very public-private investments the Administration has urged PHAs to pursue.

Not only do these proposals place essential programs at risk, but they pose a grave threat to the ability of PHAs and their private development partners to redevelop and preserve existing affordable housing properties with high capital needs, and to deliver on this Administration's push for PHAs to reposition their portfolios. The scale of those capital needs is staggering and well documented: the 10-Year Roadmap for Public Housing Sustainability, a national initiative convened by CLPHA, estimates the cost of addressing the public housing portfolio's capital needs backlog at $169.1 billion — approximately $188,000.00 per unit.[12] A backlog of this magnitude cannot be addressed with appropriated funds alone; it can be met only through sustained public-private investment on a national scale. The public private partnerships which undertake this work rely on the long-term stability of HUD programs to leverage financing from investors and lenders using Low-Income Housing Tax Credits, tax exempt bonds, and other sources in the face of an ever-worsening affordable housing crisis. By making every discretionary award revocable whenever "agency priorities" shift, the Proposed Rule injects precisely the instability that capital markets will not underwrite and raises the cost of, or ends altogether, the leveraged transactions on which any national preservation effort depends.

This Administration has already proposed budgets that, if enacted, would eliminate funding to programs that PHAs and developers rely on to maintain and expand the affordable housing supply and increase resident independence, including public housing Operating and Capital Funds, the Restore-Rebuild initiative, CNI, the Community Development Block Grant ("CDBG"), HOME Investment Partnerships, Family Self-Sufficiency ("FSS"), Jobs-Plus Pilot, and Resident Opportunity and Self-Sufficiency ("ROSS"). We are deeply concerned that the Proposed Rule gives federal agencies unfettered discretion to alter, suspend, or terminate discretionary funding awards for disfavored programs, certain PHAs, or other equally arbitrary and capricious reasons with very few exceptions. Although the Proposed Rule incorporates a generalized requirement for appeal processes, these are functionally unworkable because the grounds for termination are so expansive and there are no clear, uniform benchmarks or standards for such appeals.[13]

B. <u>OMB Failed to Consider PHAs' Significant Reliance Interests</u>.

These threats to funding stability are compounded by the Proposed Rule's disregard for how PHAs operate under the current framework. For decades, PHAs, housing providers, and the communities they serve have relied on the regulatory flexibility codified in Title 2 to tailor federal requirements to local conditions. Yet OMB and HUD fail to consider these significant reliance interests in the Proposed Rule and the Regulatory Impact Analysis. Indeed, the Regulatory Impact Analysis

[12] 10 Year Roadmap for Public Housing Sustainability, *Interim Report: Estimating the Cost to Preserve the Nation's Public Housing* (Oct. 2025), https://www.10yearroadmap.org/interimreport.
[13] Proposed 2 C.F.R. § 200.342.

includes no discussion of specific impacts on the housing industry or on any other individual sector. Moreover, because future amendments to Part 200 would immediately become effective without individualized agency rulemaking, PHAs and other grantees will no longer be able to easily discern specific effects on HUD programs. This inevitable regulatory confusion is at odds with the requirement that agencies prepare detailed cost-benefit analyses for significant agency actions.[14]

C. The Proposed Rule Imposes Administrative Burdens That Will Delay Funding and Deter Private Partners.

Administrative burden is not a mere inconvenience; it carries severe operational consequences. For PHAs operating on chronically prorated funding with administrative fees at roughly 90 percent of eligibility, every staff hour diverted to new compliance requirements is an hour not spent housing vulnerable families. The Proposed Rule would impose substantial, unquantifiable financial and operational burdens without considering these localized costs.

Moreover, these compounding regulatory hurdles severely inhibit PHAs' ability to engage private-sector partners. Public-private partnerships are increasingly vital to repositioning public housing portfolios, yet private developers, investors, and contractors are frequently unwilling to navigate existing, opaque frameworks governing procurement, labor standards, and Build America, Buy America ("BABA") requirements. By adding layers of administrative uncertainty, such as the proposed requirement that PHAs submit written justifications to HUD for individual disbursement requests, the Proposed Rule exacerbates this friction. At a time when public-private collaboration is critical to addressing the capital needs backlog, the Proposed Rule will actively deter the very partners needed to leverage federal funding streams.

D. The Implementation Timeline Is Impracticable.

As a preliminary matter, the contemplated effective date of the Proposed Rule is October 1, 2026. If finalized and implemented on the schedule proposed, the Proposed Rule would impose sweeping changes to an already complex and complicated regulatory framework with less than 90 days' notice. With comments due on July 13, 2026, and OMB expected to issue the final rule on or about September 1, 2026, PHAs will be left with a mere thirty (30) days to identify required program modifications, establish new protocols, and communicate the new requirements to recipients, subrecipients, and other parties — who must, in turn, scramble to make conforming changes of their own. Furthermore, this compressed 30-day window fails to account for the time HUD itself will require to process the massive administrative influx, particularly given the significant historic downsizing of HUD headquarters, Regional, and Field Offices.

We are fundamentally opposed to OMB and HUD's intent to exercise unfettered federal discretion over these funding sources, especially on such a condensed and unworkable timeframe. We urge OMB and HUD to either withdraw the Proposed Rule in its entirety or drastically revise it to preserve necessary regulatory exemptions, provide grantees with increased local control, and focus

[14] *See* Exec. Order 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

on outcomes over processes. This would safeguard the effectiveness of affordable rental housing programs and ensure that PHAs and their partners can better serve their local communities.

II. The Proposed Rule is Unauthorized by Statute

The Proposed Rule rests on statutory authority that OMB does not possess. The Proposed Rule, which would vest OMB with near-unilateral power over all federal financial assistance, is an agency action that exceeds OMB's statutory authority and violates the APA.[15] Further, when agencies assert authority to exercise vast and significant economic and political powers they are required to identify clear Congressional authorization for their actions.[16] OMB fails to do so in the Proposed Rule. As explained in further detail below, the Proposed Rule exceeds OMB's statutory authority, conflicts with legislative history, and supplants HUD's statutory authority.

Moreover, OMB's interpretation of its statutory authority is owed no deference following the *Loper Bright Enterprises v. Raimondo*[17] decision, which overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* and the principle that agency interpretations of statutes are entitled to deference.[18] The Supreme Court was clear that when exercising independent judgment over agency actions, reviewing courts "need not and under the APA *may not* defer to an agency interpretation of the law,"[19] even if a statute is ambiguous.

A. <u>The Proposed Rule Exceeds OMB's Statutory Authority and Conflicts with Legislative History</u>.

OMB cites various authorities purporting to confer virtually unchecked power to promulgate a government-wide "Uniform Grants Regulation" binding all federal grant-making agencies. Those cited authorities, however, do not support this sweeping exercise of regulatory power. The plain language[20] of the statutes cited in support of the Proposed Rule reveals that Congress granted OMB the limited authority to promulgate *guidance* or *policy*, and definitely not regulations.[21]

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[15] Under the APA, a "court shall . . . hold unlawful and set aside agency actions, findings, and conclusions found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

[16] *See Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 764 (2021); *see also Util. Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)) ("When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,'" a court "typically greets its announcement with a measure of skepticism.").

[17] 603 U.S. 369, 398-99 (2024).

[18] 467 U.S. 837 (1984).

[19] *Loper Bright*, 603 U.S. at 412-13 (emphasis added).

[20] *See Bostock v. Clayton County,* 590 U.S. 644, 673-74 (2020) ("[W]hen the meaning of a statute's terms is plain, [the reviewing court's] job is at an end.").

[21] 31 U.S.C. § 6307 (the Director of OMB may "issue supplementary interpretative guidelines to promote consistent and efficient use of procurement contracts, grant agreements, and cooperative agreements"); 31 U.S.C. § 1111 (authorizing the President, through OMB, to "evaluate and develop improved plans for the organization, coordination, and management of the executive branch"); 31 U.S.C. § 503(a)(2) (the Deputy Director of OMB shall "establish governmentwide financial management policies for executive agencies"); 31 U.S.C. § 7505 (the Director of OMB shall "prescribe guidance to implement this chapter [the Single Audit Act]," and each federal agency "shall promulgate such amendments to its regulations as may be necessary to conform such regulations to the requirements of this chapter and of such guidance").

OMB's broad reading of these statutes to justify unchecked regulatory authority over all federal grant-making agencies conflicts with basic principles of statutory interpretation and Congressional intent.[22] Indeed, federal courts interpreting these statutes have concluded that OMB's authority to issue guidance does not override individual federal agencies' discretion.[23] The statutory authorities cited by OMB have not been amended since adoption, indicating that for decades and continuing to the present day, Congress intends for OMB to occupy an advisory rather than a regulatory role in federal grant-making.[24]

This conclusion is affirmed by the legislative history of the seminal Federal Grant and Cooperative Agreement Act of 1977, which directed OMB to undertake a study and report to Congress "to develop a better understanding of alternative means of implementing Federal assistance programs, and to determine the feasibility of developing a comprehensive system of *guidance* for Federal assistance programs."[25]

OMB's two-year comprehensive study, which involved the executive agencies, the General Accounting Office, state and local governments, federal funding recipients, and the public,[26] yielded a report[27] that confirmed Congress considered and rejected the opportunity to give OMB authority to issue government-wide binding regulations rather than guidance, and that federal agencies were always intended to retain their Congressionally mandated authority to create agency-specific policies within the umbrella of OMB's guidance.

Significantly, the OMB report concluded that "a <u>system of guidance</u> should be a <u>concept</u> for improving the management of assistance. A system of guidance should not, as some have suggested, simply be a legal code, a single assistance statute or regulation, or even a set of assistance regulations . . ."[28] OMB committed to "be careful to protect and selectively build on work already completed,"[29] which were the OMB Circulars, the substantial body of guidance that existed at the time, and to "provide a careful mix of standard requirements where they are appropriate and flexible, goal-oriented policies where they are more suitable," decentralize as many operating decisions as possible, and importantly, "maintain recipient autonomy" while

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[22] *City of Fresno v. Turner*, No. 25-cv-07070-RS, 2025 U.S. Dist. LEXIS 187230, *32 (N.D. Cal. Sep. 23, 2025) (quoting *West Virginia v. EPA*, 597 U.S. 697, 723 (2022)) ("Congress 'rarely accomplishe[s]' '[e]xtraordinary grants of regulatory authority' through 'modest words, vague terms, or subtle devices.'").

[23] *See, e.g.*, *Matter of Civic Action Inst.*, 1982 U.S. Comp. Gen. LEXIS 424, *4 (Comp. Gen. Sept. 24, 1982) (finding that in general, "the Federal Grant and Cooperative Agreement Act gives agencies considerable discretion in determining whether to use a contract, grant, or cooperative agreement"); *Nat'l Council of Nonprofits*, 775 F. Supp. 3d at 126 ("The structure and provisions of [31 U.S.C. § 503] strongly suggest that OMB occupies an oversight role. . . . OMB's role is mainly supervisory, rather than directly active.").

[24] Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95-224 (1978); A bill to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258 (1982); Chief Financial Officers Act of 1990, Pub. L. No. 101-576 (1990); Single Audit Act Amendments of 1996, Pub. L. No. 104-156 (1996).

[25] P.L. 95-224, 92 Stat. 3, § 8 (Feb. 3, 1978) (emphasis added).

[26] *Id.*; Vol. 44, No. 5, Fed Reg. 1900-05 (Jan. 8, 1979).

[27] OFF. OF MGMT. AND BUDGET, Managing Federal Assistance in the 1980's: A Report to Congress of the United States Pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224) (Mar. 1980).

[28] *Id.* at 35 (emphasis in original).

[29] *Id.* at 37.

noting "the system [of guidance] must not inadvertently undercut purposes of federal stimulation and support."[30]

The Proposed Rule would reverse nearly fifty (50) years of OMB precedent of operating within its Congressionally-mandated boundaries,[31] and eviscerate federal agencies' Congressionally-mandated authority over their programs and their attendant regulatory powers. Furthermore, Congress always intended for federal agencies to be repositories of subject matter and program expertise. The Proposed Rule would ignore and invalidate this.

Other authorities cited in the Proposed Rule undermine OMB's interpretation of the scope and breadth of Title 2. For example, OMB analogizes its purported authority to terminate federal awards on a discretionary basis in proposed changes to Title 2 to the termination for convenience provisions contained in the Federal Acquisition Regulation (the "FAR"), which is codified at Title 48 of the C.F.R. Significantly, the implementing statute governing the FAR does not confer authority on OMB with regard to Title 2. Furthermore, the Proposed Rule's citation of an Executive Order[32] and the associated OMB Reorganization Plan do not confer statutory authority on OMB. In fact, the cited Reorganization Plan emphasized that program evaluation would "remain a function of the individual agencies."[33]

B. The Proposed Rule Supplants HUD's Clear Statutory Authority.

By seeking to confer OMB with unfettered authority to regulate federal grant-making agencies, the Proposed Rule would enable OMB to intrude on and supplant federal agencies' statutory authority to administer programs and issue awards of federal funds, and would eliminate agencies' authority to issue regulatory exemptions as necessary. As it pertains to HUD, OMB's Proposed Rule requiring federal agencies to "eliminate the use of disparate-impact liability in all contexts relevant to federal awards" and ensure that federal awards "are administered in a way that does not promote or support the use of disparate-impact liability" directly conflicts with HUD's statutory authority under the federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended (the "FHA").

The FHA espouses the nationwide policy "to provide, within constitutional limitations, for fair housing throughout the United States,"[34] including the obligation to affirmatively further fair housing.[35] For decades, the United States Supreme Court and federal Courts of Appeals consistently recognized that disparate impact liability is cognizable under the FHA.[36] Pursuant to

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[30] *Id*. at 35.
[31] Up until now, OMB consistently interpreted its statutory authority as limited to issuing guidance and advising on federal grant-making, as discussed further in Section IV(B) of these comments.
[32] Exec. Order 11541, 35 Fed. Reg. 10737 (July 1, 1970) (transferred Bureau of the Budget functions to OMB).
[33] Reorganization Plan No. 2 of 1970 (July 1, 1970).
[34] 42 U.S.C. § 3601.
[35] *Id.* at 3608(d).
[36] *See, e.g.*, *Texas Dept. of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 546 (2015) ("*Inclusive Cmtys*.") (holding that disparate impact claims are cognizable under the FHA and requiring a robust causal link between the challenged practice and the discriminatory effect for disparate impact claims); *Town of Huntington, N.Y. v. Huntington Branch, N.A.A.C.P.*, 488 U.S. 15, 17-18 (1988) (affirming the lower court's holding that a zoning scheme that confined multifamily housing to minority neighborhoods constituted a disparate impact under the FHA).

its Congressional authority to implement the FHA, HUD issued regulations consistent with this jurisprudence.[37] Because the Proposed Rule would allow OMB to regulate a sector Congressionally designated to HUD's authority, the Proposed Rule exceeds OMB's statutory authority in violation of the APA.

Moreover, by purportedly executing the Proposed Rule on HUD's behalf, OMB exceeded the limits of HUD's longstanding statutory authority to delegate its powers. Though HUD's Deputy Secretary authorized OMB's Director to digitally sign the Proposed Rule for publication in the Federal Register, HUD's powers and duties may only be delegated to officers and employees of HUD, not to directors of other federal agencies.[38] The Proposed Rule's unauthorized delegation of HUD's powers to OMB lacks statutory authority and therefore violates the APA.

III. The Proposed Rule Violates Numerous Federal Court Orders

The practical harms and lack of statutory authority described above are further compounded by a fundamental legal defect: the Proposed Rule attempts to codify, government-wide, the very funding conditions that federal courts across the country have already enjoined. The Proposed Rule is not the first time that the Administration has sought to impose directives expressed in Executive Orders on HUD and other federal agencies by conditioning receipt of federal funds on compliance with several unrelated criteria, including conditions related to DEI, gender identity, and abortion (collectively, the "Funding Conditions").[39] HUD took additional steps to adhere to the Administration's policy goals by revising its policy requirements and terms for financial assistance programs to require recipients to comply with "applicable Executive Orders," including those related to DEI, gender identity, and abortion.[40]

Recipients in the housing industry, including local governments, PHAs, and nonprofit organizations, along with recipients of federal funding administered by other federal agencies, subsequently filed suit to challenge the Funding Conditions.[41] The federal courts reviewing these

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[37] 24 C.F.R. § 100.500. HUD's proposal to rescind these regulations (91 Fed. Reg. 1,475 (Jan. 14, 2026)) directly conflicts with HUD's affirmative duties to further fair housing and remedy discriminatory actions under the FHA, and has yet to be implemented.

[38] 42 U.S.C. § 3535(d) ("The Secretary may delegate any of his functions, powers, and duties to such officers and employees *of the Department* as he may designate . . .") (emphasis added). This language was originally codified in 1965 through the Department of Housing and Urban Development Act, which established HUD. Pub. L. No. 89-174, § 7(d) (1965).

[39] Among HUD's housing programs targeted with the Funding Conditions were the Continuum of Care ("CoC") program; various programs administered by the Office of Community Planning and Development, including CDBG, Emergency Solutions Grants ("ESG"), HOME, and Housing Opportunities for Persons with Aids ("HOPWA"); the public housing Operating Fund and Capital Fund programs; the Multifamily Housing Service Coordinators ("MFSC") program; the FSS program; and grant programs authorized by the Violence Against Women Act ("VAWA").

[40] U.S. DEP'T OF HOUS. & URB. DEV., General Administrative, National, and Departmental Policy Requirements and Terms for HUD's Financial Assistance Programs (revised Apr. 22, 2025).

[41] *See Martin Luther King, Jr. Cnty. v. Turner*, 2:25-cv-00814 (W.D. Wa. May 2, 2025) (CoC grants); *Nat'l All. to End Homelessness v. Turner*, 1:25-cv-00447 (D.R.I. Sept. 11, 2025) (CoC grants); *Nat'l All. to End Homelessness v. HUD*, 1:25-cv-00636 (D.R.I. Dec. 1, 2025) (CoC grants); *City of Fresno v. Turner*, 3:25-cv-07070 (N.D. Cal. Aug. 20, 2025) (CPD-administered grants); *R.I. Coal. Against Domestic Violence v. Kennedy*, 1:25-cv-00342-MRD-PAS (D.R.I. July 21, 2025) (CoC and CPD-administered grants); *Hous. Auth. of the City & Cnty. of S.F. v. Turner*, 4:25-

challenges overwhelmingly and unequivocally ruled that the Funding Conditions were unlawful and unconstitutional.

The courts concluded that the Funding Conditions violated the Constitution's Separation of Powers doctrine and Spending Clause, were void for vagueness under the Fifth Amendment Due Process Clause, violated First Amendment free speech principles, and contravened the APA as in excess of statutory authority and arbitrary and capricious. Accordingly, imposition of the Funding Conditions was preliminarily enjoined, stayed pending judicial review, or vacated under the APA.[42]

By proposing regulatory provisions that would incorporate functionally identical Funding Conditions into the terms of all federal awards, OMB violates the aforementioned federal Orders through the Proposed Rule. OMB's assertions that codifying the Funding Conditions in Title 2 and incorporating them in award agreements will provide applicants and recipients "with clear and unambiguous notice of their applicability" reveal that the proposed incorporation of the Funding Conditions is designed with the aforementioned litigation in mind and with the clear intent of circumventing the injunctions, stays, and vacatur Orders. OMB cannot, however, undo or escape these Orders through the Proposed Rule.

As federal courts found when enjoining Funding Conditions on HUD grant programs, the Proposed Rule is void for vagueness under the Due Process Clause of the Fifth Amendment because the proposed provisions implementing the Funding Conditions fail to notify grant recipients of what is required for compliance, especially in the housing context.[43] It is entirely unclear what it means for a PHA or housing provider to "fund, promote, encourage, subsidize, or facilitate" DEI, gender identity, the transition of children, or elective abortion. Would a PHA violate the proposed regulations that incorporate the Funding Conditions for conducting outreach to disadvantaged and

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cv-08859 (N.D. Cal. Oct. 15, 2025) ("*SFHA*") (Operating Fund program, MFSC, and FSS grants); *R.I. Coal. Against Domestic Violence v. Blanche*, 1:25-cv-00279 (D.R.I. June 16, 2025) (OVW-administered grants).

[42] *King Cnty.*, 798 F. Supp. 3d 1224 (W.D. Wash. 2025) (preliminary injunction); *Nat'l All. to End Homelessness v. Turner*, No. 25-cv-00447-MSM-AEM, 2026 U.S. Dist. LEXIS 69172 (D.R.I. Mar. 31, 2026) (APA vacatur); *Nat'l All. to End Homelessness v. HUD*, No. 1:25-cv-00636-MSM-AEM, 2025 U.S. Dist. LEXIS 265988 (D.R.I. Dec. 23, 2025) (preliminary injunction and APA stay); *City of Fresno*, No. 25-cv-07070-RS, 2025 U.S. Dist. LEXIS 187230 (N.D. Cal. Sep. 23, 2025) (preliminary injunction); *Kennedy*, 812 F. Supp. 3d 180 (D.R.I. Oct. 23, 2025) (preliminary injunction and APA stay); *SFHA*, No. 25-cv-08859-JST, 2025 U.S. Dist. LEXIS 224929 (N.D. Cal. Nov. 14, 2025) (preliminary injunction); *Blanche*, No. 25-cv-279-MRD-AEM, 2026 U.S. Dist. LEXIS 84707 (D.R.I. Apr. 17, 2026) (preliminary injunction). Along with HUD-administered grants, the *City of Fresno* Court enjoined Funding Conditions on grants administered the U.S. Department of Transportation ("DOT") and the U.S. Department of Health and Human Services ("HHS"), the *Kennedy* Court enjoined Funding Conditions on grants administered by HHS, and the *Blanche* Court enjoined Funding Conditions on grants administered by OVW.

[43] *City of Fresno*, 2025 U.S. Dist. LEXIS 187230, at *52 ("HUD and HHS fail to define 'diversity,' 'equity,' or 'inclusion,' or explain what it means for a program to 'promote DEI.'"); *Kennedy*, 812 F. Supp. 3d at 197 ("The phrases 'promote gender ideology' and 'promote elective abortion' obscure meaning like Russian dolls stacked inside each other. Nothing in the Challenged Conditions sheds light on how this Court and Plaintiffs are to construe the intentions of the phrases."); *SFHA*, 2025 U.S. Dist. LEXIS 224929, at *40 ("[M]any of the challenged grant conditions and underlying EOs prohibit grantees from 'promoting' 'DEI,' 'illegal immigration,' 'gender ideology,' or 'elective abortions,' or some combination of the above. . . . It is not clear what meaning these words might carry in the context of public housing services."); *see also S.F. Unified Sch. Dist. v. AmeriCorps*, 789 F. Supp. 3d 716, 749 (N.D. Cal. 2025) ("Our sister courts concur that analogous anti-DEI and anti-equity or equity-related conditions related to President Trump's executive orders are likely too ill-defined to be enforced.") (collecting cases).

minority communities, using an applicant's preferred pronouns, or providing housing to a tenant who had an abortion or medically transitioned? More acutely, PHAs cannot discern how these vague prohibitions interact with core, HUD-mandated housing operations and resident services. For instance, if a FSS coordinator or Resident Service Coordinator ("RSC") connects a low-income family with local workforce development, childcare, or healthcare providers that happen to maintain organizational DEI statements or offer reproductive healthcare, does the PHA risk a funding termination for "facilitating" a prohibited activity? Similarly, it is unclear whether a PHA's statutory obligation to provide targeted language access and robust outreach to Limited English Proficient ("LEP") populations would be misconstrued as an impermissible "DEI program."

Without clear compliance directives, the Proposed Rule would force PHAs to guess as to whether these activities run afoul of the Funding Conditions, and is therefore unconstitutionally vague. Relatedly, though OMB asserts that the Proposed Rule is consistent with the Spending Clause, the proposed regulations incorporating the Funding Conditions violate the Spending Clause because they are so ambiguous that recipients cannot knowingly accept them.[44]

As with the enjoined Funding Conditions, PHAs and other recipients would be forced to "choose between attempting compliance or forgoing millions of dollars of key federal funding" if the Proposed Rule were to be finalized and implemented.[45] Therefore, OMB's proposed regulations that would insert the Funding Conditions into all federal grants is a deliberate and unlawful attempt to sidestep numerous federal courts' Orders enjoining and staying such illegal Funding Conditions.

IV. The Proposed Rule is Arbitrary and Capricious and Violates the APA

Finally, even if OMB possessed the statutory authority it claims, the manner in which it has exercised that authority cannot survive judicial review. OMB fails to provide valid justifications for the myriad, substantial changes the Proposed Rule would make to the administration and management of federal funds. Therefore, the Proposed Rule is arbitrary and capricious and violates the APA.[46] Under the APA, if agency action is not "reasonable and reasonably explained," the action is deemed arbitrary and capricious.[47] Agency actions are subject to a higher standard of

[44] *S.D. v. Dole*, 483 U.S. 203, 207 (1987) (under the Spending Clause, Congress may only place conditions on the receipt of federal funds "unambiguously," so grant recipients can "exercise their choice knowingly, cognizant of the consequences of their participation"); *see SFHA*, 2025 U.S. Dist. LEXIS 224929, at *48-49 ("Because the challenged conditions are unconstitutionally vague, they also likely violate the Spending Power. To the extent that the Grant Conditions do not provide Defendants fair notice from a Due Process perspective, they also fail to enable Plaintiffs to 'knowingly accept' them under the Spending Power.").

[45] *City of Fresno*, 2025 U.S. Dist. LEXIS 187230, at *59.

[46] Under the APA, a "court shall . . . hold unlawful and set aside agency actions, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

[47] *Ohio v. Environmental Protection Agency*, 603 U.S. 279, 292 (2024) (quoting *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021)); *see also Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) ("[A]n agency rule [is] arbitrary and capricious if the agency . . . relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.").

review when an agency changes position or is not writing on a blank slate,[48] particularly when the new policies contradict factual findings underlying the prior policy, and where serious reliance interests exist.[49]

The Proposed Rule satisfies none of these standards. OMB fails to provide the requisite heightened justifications in the Proposed Rule and the Regulatory Impact Analysis. The Proposed Rule relies on the Administration's Executive Orders as its primary justification, fails to discuss significant reliance interests, overrides HUD's regulatory authority, and conflicts with HUD-specific regulations without explanation or justification. Furthermore, the Proposed Rule provides the public with only forty-five (45) days, instead of at least the required sixty (60) days, to submit comments on wide-ranging proposals destined for an accelerated three-month implementation schedule. As such, the Proposed Rule is arbitrary and capricious in violation of the APA.

A. OMB's Reliance on Executive Orders is Arbitrary and Capricious.

OMB cites the Administration's Executive Orders as its primary justification for the significant proposed regulatory changes, principally Executive Order 14332, "Improving Oversight of Federal Grantmaking."[50] OMB claims in the preamble that the Proposed Rule is designed to "improve transparency, accountability, and oversight" for use of federal funds. However, Executive Order 14332 insufficiently justifies these objectives, and instead appears to be the blueprint for the Proposed Rule. In fact, Executive Order 14332's directives align with the Proposed Rule's policy changes, including review of awards by political appointees, incorporation of the Funding Conditions, discretionary termination of awards without due process, and requiring written justifications for payment requests.[51]

Under the APA, an agency cannot merely rely on the need to implement and comply with Executive Orders in lieu of articulating reasoned justifications for policy changes. Despite the President's power to issue such orders, agencies "cannot flip-flop regulations on the whims of each new administration" because the APA "requires reasoning, deliberation, and process."[52] Accordingly, multiple federal courts have invalidated agency action as arbitrary and capricious under the APA where the agency justifies its policy changes through "rote recitation of the need

[48] *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 33 (2020).
[49] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009).
[50] OMB also cites EOs regarding DEI, gender identity, abortion, and other sociopolitical issues, many of which were the impetus for the OMB Memorandum freezing federal financial assistance and the Funding Conditions on federal awards, both of which were subsequently enjoined, as discussed in Section III above. *See* Exec. Order 14148; Exec. Order 14151; Exec. Order 14168; Exec. Order 14173, 90 Fed. Reg. 8,633 (Jan. 21, 2025); Exec. Order 14182; Exec. Order 14281, 90 Fed. Reg. 17,537 (April 23, 2025); Exec. Order 14292, 90 Fed. Reg. 19,611 (May 5, 2025); Exec. Order 14303, 90 Fed. Reg. 22,601 (May 23, 2025).
[51] Exec. Order 14332, 90 Fed. Reg. 38,929 (Aug. 12, 2025). No HUD statute allows for unilateral termination of awards without appeal rights.
[52] *California v. Bernhardt*, 472 F. Supp. 3d 573, 601-602 (N.D. Cal. 2020); *see Nebraska v. Su*, 121 F.4th 1, 16 (9th Cir. 2024) ("[E]xempting rules implementing an executive order from APA review . . . would allow presidential administrations to issue agency regulations that evade APA-mandated accountability by simply issuing an executive order first.").

to implement . . . Executive Orders" rather than substantive reasoning.[53] OMB articulates scant alternative justification for the sweeping policy changes in the Proposed Rule.

Perhaps recognizing the legal shortcomings of its reliance, OMB emphasizes that the cited Executive Orders include the qualifying language "to the maximum extent provided by law," and insert the same language in several of the proposed regulations. However, as numerous federal courts have recognized, such "savings clauses" cannot validate Executive Orders whose specific directives are unlawful.[54] Moreover, though OMB asserts that the proposed regulations are an exercise of its "discretion to shape financial assistance policy consistent with applicable law and the clear direction from the President provided in the recent Executive Orders," no such statutory discretion exists here, as discussed above in Section II(A). OMB's reliance on Executive Orders to justify the Proposed Rule is arbitrary and capricious in violation of the APA.

B. The Proposed Rule Curtails Federal Agencies' Regulatory Flexibility.

As discussed in Section II(A) above, Congress granted OMB the authority to promulgate guidance, not regulations. For decades, OMB consistently interpreted its own statutory authority to issue guidance while preserving agency-specific flexibility and authority.

In 2004, OMB established Title 2 of the C.F.R. to house both government-wide guidance to federal agencies for grants and agreements, and individual agencies' regulations implementing the guidance.[55] OMB's final regulations explicitly provided that "[p]ublication of the OMB guidance in the C.F.R. does not change its nature — it is guidance and not regulation."[56] Though this language has remained unchanged since Title 2 was established,[57] OMB now proposes to remove it and fails to provide a reasoned justification for doing so.

In 2013, OMB consolidated several of its Circulars into the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the "Uniform Guidance"), codified at 2 C.F.R. Part 200.[58] Both the Uniform Guidance and subsequent amendments thereto[59] consistently refer to Part 200 as "guidance" rather than "regulation," striking a balance between applying streamlined guidelines across the government and giving federal agencies flexibility to waive certain requirements.

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[53] *S.F. Unified Sch. Dist.*, 789 F. Supp. 3d at 754 (new grant conditions were arbitrary and capricious where AmeriCorps cited EO priorities as sole explanation for policy change); *see also, e.g.*, *Kingdom v. Trump*, No. 1:25-cv-691-RCL, 2025 U.S. Dist. LEXIS 105237, *33 (D.D.C. June 3, 2025) (federal Bureau of Prisons' new medical treatment policies were likely arbitrary and capricious where the only explanation for the policies was that an EO required them); *California v. United States DOI*, 381 F. Supp. 3d 1153, 1169-70 (N.D. Cal. 2019) (vacating DOI's rescission of rule as arbitrary and capricious where DOI stated, without explanation, that rule contradicted policy in EO).

[54] *See City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1240 (9th Cir. 2018) ("If 'consistent with law' precludes a court from examining whether [an EO] is consistent with law, judicial review is a meaningless exercise, precluding resolution of the critical legal issues.").

[55] 69 Fed. Reg. 26,276 (May 11, 2004).

[56] *Id.* at 26,280.

[57] 2 C.F.R. § 1.105(b).

[58] 78 Fed. Reg. 78590 (Dec. 26, 2013).

[59] 85 Fed. Reg. 49,506 (Aug. 13, 2020); 89 Fed. Reg. 30,046 (Apr. 22, 2024).

The Proposed Rule would upend this balance. OMB proposes that future amendments to Part 200 would apply government-wide upon the effective date of OMB's final rule, with federal agencies only permitted to amend their implementing regulations in Title 2 to provide for agency-specific additions, clarifications, and exceptions if required by statute or approved by OMB, an exceptionally narrow standard. OMB also proposes to implement new regulations regarding conflicts between Title 2 and agency-specific regulations, which would provide that Title 2 controls unless an agency-specific regulation is required by statute. Further, the Proposed Rule would significantly expand the subparts of Title 2 that federal agencies must implement. Collectively, these proposed regulations would give OMB unchecked authority over federal grant-making agencies and severely limit agencies' ability to promulgate their own regulations. OMB fails to assert a reasoned explanation for its exercise of this sweeping authority, in violation of the APA.

C. <u>The Proposed Rule, Without Accompanying HUD Regulations Specifically Addressing the Proposed Rule, Will Conflict with HUD Regulations and Create Inefficiencies</u>.

Clarity and certainty are critical to effective administration of housing programs and are stated goals of the Proposed Rule. However, effective grant administration requires each agency to identify specific provisions that need to be modified, which the APA requires to be implemented via corresponding changes to their own regulations before implementation. While adoption of the Proposed Rule in 2 C.F.R. Part 2400 would generally retain HUD's detailed and long-standing regulations governing the use of funds, the Proposed Rule would essentially require federal agencies that implement the OMB provisions to apply OMB's government-wide policies when regulatory conflicts arise unless such conflicts are required by a federal statute or approved by OMB.[60] Notwithstanding OMB's assurances that federal agencies would retain authority over their own regulations, the Proposed Rule would effectively eviscerate HUD's and other agency's autonomy over those regulations.

Additionally, it is unclear whether HUD has analyzed its regulations for any such conflicting provisions, determined whether conflicts are exempted as required by statute, or planned conforming amendments to the conflicting provisions that are not exempt. To propose any such amendments, HUD is required to follow its regulatory processes by providing a sixty (60)-day comment period and comply with the HUD Reform Act by publishing a final rule at least thirty (30) days prior to implementation.[61] It is impossible for HUD to comply with these requirements within the Proposed Rule's condensed implementation timeline.

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[60] Proposed 2 C.F.R. § 200.101 would require adherence with all of subsection F of the Proposed Rule and 2 C.F.R. § 200.340 in subpart D of the Proposed Rule. However, OMB's proposal goes on to state that in the event of non-statutory conflicts involving a policy in a federal regulation, once a federal agency has implemented regulations adopting the OMB regulations in part, *OMB's government-wide policies should be applied to the greatest extent permitted by law*. Proposed 2 C.F.R. § 200.101(d)(2). Additionally, proposed 2 C.F.R. § 200.106 provides that federal agencies "must implement the language in subparts A through F of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB." Proposed 2 C.F.R. § 200.106(a).

[61] *See* 24 C.F.R. Part 10; 42 U.S.C. § 3535.

The Proposed Rule, therefore, is expected to generate ambiguity about program and compliance requirements and subject private entities not normally governed by 2 C.F.R. Part 200 to various provisions of the Proposed Rule.[62] Moreover, though the public housing Operating Fund program is exempted from Part 200's program income requirements under current HUD regulations,[63] the Proposed Rule would override this exemption and, as a result, force PHAs to adopt and maintain dual accounting systems in order to comply with proposed changes to PHAs' accounting and cash management practices.

Most critically for CLPHA members, the blanket override under the Proposed Rule authorizes any agency to terminate a grant that "does not effectuate program goals, Federal agency priorities, or the national interest as they exist at the time of the termination."[64] While the Proposed Rule provides several exemptions, including "programs where legislation establishes an entitlement to the funds on the part of the recipient, such as block grants, those awarded based on a statutory formula, or disaster recovery grants," HUD has not verified whether formula block grants for the HOME and CDBG programs, for example, would be considered exempt under this exception.[65] The Proposed Rule also instructs agencies to consult with the OMB for questions regarding the scope of such exemptions or to request additional exemptions.[66] It is unlikely that HUD has had sufficient time to digest the scope of such exemptions as they would apply to HUD programs, let alone seek additional exemptions from OMB. For example, and quite importantly, HUD has not clarified the status of PHA's public housing and voucher funds administered via Annual Contributions Contracts, either as not governed by Part 200 or as exempted.[67] Furthermore, the semantics of whether the Proposed Rule constitutes regulation or guidance or purports to apply exclusively to grants but not contracts is irrelevant in light of the Proposed Rule's substantive effects, particularly regarding how OMB intends to restrict the use of federal funds in general.

In other words, regardless of what it is called or the mechanism by which federal funds are disbursed, that the Proposed Rule gives HUD carte blanche to condition all of its funding on the Administration's policy priorities is problematic at best. CLPHA and Reno & Cavanaugh therefore oppose the Proposed Rule.

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[62] *See, e.g.*, 24 C.F.R. § 905.604(h).

[63] *See* 24 C.F.R. § 990.195(d).

[64] *See* proposed 2 C.F.R. § 200.340(a). Notably, the phrase "as they exist at the time of termination" suggests that grants could be terminated despite compliance with grant terms and conditions if the federal agency's own priorities change after award. That is, the regulation at least implicitly authorizes the imposition of new non-legislative provisions mid-performance.

[65] For example, for federal FY 2026, Congress appropriated and HUD allocated $3.3 billion to states, entitlement jurisdictions, and Indian tribes for the CDBG program via formulas identified in 24 C.F.R. Part 570, and allocated $1.25 billion to the same entities for the HOME program via 24 C.F.R. Part 92. *See* Department of Housing and Urban Development Appropriations Act, 2026, Pub. L. No. 119-75, 140 Stat. 398 (2026).

[66] *See* proposed 24 C.F.R. 200.340(a)(2).

[67] Similarly, for FFY 2026, Congress appropriated and HUD allocated to PHAs $4.7 billion to operate public housing and $3.2 to renovate and replace public housing via formulas established in 24 C.F.R. Part 990 and 24 C.F.R. Part 905 respectively.

D. <u>The Proposed Rule's 45-Day Comment Period and Abbreviated Implementation Schedule Raise APA Concerns and Violate HUD's Rulemaking Requirements</u>.

The APA mandates certain procedures for notice-and-comment rulemaking. After publishing notice of a proposed rulemaking in the Federal Register, an agency must give interested persons an opportunity to submit comments, which must be considered in formulating a concise general statement of the basis and purpose of the final rule.[68] A final rule must be published no sooner than thirty (30) days before its effective date.[69] Notice-and-comment rulemaking "is not to be an empty charade," but instead must be "a process of reasoned decision-making."[70] As such, commenters must be given the opportunity to meaningfully participate in the rulemaking process prior to the final formulation of rules,[71] and agencies must consider and respond to significant comments received during the public comment period.[72]

OMB's own Office of Information and Regulatory Affairs ("OIRA") determined that the Proposed Rule is a "significant regulatory action" likely to materially affect the economy and the rights and obligations of recipients.[73] Given the complexity and numerosity of the regulatory changes in the Proposed Rule, recipients likely cannot fully evaluate and meaningfully comment on the impact of the Proposed Rule within forty-five (45) days, especially because the Proposed Rule and Regulatory Impact Statement fail to discuss any agency-specific impacts of the proposed regulations.

Nevertheless, OMB intends to issue a final rule effective October 1, 2026, presumably to ensure that the new regulations apply government-wide beginning in Fiscal Year 2027.[74] The Proposed Rule's comment period and implementation schedule are exceedingly brief when compared to prior amendments to the Uniform Guidance, all of which provided comment periods of at least sixty (60) days and at least ten (10) months between a notice of proposed rulemaking and the effective date of a final rule.[75]

Here, OMB will have a mere forty-nine (49) days — only five (5) days longer than the brief comment period — to thoroughly review and respond to nearly three hundred thousand comments in order to issue a final rule no later than September 1, 2026 to meet its effective date target. As of the submission date of these Comments, more than 292,000 public comments have been submitted in response to the Proposed Rule. It is highly doubtful that OMB can fulfill its statutory responsibility to consider and respond to all significant public comments in that timeframe. With fewer than two (2) months to evaluate these comments, OMB has signaled that its review will be

[68] 5 U.S.C. § 553(c).
[69] 5 U.S.C. § 553(d).
[70] *Conn. Light & Power Co. v. Nuclear Regulatory Com.*, 673 F.2d 525, 528 (1982).
[71] *See id.*; *see also Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392 (9th Cir. 1995) (notice-and-comment period was adequate where public "seemed well aware" of proposed rulemaking and supporting studies).
[72] *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015).
[73] 91 Fed. Reg. at 32,235; *see* OFF. OF MGMT. AND BUDGET, Regulatory Impact Analysis of Proposed Revisions to 2 C.F.R. 200, 1-3 (May 29, 2026).
[74] 91 Fed. Reg. at 32235.
[75] *See* 78 Fed. Reg. 78,590 (90-day comment period; 10 months from proposed rulemaking to effective date); 85 Fed. Reg. 49,506 (60-day comment period; 10 months from proposed rulemaking to effective date); 89 Fed. Reg. 30,046 (60-day comment period; 12 months from proposed rulemaking to effective date).

cursory at best, and has all but guaranteed that any final rule will be violative of APA rulemaking procedures.

Furthermore, as part of the consolidated issuance of the Proposed Rule, HUD's Title 2 implementing regulations[76] would be amended through the same 45-day comment period and October 1, 2026 implementation date as the Proposed Rule. This timeline violates Congress's directive to HUD in the 2026 Appropriations Act that all rulemaking be in accordance with HUD's rulemaking regulations at 24 C.F.R. Part 10 and Executive Order 12866, "including providing for public participation and not less than 60 days for the submission of written comments."[77] Under 24 C.F.R. Part 10, notice and public procedure requirements may only be omitted if required by statute or if HUD determines they are "impracticable, unnecessary, or contrary to the public interest," in which case, "reasons for the determination shall be stated in the rulemaking document."[78]

The Proposed Rule makes no such showing. Though OMB states that it considered, but ultimately rejected, a 60-day comment period to ensure there was "a path to issuing a final rule that is effective by October 1," this does not constitute a determination by HUD as required under 24 C.F.R. Part 10 that a 60-day comment period would be impracticable, unnecessary, or contrary to the public interest, as the Federal Fiscal Year has begun on October 1 every year since 1977.[79] The purported administrative convenience of implementing a final rule by October 1, 2026 does not provide a reasoned explanation under the APA for OMB, or under 24 C.F.R. Part 10 and the 2026 Appropriations Act for HUD, to waive rulemaking procedures, and is therefore arbitrary and capricious.

We note that this timeline is likely to place HUD in violation of the HUD Reform Act of 1977, in which Congress prohibited HUD from establishing the effective date of a regulation earlier than thirty (30) days after the final regulation is published.[80] To have an October 1, 2026 effective date and comply with the HUD Reform Act, OMB would need to publish the final regulation implementing the Proposed Rule (including revisions to HUD's own regulation adopting these changes) only forty-nine (49) days after comments close on the Proposed Rule, which seems very unlikely indeed.

V. Conclusion

For the reasons set forth above, CLPHA and Reno & Cavanaugh respectfully urge OMB and the joining agencies to withdraw the Proposed Rule in its entirety. The Proposed Rule would destabilize the funding on which public housing authorities and their partners depend to house low-income households; it exceeds the guidance-issuing role Congress assigned to OMB; it would bind recipients to conditions that federal courts have repeatedly held unlawful; and it was proposed

[76] 2 C.F.R. Parts 2400, 2424, and 2429.

[77] Department of Housing and Urban Development Appropriations Act, 2026, Pub. L. No. 119-75, 140 Stat. 422; *see also* 24 C.F.R. § 10.1.

[78] 24 C.F.R. § 10.1.

[79] 31 U.S.C. § 1102; *see* Fiscal Year Transition Act, Pub. L. No. 94-274 (1976).

[80] *See* 42 U.S.C. § 3535(o) ("No rule or regulation may become effective until after the expiration of the 30-calendar day period beginning on the day after the day on which such rule or regulation is published as final.").

through a process — a 45-day comment period and an October 1, 2026 effective date — that neither the APA nor HUD's own rulemaking requirements permit.

CLPHA and Reno & Cavanaugh appreciate the opportunity to comment and would welcome the opportunity to discuss these concerns further.

Sincerely,

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