National Fair Housing Alliance

1331 Pennsylvania Avenue, NW, Suite 650, Washington, DC 20004 • (202) 898-1661 • Fax: (202) 371-9744 • www.nationalfairhousing.org

July 13, 2026

To: Office of Management and Budget
OMB-2026-0034
via regulations.gov

Department of Housing and Urban Development
Attn. Andrew Hughes
RIN 2501-AE01
via email

Re: Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026) (OMB-2026-0034) (RIN 2501-AE01)

To Whom it May Concern:

The National Fair Housing Alliance (NFHA), on behalf of itself and its undersigned members, submits this comment to the Notice of Proposed Rulemaking (NPRM) regarding the Regulation for Federal Financial Assistance jointly promulgated by the Office of Management and Budget (OMB), the Department of Housing and Urban Development (HUD), and other federal agencies. NFHA strongly opposes the proposed Rule in its entirety, along with HUD's participation in the rulemaking and proposal to adopt nearly all the proposed changes. The proposed Rule would transform Congressionally appropriated federal financial assistance into a slush fund that the Administration can use to curtail legally protected activities it disfavors, chilling speech and improperly burdening freedom of assembly as a result. The proposed Rule conflicts with the Fair Housing Act (FHA), as it seeks to enshrine interpretations of antidiscrimination law flatly at odds with decades of settled law. The Rule would also upend longstanding settled expectations about fair housing enforcement and the administration of fair housing grants that NFHA, its members, and other recipients of fair housing grants have relied on in planning and carrying out their core activities, and it does so without providing an adequate, reasoned explanation for the changes. The Rule would not advance the purposes it purports to serve, either insofar as it claims to reduce discrimination or claims to reduce the burden on grantees. The proposed Rule also violates the procedural requirements for HUD notice-and-comment rulemaking.

Founded in 1988, NFHA is the country's only national civil rights organization dedicated solely to eliminating all forms of housing and lending discrimination and ensuring equal opportunities for all people. NFHA is a trade association for fair housing and justice-centered organizations and individuals throughout the United States and its territories, and works to dismantle barriers and address discrimination in housing and lending. NFHA receives funding through HUD's Fair Housing Initiatives Program (FHIP).

Among NFHA's membership are a significant number of organizations that also receive or have received funding through FHIP, or through HUD's Fair Housing Assistance Program (FHAP). The NPRM implicates federal financial assistance awarded under both programs, jeopardizing decades of cooperative programming that has made significant progress toward eradicating housing discrimination and that Congress has recognized as essential to fully enforcing the FHA. Ultimately, the proposed Rule paves the way for increased housing discrimination, preventing the people of America from fairly accessing rental housing or achieving the dream of homeownership.

I. The Fair Housing Act

In 1968, Congress adopted the FHA to enshrine a policy of the "highest priority": to provide for fair housing throughout the United States. The FHA prohibits discrimination on the basis of race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, and national origin. The FHA applies broadly to public and private housing-related activities, including activities that cause unjustified and unnecessary disparities on the basis of a protected characteristic. *See generally Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 530–546 (2015).

II. The Fair Housing Initiatives and Fair Housing Assistance Programs

HUD enforces the FHA, but HUD does not act alone. It works with a robust and multifaceted network of organizations—including FHIP-funded nonprofit fair housing organizations and FHAP-funded state and local agencies—to achieve the FHA's aims. FHIP and FHAP organizations are charged with investigating FHA violations, bringing actions to enforce the FHA, and educating and conducting outreach with respect to the rights and obligations that exist under the FHA.

A. FHIP

Non-profit organizations devoted to fair housing have long played a pivotal role in FHA enforcement. In 1987, HUD funded a pilot program to provide direct funding to nonprofit fair housing agencies to conduct fair housing education and to provide intake, testing, investigation, conciliation, and/or litigation of complaints of housing discrimination. Recognizing the success of that program, Congress amended the FHA to provide permanent support for these groups through the Housing and Community Development Act of 1992, 42 U.S.C. § 3616a.

Under the statute, funds are provided to entities in order "to develop, implement, carry out, or coordinate" programs that enforce rights granted under the FHA and housing-related antidiscrimination laws, as well as education and outreach programs "designed to inform the public concerning rights and obligations under" those laws. 42 U.S.C. § 3616a(a)(1)-(2). Nothing in the statute or in FHIP implementing regulations, 24 C.F.R. § 125 *et seq.*, contemplates that only *some* rights might be enforced, or that FHIP organizations might selectively inform the public as to only a subset of rights guaranteed under the law. Instead, the statute provides that FHIP funds are to be used in support of the investigation, enforcement of, and education about the rights guaranteed by the FHA and the discriminatory practices that threaten those rights. Although the statute permits HUD to use FHIP funds for "special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination," 42 U.S.C. § 3616a(b)(2)(C), there is no authority in statute or regulation for HUD to elect not to provide FHIP funds to organizations or entities because the theories of discrimination those organizations investigate and/or enforce are, while legally cognizable, nevertheless disfavored by a current presidential administration.

B. FHAP

At the time that the FHA was passed, multiple states and local jurisdictions had enacted their own fair housing laws and established agencies to enforce them, and Congress envisioned that HUD would coordinate with and rely on state and local agencies to "provid[e] rights and remedies for alleged discriminatory housing practices which are substantially equivalent to" those of the FHA. Pub. L. No. 90-284 § 810(c), 82 Stat. 73, 86; *see also id.* § 808, 82 Stat. 73, 84. Congress first funded FHAP agencies in 1980, and in 1988, Congress amended the FHA to include a process and criteria for certifying state and local fair housing agencies as substantially equivalent to the FHA, which certification enables them to receive FHAP funding. *See* 42 U.S.C. § 3610(f). To be certified as a substantially equivalent agency, a state or local agency must administer a fair housing law that "on its face . . . provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act." 24 CFR § 115.201(a).

In determining whether a law is substantially equivalent, the antidiscrimination requirements of the FHA are a floor and not a ceiling: As the statutory and regulatory structure of FHAP make clear, FHAP funding is available to state and local agencies that enforce laws that provide *at minimum* the protections of the FHA, but states and localities are free to provide more expansive protections than the FHA while maintaining participation in FHAP. *See* 42 U.S.C. § 3615 (the FHA does not "invalidate or limit any law of a State or political subdivision of a State," except those that "require or permit" discriminatory housing practices prohibited by the FHA); 24 CFR § 115.204(h) (substantially equivalent state and local laws may be "different than the [FHA] in a way that does not diminish coverage of the Act, including, but not limited to, the protection of additional prohibited bases"). FHAP agencies have been enormously effective; in recent years, they have processed significantly more fair housing complaints than HUD and the Department of Justice. *See* Nat'l Fair Hous. All., *2025 Fair Housing Trends Report* at 14-15, 16 (2025), https://nationalfairhousing.org/wp-content/uploads/2025/11/2025-NFHA-Fair-Housing-Trends-Report.pdf.

III. [200.218, 200.300, 200.450] The Proposed Rule Conflicts with Established Law

NFHA, its members, and other fair housing grantees have, for decades, followed established precedent to educate on and enforce the FHA and substantially equivalent laws. The proposed Rule inappropriately attempts to enshrine interpretations of substantive law that conflict with the Supreme Court's settled rulings through grant regulations. This includes provisions in the proposed Rule regarding disparate impact liability, "gender ideology," and "unlawful DEI." Because HUD purports to implement the Rule, the Rule would govern FHIP and FHAP and implicate the FHA. As described herein, the proposed Rule conflicts directly with the FHA.[1]

A. [200.218] Disparate Impact Liability

The proposed Rule directs "agencies and pass-through entities, to the maximum extent permitted by law, to ensure that awards are administered in a manner that does not promote or support theories of disparate-impact liability, including by not issuing terms, conditions, or guidance that would advance theories of disparate-impact liability." 91 Fed. Reg. 32213. Recipients of federal

[1] The proposed Rule purports to acknowledge the settled principle that a rule cannot supersede a statute and says it accounts for conflicts with other existing law. *See* 91 Fed. Reg. 32198, 32207 (proposed May 29, 2026) (the regulatory text "provide[s] mechanisms for exceptions and otherwise maintaining alignment with agency program statutes in the case of conflict"); 91 Fed. Reg. at 32210 (the proposed rule "explains that the default presumption would generally be for the Federal agency to apply the government-wide policies in this part if it can do so consistent with the law"). However, this does not remedy the problem, particularly in light of the proposed Rule's conspicuous lack of any requirement that agencies clarify the instances in which the Rule conflicts with other existing law.

The rule appears to contemplate that NFHA and its members could continue to give full effect to the FHA in spite of apparent conflicts with the proposed Rule, for example, by investigating cases of disparate impact discrimination, on the ground that the conflicts would be resolved in favor of the statute. But absent clarification that these investigations, etc., are permissible, NFHA or its members treating them as such poses significant risk to the organizations' funding and their operations, and so the very existence of these conflicts makes it likely that funding recipients will forego lawful enforcement activities that appear to conflict with the proposed Rule. This is so both because of the necessity of the funding at stake—for most FHIP and FHAP organizations, federal funding makes up a substantial portion of their operating budgets—and because HUD is the entity that will decide whether a given activity comports with its version of the law, and HUD has made clear (by its adoption of this proposed Rule and otherwise) that its interpretation of the relevant law fails to comply with binding Supreme Court precedent. Thus, a recipient whose funding is terminated for pursuing a lawful but disfavored activity might ultimately prevail in a lawsuit, but illegal fund termination, the loss of funding for substantial time even if litigation is successful, and the need to resort to a lawsuit is an impermissible cost for FHIPs and FHAPs to bear in order to use federal funding to fulfill their statutory obligations.

financial assistance are "to avoid using Federal award funds" to "promote or support theories of disparate-impact liability" "unless expressly required by law." *Id.* The prohibition on using federal awards to promote or support theories of disparate impact liability conflicts with the FHA and the established practice of HUD programs including FHIP and FHAP, and it is inappropriate for HUD to adopt this portion of the proposed Rule.

As an initial matter, the definition of "disparate-impact liability" provided in the proposed Rule does not comport with the legal definition of disparate impact that applies under the FHA and other civil rights laws. The proposed Rule states:

> *[D]isparate-impact liability* means a theory under which a facially neutral policy or practice . . . gives rise to an automatic or near-insurmountable presumption of the existence of unlawful discrimination on the basis of federally protected characteristics . . . where there are any differences or disparities in outcomes . . . among different races, sexes, or similar groups. Under a theory of disparate-impact liability, this presumption would apply even if there is no facially discriminatory policy or practice, there is no discriminatory intent involved, and equal opportunity is provided. . . . Disparate-impact liability effectively mandates consideration of federally protected characteristics . . . and incentivizes racial balancing, contrary to principles of equal treatment and merit-based opportunity.

91 Fed. Reg. at 32252. This simply is not disparate impact discrimination under the FHA and other relevant laws.

Under settled law, disparate impact liability arises when a facially neutral policy or practice creates unnecessary disparities among protected groups *and* the policy or practice is not justified, or, if justified, there are other available policies or practices that achieve the same purpose but do not give rise to the same level of disparity. *See Ricci v. DeStefano*, 557 U.S. 557, 578 (2009).[2] The existence of a statistical disparity in outcomes alone is insufficient to make a showing of disparate impact discrimination, and avoidance of disparate impact liability does not require any form of racial balancing.[3] Indeed, policies and procedures that cause disparate outcomes can be perfectly legal. As the Supreme Court recognized in *Texas Department of Housing and*

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[2] As one example, in 2012 the Department of Justice reached a settlement with Luther Burbank Savings to resolve allegations that it had engaged in illegal disparate impact discrimination by enforcing a $400,000 minimum loan amount policy for its wholesale single-family residential mortgage loan program. *See* U.S. Dep't of Justice, *Justice Department Reaches Settlement with Luther Burbank Savings to Resolve Allegations of Lending Discrimination in California* (Sept. 12, 2012), https://www.justice.gov/archives/opa/pr/justice-department-reaches-settlement-luther-burbank-savings-resolve-allegations-lending.

[3] The proposed Rule claims that it is intended to "ensure that basic American principles of equality and equal opportunity are upheld" and to ensure "that unlawful discrimination is no longer permitted." 91 Fed. Reg. at 32199. Not only is disparate impact discrimination unlawful under the FHA, but when an unjustified or unnecessary policy creates a disparity along protected-class lines, there is no meaningful equality of opportunity. Instead, there exists an unfair barrier to access and opportunity for those the unnecessary policy disproportionately excludes.

Community Affairs v. Inclusive Communities Project, Inc., which explicitly affirmed disparate impact liability under the FHA,

> disparate-impact liability has always been properly limited in key respects that avoid the serious constitutional questions that might arise . . . if such liability were imposed based solely on a showing of statistical disparity. Disparate-impact liability mandates the "removal of artificial, arbitrary, and unnecessary barriers, not the displacement of valid . . . policies."

576 U.S. at 540 (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971)).

As noted, disparate impact theories are cognizable under the FHA. The Supreme Court affirmed as much over a decade ago in *Inclusive Communities*. 576 U.S. at 530-546. As the Supreme Court further recognized, lower courts had long understood the FHA to prohibit conduct having a disparate impact within the burden-shifting framework it identified, Congress had reaffirmed that interpretation, and there has been broad reliance on the availability of disparate-impact claims under the FHA by individuals and policymakers alike. *Id.* at 546.

Numerous FHA cases have been pursued on the basis of disparate impact, to the significant benefit of the American public. Beyond *Inclusive Communities*, disparate-impact actions have been pursued against:

- A nearly all-white city that adopted an ordinance prohibiting the construction of multi-family dwellings, which had a discriminatory effect on Black Americans. The policy was not necessary to further any of the city's concerns related to, for example, traffic, school overcrowding, or property values. *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974).
- A mobile home community that had a three-person-per-dwelling maximum occupancy policy, which had a discriminatory effect on families with children. *HUD v. Mountain Side Mobile Estates P'Ship*, No. 08-92-0010-1 (HUD Sec'y July 19, 1993), aff'd in relevant part, 56 F.3d 1243 (10th Cir. 1995).
- A nearly all-white parish bordering New Orleans that adopted an ordinance limiting the rental of housing to blood relatives of the owners, and placing a moratorium on the construction of all multi-family housing, which had a disparate impact based on race. *Greater New Orelans Fair Hous. Action Center v. St. Bernard Par.*, 641 F. Supp. 2d 563, 565-66 (E.D. La. 2009).[4]
- An insurance company that would not provide insurance to landlords that rent to Section 8 voucher holders, which had a disparate impact on African Americans and women. *National Fair Housing Alliance v. Travelers Indemnity Co.*, 261 F. Supp. 3d 20 (D.D.C. 2017).

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[4] This case was brought initially by a FHIP funding recipient. This essential work would potentially be precluded by the proposed Rule.

B. [200.300] So-Called "Gender Ideology"

The proposed Rule would require that federal financial assistance "is not used to fund, promote, encourage, subsidize, or facilitate . . . [g]ender ideology." 91 Fed. Reg. at 32215. As with disparate impact, it is unclear what constitutes promoting, encouraging, subsidizing, or facilitating so-called "gender ideology," which the proposed Rule defines as "includ[ing] theories or ideologies that deny the biological reality of sex or the sex binary in humans, or endorse or advocate for the notion that sex is a chosen or mutable characteristic." *Id*. The proposed Rule references Executive Order 14168, which in turn offers this definition:

> "Gender ideology" replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify and thus become women and vice versa . . . . Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one's sex.

Exec. Order No. 14168 § 2(f), 90 Fed. Reg. 8615 (Jan. 30, 2025). Given these expansive and non-exhaustive definitions of so-called "gender ideology," the prohibition contradicts the FHA.

The FHA prohibits discrimination in housing "because of . . . sex." 42 U.S.C. § 3604(a), (b), (d), (e). As the Supreme Court has recognized, the "because of sex" language includes a prohibition against discrimination on the basis of gender identity and sexual orientation. *See Bostock v. Clayton County*, 590 U.S. 644, 669 (2020).

In *Bostock*, the Supreme Court held that "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex," *id.* at 669, and therefore ran afoul of Title VII's "plain terms," which—like the FHA—include a prohibition on discrimination because of sex. Although *Bostock* is a Title VII employment discrimination case, the holding applies to the FHA, because Title VII and the FHA both bar discrimination "because of . . . sex." 42 U.S.C. § 2000e-2(a)(1) (Title VII); 42 U.S.C. § 3604(a) (FHA). Nor is there any reason to think Congress intended the statutes to operate differently in this respect.[5] Indeed, even before *Bostock* was decided, courts had recognized that the FHA prohibition on sex discrimination applied to

[5] As the Court recognized in *Inclusive Communities*, cases interpreting Title VII often "provide essential background and instruction" in deciding FHA issues. 576 U.S. at 533. The Supreme Court and lower courts routinely look to Title VII case law in answering questions about standing, disparate impact, and other issues under the FHA. *See, e.g.*, *Trafficante v. Metro. Life Ins. Co.,* 409 U.S. 205, 209 (1972) (standing); *Inclusive Cmtys. Project*, 576 at 530–33 (citing *Griggs*, 401 U.S. 424) (disparate impact); *Durrett v. Hous. Auth. of City of Providence*, 896 F.2d 600, 602 n.3 (1st Cir. 1990); *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 935 (2d Cir. 1988), *aff'd* 488 U.S. 15 (1988); *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 148 (3d Cir. 1977); *Hall v. Greystar Mgmt. Servs., L.P.*, 637 F. App'x 93, 98 (4th Cir. 2016); *Equal Emp. Opportunity Comm'n v. Miss. Coll.*, 626 F.2d 477, 482 (5th Cir. 1980); *Hollis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 537 (6th Cir. 2014); *Kyles v. J.K. Guardian Sec. Servs., Inc.*, 222 F.3d 289, 295 (7th Cir. 2000); *Badami v. Flood,* 214 F.3d 994, 997 (8th Cir. 2000); *Cmty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1048 n.3 (9th Cir. 2007); *Asbury v. Brougham*, 866 F.2d 1276, 1279 (10th Cir. 1989); *Fox v. Gaines*, 4 F.4th 1293, 1296 (11th Cir. 2021); *2922 Sherman Ave. Tenants' Ass'n v. D.C.*, 444 F.3d 673, 679 (D.C. Cir. 2006).

discrimination on the basis of gender and sexual orientation. *See, e.g.*, *Wetzel v. Glen St. Andrew Living*, 901 F.3d 856 (7th Cir. 2018).

Meanwhile, most states have now either interpreted or amended their fair housing statutes to protect LGBTQ+ people.[6] Not only do many states have explicit LGBTQ+ protections, but regulators and courts in many states with fair housing statutes that are substantially similar to the FHA have construed their laws to prohibit discrimination based on sexual orientation or gender identity.

A recognition that individuals can be transgender is part and parcel of addressing and redressing discrimination on that basis. Accordingly, any attempt in the proposed Rule to curtail activities that discuss, address, ameliorate, or enforce against discrimination on the basis of gender identity or sexual orientation squarely conflicts with the FHA and the activities FHIP and FHAP are intended to support.

C. [200.300] "Unlawful DEI"

Among its provisions, the proposed Rule seeks to prevent federal awards from being "used to fund, promote, encourage, subsidize, or facilitate" "'[d]iversity, equity, and inclusion' or 'diversity, equity, inclusion, and accessibility' policies, principles, or practices that violate any applicable Federal anti-discrimination laws" (so-called "unlawful DEI"), including racial discrimination and the use of race or intentional proxies for race as selection criteria for employment or program participation. *See* 91 Fed. Reg. at 32215.

The concept of "unlawful DEI" as used in the proposed Rule is either meaningless, surplusage, or contrary to law. As defined, it is circular: unlawful DEI is DEI that is illegal. This is tautological and of no added meaning. If indeed the objective of the NPRM is to emphasize that recipients of federal awards cannot promote, encourage, subsidize, or facilitate illegal discrimination, simply saying so without recourse to an amorphous idea of "unlawful DEI"

[6] *See*, e.g., Cal. Gov't Code § 12955 (2025); Colo. Rev. Stat. § 24-34-502 (2025); Conn. Gen. Stat. § 46a-64c, -81e (2025); Del. Code Ann. tit. 6, § 4603 (2025); D.C. Code § 2-1402.21; Haw. Rev. Stat. § 515-3; 775 Ill. Comp. Stat. 5/1-103(O-1), (Q), 5/3-102 (2025); Iowa Code § 216.8 (2025); Me. Stat. tit. 5, § 4581-A (2025); Md. Code Ann., State Gov't § 20-705 (West 2025); Mass. Gen. Laws ch. 151B, 4-3A, 3B, 6, 7 (2025); Mich. Comp. Laws § 37.2102 (2025); Minn. Stat. § 363A.09 (2025); Nev. Rev. Stat. § 118.100 (2025); N.H. Rev. Stat. Ann. §§ 354-A:10, 354-A:12.VI; N.J. Stat. Ann. § 10:5-4 (2025); N.M. Stat. Ann. § 28-1-7.G (West 2025); N.Y. Exec. Law § 296.2-a (McKinney 2025); Or. Rev. Stat. § 839-005-0205 (2025); 34 R.I. Gen. Laws § 34-37-2 (2025); Utah Code Ann. § 57-21-5 (2025); Vt. Stat. Ann. tit. 9, § 4503(a); Va. Code Ann. § 36.96.3 (2025); Wash. Rev. Code Ann. § 49.60.222 (2025); Wis Stat. § 106.50 (2025).

would be sufficient. However, it would also be surplusage: because such conduct is already illegal, there is no purpose in including the prohibition here.

Thus, it is reasonable for any grantee to understand that the prohibition on "unlawful DEI" must have some added specific meaning, allowing the Administration to bar something not already barred, though the proposed Rule is coy as to what that might be. The reference to prior guidance from the Administration suggests that rather than merely restating an existing prohibition on discrimination, the inclusion of "unlawful DEI" is an effort to enshrine and enforce an understanding about certain activities undertaken to remedy disparities that has no basis in the law. For example, a memo on "unlawful DEI" issued by former Attorney General Pam Bondi identified activities long understood to be *legal* (such as interviewing diverse slates of candidates for jobs and targeting scholarship programs at specific geographic areas or at "first generation college students") and wrongly classified them as *illegal*. *See* Office of the Attorney General, *Memo from Attorney General Bondi: Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* at 7-8 (Jul. 29, 2025), https://www.justice.gov/ag/media/1409486/dl.

Among their critical activities, FHIP and FHAP organizations work with financial institutions and housing providers to ensure their policies do not discriminate against applicants on the basis of a protected characteristic or cause unlawful disparate impact, and the organizations investigate and resolve claims of discrimination against such entities. As is clear from, for example, the Government's resolution of redlining matters in the past, redressing discrimination can require targeted relief that is aimed at specific geographic areas or particular communities that have been adversely affected by discriminatory practices. *See, e.g.*, Department of Justice, *Justice Department Secures Agreement with Patriot Bank to Resolve Lending Discrimination Claims* (Jan. 17, 2024) (loan subsidy fund for majority-Black and Hispanic neighborhoods, advertising and outreach in majority-Black and Hispanic neighborhoods, MLOs for majority-Black and Hispanic neighborhoods) https://www.justice.gov/archives/opa/pr/justice-department-secures-agreement-patriot-bank-resolve-lending-discrimination-claims; Department of Justice, *Justice Department and State of North Carolina Secure $13.5 Million Agreement with First National Bank of Pennsylvania to Resolve Redlining Claims in North Carolina* (Feb. 5, 2024), https://www.justice.gov/archives/opa/pr/justice-department-and-state-north-carolina-secure-135-million-agreement-first-national-bank (similar); Department of Justice, *Justice Department and Department of Housing and Urban Development Secure over $15M from OceanFirst Bank to Resolve Redlining Claims in New Jersey* (Sep. 18, 2024), https://www.justice.gov/archives/opa/pr/justice-department-and-department-housing-and-urban-development-secure-over-15m-oceanfirst (similar). Yet, the Administration's "guidance" regarding "unlawful DEI" would suggest that such measures could be understood to be discriminatory. *See Memo from Attorney General Bondi* at 5 (geographic and institutional targeting potentially unlawful); *see also id.* at 8 (suggesting that programs or policies that intend to influence demographic representation risk violating federal law).

Moreover, it is an essential part of NFHA's work, and the work of its members, to provide education and resources to communities and individuals that have been impacted by discrimination. Where redlining or other invidious discrimination has occurred, NFHA and its members conduct outreach in local communities to inform them of potential harms they might have faced, and potential remedies that might exist to help address those harms. Given the nature of the content at issue, this, too, could be swept up within the capacious and ill-defined notion of "unlawful DEI."

D. [200.450] Issue Advocacy

The issue advocacy provision of the proposed Rule would prohibit using federal funds for engaging in issue advocacy or public messaging "that promotes or opposes a particular social, political, or public policy position unrelated to the statutory objectives or performance requirements of the Federal award, including messaging designed to influence public attitudes on matters not necessary to accomplish the purpose of the Federal award." 91 Fed. Reg. at 32262.[7] In addition to investigation and enforcement activities, NFHA and FHIP and FHAP organizations engage in education and outreach, including on disparate impact discrimination, gender- and sexual-identity-based discrimination, and more broadly on rights and obligations under the FHA that conflict with the proposed Rule's unfounded statements regarding antidiscrimination and antidiscrimination law. To the extent that the issue advocacy provision of the proposed Rule would be used in effect to prevent such education and outreach activities, it, too, conflicts with existing law.

NFHA and NFHA members' activities, including when seeking to inform affected communities about discriminatory harms and correlating rights and remedies, can include press releases, community outreach, partnerships with local organizations, and other activities that are designed to reach impacted individuals. The broad definition of issue advocacy as including "social, political, [and] public policy positions"; the essentially social, political, and public-policy-related nature of combatting discrimination; the lack of adequate definition of what is "necessary"; and the fundamentally ill-conceived restrictions regarding disparate impact, "unlawful DEI," and "gender ideology," combine to create a significant risk that these critical activities will nevertheless be flagged as disallowed issue advocacy when they do not comport with the Administration's preferred viewpoints.

[7] The prohibitions in the current 2 CFR § 200.450 apply to lobbying, with specific and particular definitions given.

IV. [200.218, 200.300, 200.340, 200.450] The Proposed Rule Upsets Longstanding Reliance Interests

FHIP has existed in some form since 1987, and funding for FHAP has existed since 1988. In the nearly four decades since those programs were established, FHIP- and FHAP-funded organizations have worked collaboratively with HUD to enforce and educate on the FHA. Year after year, organizations have used FHIP funds, consistent with Congressional intent, to carry out activities that include investigating and educating about practices that have an unjustified disparate impact on access to housing, investigating and educating about gender- and sexuality-based discrimination, and publishing information and engaging in various other activities that the Administration could view as "unlawful DEI"—for example, acting to address redlining and promoting homebuyer-assistance programs targeting specific geographies. That is, activities that ferret out practices that violate the Fair Housing Act, educate the public about the scope of the Act's protections, and otherwise ensure that the Act is effective. For decades, fair housing groups and agencies have planned programming to put these activities into place and have hired staff to pursue them. The sudden directive that those activities, long-funded and well-established in the law, are actually illegal and/or will result in fund termination, constitutes an abrupt change that upsets FHIP- and FHAP-funded organizations' reliance interests and impedes their ability to further fair housing enforcement and education in accordance with Congress's intent in authorizing and funding FHIP and FHAP.

As the Supreme Court has made clear, while an agency can change its existing policies if it has provided a reasoned explanation for the change, the agency must "be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account." *Encino Motorcars v. Navarro*, 579 U.S. 211, 221 (2016) (internal marks and citation omitted). HUD has utterly failed to do so in this instance. The Rulemaking does not engage in any meaningful way with the changes it requires from FHIPs and FHAPs or with the conflicts it creates with the FHA. Indeed, the proposed Rule does not mention the FHA at all, much less provide "a reasoned explanation" for how its change in position comports with that statute. *See Navarro*, 579 U.S. at 221.

As discussed above, new provisions about disparate impact, "gender ideology," and "unlawful DEI" will sow confusion as to what precisely is prohibited. For example, does the proposed rule preclude FHIP and FHAP grant recipients from pursuing actual disparate impact claims? Or simply promoting the *specific and incorrect* definition of disparate impact included in the proposed Rule? This confusion will chill legal activity and be detrimental to the right of all Americans to be free of housing discrimination. Changes to federal funding requirements will also necessitate significant efforts and outlays of costs by FHIP and FHAP organizations. Proposed modifications to the circumstances under which federal financial assistance can be terminated likewise present a significant change to how grants have been administered and how and why funding can be cut off midstream. Ultimately, the confusion and uncertainty these crucial institutions will face will directly lead to victims of potential housing discrimination in local communities throughout the Nation being left with limited or no recourse to address the harms they have faced.

V. [200.218, 200.300, 200.340, 300.450] The Proposed Rule Undermines the Purposes it Purports to Serve

Among the purposes the proposed Rule states it is intended to serve is to ensure that federally funded programs "broadly serve the needs of all Americans." 91 Fed. Reg. at 32202 (arguing that previously, federal agencies did not "aim[ ] to broadly serve the needs of all Americans"). The proposed Rule indicates that the agencies believe activities related to disparate impact, "gender ideology," and "unlawful DEI" are not in the public interest, and that changes are intended to "promote equal treatment consistent with the purposes of Federal civil-rights law." 91 Fed. Reg. at 32220 (discussing the "unlawful DEI" provision). And yet, by threatening the foundations of FHA enforcement, the provisions of the proposed Rule would prevent Americans from understanding the FHA and, ultimately, allow housing discrimination to increase unchallenged. Put simply, the proposed Rule would *prevent* fair housing education and enforcement from reaching and serving the needs of all people across the Nation, which is what FHIP and FHAP are currently structured to do.

Additionally, the proposed Rule is intended to clarify the "regulatory structure" of federal grantmaking, and the "status of OMB's government-wide financial management policies and requirements." 91 Fed. Reg. at 32205. The proposed Rule explains that this "is intended to establish a standardized framework across all Federal grantmaking agencies . . . and to promote predictability, transparency, and consistency across the Federal Government." *Id*. Here, again, the proposed Rule does the opposite. Each agency—and each program—is subject to its own statutory framework and implementing regulations. Rather than streamlining or rendering more predictable the grantmaking process, the proposed Rule's unhelpful carve-outs for conflicts with existing law render the applicability of the Rule's various provisions an unclear morass. Can a FHIP or FHAP recipient rely on HUD to make decisions in keeping with existing legal precedent interpreting the FHA and related law? How can a recipient act in such reliance if HUD, on notice of this conflict, nevertheless finalizes the proposed Rule without accounting for the conflict—or even acknowledging it?

For the same reasons, the purported purposes of improving transparency, accountability, oversight, and efficiency of federal financial assistance programs are undermined by the actual text and operation of the proposed Rule. *See* 91 Fed. Reg. at 32201, 32204. The lack of clarity as to which provisions of the proposed Rule do or do not conflict with the various federal assistance programs threatens all of these objectives. Because the proposed Rule does nothing to clarify where there are, in fact, conflicts between the Rule and broad swaths of existing statutory and regulatory law governing assistance programs, the Rule leaves grantees to guess as to what is intended and leaves open the door to inaccurate and inappropriate determinations by agencies as to which portions of the proposed Rule apply.

The uncertainty and lack of transparency is aggravated further by the revisions to § 200.340, which would broaden agency authority to suspend or terminate discretionary awards based on evolving priorities, including "if a Federal award does not effectuate . . . Federal agency priorities . . . as they exist *at the time of the termination*." 91 Fed. Reg. at 32258 (emphasis added). This provides no transparency or accountability, and is of no assistance to grantees in determining when or why their funding—upon which they and the communities they serve reasonably rely—might be cut off. This would effectively render any award revocable for unpredictable and/or unforeseeable reasons having nothing to do with the performance of the grantee relative to the terms of the award when it was actually granted.

Finally, the proposed Rule is supposed to "reduce recipient burden" associated with Federal awards. 91 Fed. Reg. at 32199, 32200, 32208. Again, the opposite will occur. The uncertainty as to where HUD would agree that a conflict exists and therefore which provisions of the proposed Rule would apply, as well as the significant changes the proposed Rule would engender to existing practices and norms of FHIP and FHAP, will increase the cost and burden of compliance on the recipients of federal awards.[8]

VI. The Proposed Rule Violates the First Amendment

A. [200.218, 200.300] Attempts to Limit the Use of Federal Funds in Enforcement and Litigation are Unconstitutional.

FHIP and FHAP organizations are charged with investigating, enforcing, and educating on the rights guaranteed by the FHA, including the right to be free from housing practices that cause unjustified disparate impacts and from discrimination on the basis of sex—including gender identity and sexual orientation. That enforcing the full suite of rights guaranteed by the FHA is critical is supported by the statutory and regulatory regime governing these programs. *See generally, e.g.*, 24 CFR § 125.301(a) (Education and Outreach Initiative provides funding for "education and outreach programs designed to inform members of the public concerning their rights and obligations under the provisions of fair housing laws"); *id.* § 125.401(a) (Private Enforcement Initiative provides funding "to investigate violations and obtain enforcement of the

[8] The proposed Rule also includes numerous new requirements regarding documentation and information to be submitted as part of the federal award process. *See, e.g.*, 91 Fed. Reg. at 32223 ("OMB also proposes language that requires payment requests from recipients and subrecipients other than States to include justifications describing the purpose of the payment and the specific award-related work it supports. Under the proposed text, agencies must collect this information once appropriate systems are in place.").

rights granted under the Fair Housing Act or State or local laws that provide rights and remedies for discriminatory housing practices…"); *id.* § 115.204(h) (substantially equivalent state and local laws may have additional prohibited bases compared to the FHA but may not diminish coverage of the FHA). That is, the relevant statutory and regulatory provisions are to the effect that FHIP and FHAP funding recipients should enforce and educate about *all* fair housing violations, not just those that the current presidential administration views as important (or cares to acknowledge). Where the FHIP program means for agencies to pick and choose certain violations to prioritize, it says so. *See* 42 U.S.C. 3616a(b)(2) (providing for grants to carry out "special projects" that "respond to new or sophisticated forms of discrimination"). And, as stated above, FHAP agencies must at a *minimum* enforce the suite of rights that exist under the FHA.

And that makes sense, because FHIP and FHAP, and FHIP and FHAP organizations, are dedicated to vindicating the rights of ordinary people, many of whom walk through the organizations' doors reporting discrimination. The organizations need to be able to bring the full scope of the FHA to bear to protect the people of America, including vulnerable communities. Yet the proposed Rule would effectively prevent the use of FHIP and FHAP funds, and therefore prevent FHIP and FHAP organizations from fully investigating allegations and enforcing the law when they determine that the law has been broken.

The disparate impact, "gender ideology," and "unlawful DEI" provisions discussed above would improperly restrict the forms of FHA-cognizable discrimination recipients may combat. As the Supreme Court made clear in *Legal Services Corp. v. Velazquez*, 531 U.S. 533 (2001), when an entity that receives federal funds "is not the government's speaker" and not engaging in "governmental speech," but rather is engaging through the legal process to represent the interests of a non-government party, the government has no authority to condition funding on the party making (or refraining from making) particular legal arguments. *Id.* at 542-44. As the Court explained:

> By providing subsidies to LSC, the Government seeks to facilitate suits for benefits by using the state and federal courts and the independent bar on which those courts depend for the proper performance of their duties and responsibilities. Restricting LSC attorneys in advising their clients and in present arguments and analyses to the courts distorts the legal system by altering the traditional role of the attorneys . . . . . [The Government] may not design a subsidy to effect this serious and fundamental restriction on advocacy of attorneys and the functioning of the judiciary.

Id. at 544.

The same is true of FHIP and FHAP funding recipients, who routinely counsel and advocate on behalf of people facing all forms of housing discrimination. Any attempt to use the machinery of federal funding to curtail the use of legally cognizable arguments by those groups is a First

Amendment violation. *See id.* at 546 ("It is no answer to say the restriction on speech is harmless because . . . [LSC] attorneys can withdraw. This misses the point. The statute is an attempt to draw lines around the LSC program to exclude from litigation those arguments and theories Congress finds unacceptable but which by their nature are within the province of the courts to consider.").

B. [200.218, 200.300, 200.340, 200.450] Freedom of Speech

The prohibitions in the proposed Rule on promoting or supporting the use of disparate impact liability and promoting, encouraging, or facilitating unlawful DEI or gender ideology are impermissibly vague and threaten to chill speech.

Likewise, the prohibitions on "issue advocacy" in the proposed Rule are unconstitutional. The proposed Rule would prohibit expenditures associated with "[e]ngaging in issue advocacy or public messaging that promotes or opposes a particular social, political, or public policy position unrelated to the statutory objectives or performance requirements of the Federal award, including messaging designed to influence public attitudes on matters not necessary to accomplish the purposes of the Federal award." 91 Fed. Reg. at 32262. However, the concept of "issue advocacy" is not clearly defined, nor are standards given for determining what is "necessary" to accomplish the purposes of a given award. Particularly given the proposed Rule's positions on disparate impact, "gender ideology," and "unlawful DEI," which are not supported by law, this prohibition on "issue advocacy" in the proposed Rule threatens to impermissibly burden NFHA's and its members' freedom of speech. When these provisions are put together, it appears that the proposed Rule would label as "issue advocacy"—and thus preclude funding for—even core fair housing work.

Although in certain instances it is permissible for the government to impose restrictions on speech as a condition of funding, there are limits. Restrictions are permissible when they "define the limits of the government spending program—those that specify the activities Congress wants to subsidize." *Agency for Int'l Dev. v. Alliance for Open Society Int'l*, 570 U.S. 205, 214 (2013). It is impermissible for the government to "recast a condition on funding as a mere definition of its program." *Velazquez*, 531 U.S. at 547. Otherwise, as the Supreme Court has long held, the government may not regulate or suppress speech because of the ideology or perspective it expresses. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828-29 (1995). "The government cannot proclaim that it 'will no longer tolerate' speech it dislikes because of its 'motivating ideology'—that is a 'blatant' and 'egregious' violation of the First Amendment." *Am. Fedn. of Teachers v. Dept. of Educ.*, 796 F. Supp. 3d 66, 112 (D. Md. 2025 (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 168 (2015)). And, "the Government may not deny a benefit to a person on a basis that infringes his constitutionally protected freedom of speech even if he has no entitlement to that benefit." *Alliance for Open Society*, 570 U.S. at 214 (internal marks and citation omitted; cleaned up).

Here, Congress neither envisioned nor intended that HUD funding for FHIP and FHAP would be restricted to only a subset of rights guaranteed under the FHA or a subset of the individuals who are protected from discrimination by the law. And, in some instances, funding is expressly intended to be used for education and outreach, which could amount to "issue advocacy." Any regulatory restriction that would prohibit funding in these areas flies in the face of the Congressional intent and is an inappropriate restriction on protected speech. *Cf. Rust v. Sullivan*, 500 U.S. 173, 193, 196 (1991) (Congress can selectively fund certain programs to address an issue of public concern without funding alternative ways of addressing the same problem; it was permissible for agency regulations to prohibit advocating for abortion in the context where the act that established the federal funding barred that use). Congress can choose not to fund fair housing investigation and education at all, but it has consistently provided bipartisan funding for this important work. HUD cannot now force grantees to adopt an incorrect and underinclusive understanding of the FHA as a condition of grant funding, particularly where doing so contradicts the Congressional purpose of the programs in question.

NFHA and NFHA members gather information, study, and publish findings on issues related to housing discrimination. Because the FHA prohibits disparate impact discrimination and discrimination on the basis of gender identity and sexual orientation, these studies and publications discuss those forms of invidious discrimination. Publications also advocate for the eradication of discrimination against protected groups (including groups who are discriminated against on the basis of gender identity and sexual orientation), and NFHA staff and staff of member organizations frequently educate and present on related topics. For FHIP or FHAP recipients to do otherwise would be to implicitly—or explicitly—mislead the public into thinking these fair housing rights do not exist.

Such information sharing is an important part of NFHA's and NFHA members' work. As one example, NFHA offers a resource titled "Where You Live Matters," which provides information culled from public sources to report on the broad-ranging impacts that place (including the demographics associated with a place) can have on individuals' lives—and advocates for the FHA as a tool to equalize opportunity and access.[9] The resource provides vital information in the public interest. As another example, NFHA, along with 11 members, conducted extensive testing related to the treatment of Deaf and hard-of-hearing individuals in the provision of housing, uncovering significant discrimination, and published the results of that testing.[10] This

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[9] *See* Nat'l Fair Hous. All., *Where You Live Matters*, https://nationalfairhousing.org/issues/where-you-live-matters/.
[10] *See* Nat'l Fair Hous. All., *Are You Listening Now? A National Investigation Uncovers Housing Discrimination against the Deaf and Hard of Hearing*, (Jan. 9, 2013) https://nationalfairhousing.org/wp-content/uploads/2021/10/2013-01-09-Are-You-Listening-Now-Housing-Discrimination-against-the-Deaf.pdf.

investigative work and public reporting is precisely the type of activity that FHIP is intended to fund. Both reports are part of combatting discrimination in housing and educating the public on fair housing rights. Yet, it is at best unclear whether the proposed Rule would view such information-sharing as impermissible promotion, support, encouragement, or facilitation of purportedly impermissible topics or would deem these publications to constitute disallowed issue advocacy.

Central activities related to fair housing enforcement are also implicated. For example, studies have shown that same-sex couples are less likely to be approved for mortgage loans than heterosexual couples, and face higher financing costs when they are approved.[11] Would a FHIP recipient who provided education to the public or local mortgage lenders on unlawful discrimination because of sex under the FHA, using these factual studies, be viewed as violating the proposed Rule's prohibition on "gender ideology"? Would a funding recipient that provided training to local rental housing providers on avoiding noncompliance with the FHA that included disparate impact discrimination under *Inclusive Communities* run afoul of the proposed Rule's prohibitions related to disparate impact liability? Or would a FHIP recipient that provided training to a tribal housing provider using Indian Housing Block Grant Funds that included the ability to lawfully adopt a preference for serving tribal members be deemed to have violated the proposed Rule's prohibition on speech related to "unlawful DEI"? Would any of these activities be deemed to constitute impermissible issue advocacy?

Similarly, the proposed revisions to § 200.340, which would broaden agency authority to suspend or terminate discretionary awards based on evolving priorities, including if an award "does not effectuate . . . Federal agency priorities . . . as they exist *at the time of the termination*," introduces significant uncertainty and indicates a willingness to cut off funding for lawful—but disfavored—activities. *See* 91 Fed. Reg. at 32258 (emphasis added). This leaves the recipients of federal funding to guess at which types of activities might be contrary to amorphous, unstated, and (at the time of the award) unforeseen "priorities," and will likely chill lawful speech.

In short, the proposed Rule is unworkably vague and is plausibly over-inclusive in the speech and activities it seeks to curtail. The proposed Rule, and the conflicts it presents with existing law, will chill (or effectively prohibit) protected speech.

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[11] *See* J. Shahar Dillbary & Griffin Edwards, *An Empirical Analysis of Sexual Orientation Discrimination*, 86 U. Chi. L. Rev. 1, 4–5 (2019) https://chicagounbound.uchicago.edu/uclrev/vol86/iss1/4/; Lei Gao & Hua Sun, *Lending Practices to Same-Sex Borrowers*, 116 Procs. Nat'l Acad. Scis. 9293, 9293 (2019), https://doi.org/10.1073/pnas.1903592116.

C. [200.454] The Right of Association

NFHA is a membership organization, and the right of NFHA to associate with its members (and its members to associate with NFHA and each other) is constitutional: the First Amendment protects the right to associate with others "in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984).

The proposed Rule would prohibit federal funds from being used for subscriptions or membership costs unless grantees receive prior approval,[12] and notes that "costs of subscriptions or memberships in . . . organizations whose primary purpose is lobbying or issue advocacy[ ] are unallowable." 91 Fed. Reg. at 32231, 32261. The proposed Rule provides no guidance regarding what constitutes a "primary purpose," nor, as noted above, does it provide a clear definition of "issue advocacy."[13]

NFHA engages in advocacy as part of its broader mission to eliminate housing discrimination. However, advocacy is far from NFHA's only purpose, and its advocacy relates to ending housing discrimination—which is also an essential part of the purpose of FHIP and FHAP. Yet, NFHA has already seen attempts by HUD to prevent NFHA members from using funds to pay dues or attend NFHA events. There is a significant risk that the proposed Rule would be weaponized by the Administration to prevent NFHA members from joining organizations or attending events if the host organization engages in speech the Administration disfavors. And, in particular, there is a significant risk that this will take place because the Administration disfavors NFHA's speech, and not because it is applying a clear and consistent standard to all similarly situated organizations.[14]

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[12] The Rulemaking states that prior approval would be granted only for costs that are "necessary to fulfill the award requirements." 91 Fed. Reg. at 32232. What is "necessary" is not always clear even under the best of circumstances. As explained throughout this comment, much of the rest of the proposed Rule effectively improperly narrows or confuses the scope of what is necessary. In any event, many activities, memberships, conferences, etc. can be of immense help and importance even if they are not in the strictest terms *necessary* for carrying out an award. The lack of clear definitions and the vague yet restrictive concept of "necessity" create a perfect storm for subjective, unprincipled, and arbitrary decisions regarding allowable costs.

[13] Although § 200.450 of the proposed rule ("Lobbying") includes a mention that costs related to issue advocacy are not allowable if it "promotes or opposes a particular social, political, or public policy position unrelated to the statutory objectives or performance requirements of the Federal award, including messaging designed to influence public attitudes on matters not necessary to accomplish the purposes of the Federal award," § 200.454 states only that membership costs in organizations whose primary purpose is lobbying or issue advocacy are unallowable. *See* 91 Fed. Reg. at 32262. Section 200.454 includes a cross-reference to § 200.450. This mirrors the cross-reference in the current version of the OMB regulations, but while that cross-reference served a clarifying function in the text of the current Rule, changes to these two sections in the proposed Rule render it unclear if the prohibition on membership costs apply to *all* organizations whose "primary purpose" is "issue advocacy," or only those organizations whose primary purpose is to engage in issue advocacy on the disfavored topics listed in § 200.450. In either event, § 200.454 is an undue burden on associational rights.

[14] As has been repeatedly recognized, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of

VII. The Proposed Rule is Procedurally Deficient with Respect to HUD

In addition to the substantive deficiencies discussed above, the NPRM is procedurally deficient for two reasons specific to HUD: failure to provide a 60-day notice period, and failure to transmit the proposed Rule to congressional committees as required by statute.

A. Requirement for 60-day Notice Period

HUD regulations provide that it "is the policy of the Department that its notices of proposed rulemaking are to afford the public not less than sixty days for submission of comments." 24 CFR § 10.1. Although the regulation notes that "for some rules the Secretary will employ additional methods of inviting public participation," the regulation neither contemplates nor provides authority for HUD to provide less than a 60-day comment period. *Id.* Furthermore, the most recent appropriations bill for FY 2026 instructed HUD to comply with this requirement and provide at least 60 days for comments during this fiscal year. Pub. L. No. 119-75, 140 Stat. 422 ("The Secretary shall conduct all rulemaking in accordance with the policies of part 10 of title 24 of the Code of Federal Regulations and Executive Order 12866, as amended, including providing for public participation and not less than 60 days for the submission of written comments."). The proposed Rule affords only a 45-day comment period, *see* 91 Fed. Reg. at 32235, and is therefore contrary to HUD policy and Congressional requirements, and is procedurally deficient. Given the nature of the changes put forth in the proposed Rule and the dramatic effect those changes are poised to have on decades of established practice, the abbreviated comment period likely affects the ability of commenters and would-be commenters to provide their views to HUD. Indeed, that is precisely why Congress saw fit to ensure that HUD does not attempt to circumvent its normal procedural requirements in this manner. The proposed rule offers no explanation for why HUD believes it is appropriate to ignore Congress's clear command.

B. Requirement for 15-day Congressional Committee Review

In addition to a 60-day public notice-and-comment period, HUD is required to "transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance, and Urban Affairs of the House of Representatives an agenda of all rules or regulations which are under development or review by the Department" at least semi-annually. 42 U.S.C. § 3535(o)(1). Any rule or regulation on that agenda "may not be published for comment prior to or during the 15-calendar day period beginning on the day after the date on which such agenda was transmitted." *Id.* § 3535(o)(2)(A). If HUD seeks to publish for comment a rule or regulation that does not appear on such an agenda, HUD must submit that rule to the

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opinion or force citizens to confess by word or act their faith therein." *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The proposed Rule flies in the face of this principle.

two Committees at least 15 calendar days prior to the rule being published for comment. *Id.* § 3535(o)(2)(B).

It is NFHA's understanding that HUD has not submitted the required regulatory agenda to either required Committee since Spring 2025, and that therefore the proposed Rule has not been provided in advance to the Committees as required by law. Therefore, on information and belief, the proposed Rule is procedurally deficient for this reason as well.

VIII. Artificially Abbreviated Rulemaking Timeframe

In addition to the 45-day comment period violating the procedures for HUD notice-and-comment rulemakings, the scope and effect of the proposed Rule would be far-reaching, and a 45-day comment period is insufficient for all interested entities to provide meaningful comment.

Moreover, the Rulemaking seems to indicate that OMB, HUD, and the other agencies engaged in the Rulemaking have predetermined the date on which a final Rule will be published—no matter the volume or substance of feedback received during the notice-and-comment period: "OMB proposes to issue a final rule that is effective by October 1, 2026." 91 Fed. Reg. at 32235. The stated intent is to ensure that "only a single set of government-wide requirements apply" to the upcoming round of federal awards. *Id.*

As of the time of the submission of this Comment, over 51,000 comments had been submitted to the Rulemaking docket. October 1 is less than three months away. It is challenging to believe that OMB, HUD, and other interested agencies will be able to meaningfully engage with this volume of commentary in that time period.

Moreover, as discussed above, far from creating a readily discernible "single set of government-wide requirements," the myriad conflicts between the proposed Rule and other statutory and regulatory law mean that significant time, effort, and cost will have to be spent in order to understand where and how the provisions of the proposed Rule apply. That is, to the extent the rationale for such a truncated process is to have a clear set of rules applicable for the beginning of the next fiscal year on October 1, that rationale will not be achieved, at least for FHIP and FHAP. As described throughout this comment, the publication of a final rule that says nothing about how to reconcile its many conflicts with the Fair Housing Act and FHIP and FHAP will provide no clarity to anyone.

In sum, the overall timeline for finalizing a rule is itself a source of procedural deficiency and a likely cause of additional confusion. The timeline for drafting and implementing a final rule should be extended to permit a full and meaningful administrative process, without any agency setting a limited timeframe in advance.

Sincerely,

The National Fair Housing Alliance
Center for Fair Housing
CNY Fair Housing
Connecticut Fair Housing Center
Equal Rights Center
Fair Housing Advocates Association
Fair Housing Advocates of Northern California
Fair Housing Center of the Greater Palm Beaches
Fair Housing Center of Central Indiana
Fair Housing Center for Rights & Research
Fair Housing Center of Southwest Michigan
Fair Housing Center of West Michigan
Fair Housing Contact Service
Fair Housing Council of Metropolitan Memphis
Fair Housing Council of Northern NJ
Fair Housing Council of Oregon
Fair Housing Center of Washington
Fair Housing Justice Center
Fair Housing Resource Center
Fair Housing Rights Center in Southeastern Pennsylvania
High Plains Fair Housing Center
HOPE Fair Housing Center
Housing Equality Center of Pennsylvania
Housing Opportunities Made Equal, Inc.
Housing Opportunities Made Equal of Virgina
Greater Houston Fair Housing Center
Intermountain Fair Housing Council, Inc.
Jacksonville Area Legal Aid, Inc.
Long Island Housing Services, Inc.
Louisiana Fair Housing Action Center
Metro Fair Housing Services, Inc.
Mid-Minnesota Legal Aid
Mobility Works
Northwest Fair Housing Alliance
Open Communities
Open Communities Alliance

Project Sentinel, Inc.
Regional Housing Legal Services
Silver State Fair Housing Council
South Suburban Housing Center
Southwest Fair Housing Council
Tennessee Fair Housing Council
Toledo Building Services
Westchester Residential Opportunities
William E. Morris Institute for Justice