



National Association of Housing and Redevelopment Officials

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Office of Management and Budget
Office of Information and Regulatory Affairs
725 17th St NW,
Washington DC 20503

Re: Regulation for Federal Financial Assistance [Docket No. OMB-2026-0034]¹

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I am pleased to offer the following comments in response to the notice titled "Regulation for Federal Financial Assistance" (Docket No. OMB-2026-0034), published in the *Federal Register* on May 29, 2026.

The National Association of Housing and Redevelopment Officials, which was established in 1933, is a membership organization of approximately 26,000 housing and community development providers and professionals throughout the United States. NAHRO members create and manage affordable housing for low- and middle-income families and support vibrant communities that enhance the quality of life for all. Our members administer more than 3 million homes for more than 8 million people.

This comment letter is divided into four sections. The first section is a note on the use of artificial intelligence in reviewing and responding to comments. The second section discusses some procedural concerns with the proposed rule. The third section discusses some general concerns with the proposed rule. Finally, the fourth section discusses specific concerns with the proposed rule.

While the paragraphs below describe NAHRO's concerns in additional detail, we recommend that the Office of Management and Budget (OMB) take the following steps:

- Withdraw the proposed rule as it will produce erratic and unreliable federal funding streams that will disrupt the provision of federal rental assistance, lower or eliminate the provision of new affordable housing, and increase rental and homeownership prices across the country.

¹ All citations are informal.

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Section I - A Note on the Use of Artificial Intelligence in Reviewing and Responding to Comments to the Proposed Rule

It is NAHRO's understanding that OMB may be contemplating using artificial intelligence (AI) to review and summarize comments for the proposed rule. We strongly recommend that OMB not rely on AI summaries of comments or rely on AI to respond to comments. The Administrative Procedure Act (APA) requires that a federal agency "... give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments" ² The federal agency must consider "... the relevant matter presented" ³

Artificial intelligence, particularly large language models (LLMs), frequently hallucinate. One research study notes "... that factual legal hallucinations are widespread in the LLMs that [the researchers] study—OpenAI's ChatGPT 4, OpenAI's ChatGPT 3.5, Google's PaLM 2, and Meta's Llama 2—on the bulk of the legal knowledge tasks that [the researchers] profile." ⁴ Additionally, "... LLMs systematically *overestimate* their confidence relative to their actual rate of hallucination." Another study notes that "[h]allucination in Large Language Models (LLMs) remains one of the most pressing challenges in the safe and trustworthy deployment of generative AI systems." ⁵ While prompt design may reduce the rate of hallucinations, some hallucinations will persist due to inherent model biases and training artifacts.

Utilizing LLMs to review or respond to comments on a proposed rule likely violates the APA. If a federal agency is employing LLMs to summarize comments, the summaries are susceptible to being inaccurate because of these hallucinations. If an agency is using LLMs to respond to comments, then the responses may also be inaccurate. Most importantly, if agency officials are reading inaccurate summaries then they are not considering the "relevant matter presented" in the comments. If LLMs are being used to respond to the comments without a human reading or considering them, again, the agency would not be considering the "relevant matter presented." Both scenarios are violations of the APA.

Section II - Procedural Concerns with the Proposed Rule

Insufficient Time for a Comment Period

The proposed rule does not give sufficient time to adequately respond to the rule. The proposed rule only offers 45 days to comment. This is an insufficient time period to comment on a rule that would have an impact on an estimated \$1.1 trillion in federal financial assistance. ⁶ The Office of Management and Budget should seriously consider extending the comment period to give stakeholders additional time to analyze the proposed rule and provide feedback.

Additionally, the Consolidated Appropriations Act, 2026 (Appropriations Act) includes a provision in division D, title 2, section 242 that states the following:

² 5 U.S.C. § 553(c).

³ 5 U.S.C. § 553(c).

⁴ Dahl, Matthew, et. al., "Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models," <https://academic.oup.com/jla/article/16/1/64/7699227#s29>.

⁵ Anh-Hoang, Dang, et. al., "Survey and analysis of hallucinations in large language models: attribution to prompting strategies or model behavior," <https://pmc.ncbi.nlm.nih.gov/articles/PMC12518350/>.

⁶ Lee, Bruce Y., Forbes, "The New Trump OMB Rule: Organizations And The Public Raise Concerns," <https://www.forbes.com/sites/brucelee/2026/07/05/the-new-trump-omb-rule-organizations-and-the-public-raise-concerns/>.

The Secretary [of HUD] 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.

This text imposes two obligations on HUD. First, it requires that all rulemaking follow HUD's regulations on rulemaking and the requirements of Executive Order 12866. Second, it requires not less than 60 days for the submission of written comments.

As this rule would bind HUD, it is subject to the requirement of at least a 60-day written comment period. Though the rule states that the Deputy Secretary of the Department of Housing and Urban Development approves this document, because of the statute cited above, the Deputy Secretary lacks the authority to approve a proposed rule document with a comment period that is less than 60 days.⁷

The Proposed Rule Does Not Provide an Adequate Required Regulatory Impact Analysis

Executive Order (EO) 12866 titled "Regulatory Planning and Review" requires that "[f]or those matters identified as . . . a significant regulatory action . . . the agency shall provide . . . [a]n assessment, including the underlying analysis, of benefits anticipated from the regulatory action[,] . . . [a]n assessment, including the underlying analysis, of costs anticipated from the regulatory action[,] . . . [and an] assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation . . ."⁸ Put plainly, for significant regulatory actions, OMB is required to provide a regulatory impact analysis that details the costs, benefits, and provides alternatives to the regulatory actions.

While OMB does provide a regulatory impact analysis (RIA), the provided RIA does not meet the requirements of EO 12866.⁹ The EO requires that the RIA include an analysis of the costs, but in its analysis OMB states "OMB was unable to quantify the expected costs of the rule."¹⁰ While the RIA does include some paragraphs that discuss costs, there is no quantitative analysis of what these costs might be. For example, this rule would apply to the U.S. Department of Housing and Urban Development. In the fiscal year 2026, the following amounts were allocated to several HUD programs:

- \$4,687 million to the Public Housing Operating Fund;
- \$337 million to the Operating Fund Shortfall;
- \$3,200 million to the Capital Fund;
- \$40 million to the Resident Opportunities and Self-Sufficiency program;
- \$30 million for Emergency Capital Needs;

⁷ The proposed rule states "[t]he Deputy Secretary of the Department of Housing and Urban . . . approves this document, Regulation for Federal Financial Assistance, and authorizes . . . [the] Director of the Office of Management and Budget to digitally sign this document for purposes of publication in the **Federal Register** . [sic]" 91 Fed. Reg. 32,240.

⁸ Sections 6(a)(3)(C)(i)-(iii) of "Regulatory Planning and Review," Executive Order 12866, <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

⁹ OMB's Regulatory Impact Analysis can be found here: <https://www.regulations.gov/document/OMB-2026-0034-0038>.

¹⁰ RIA, p. 17.

- \$10 million for the Jobs Plus Initiative;
- \$25 million for the Choice Neighborhood Initiative;
- \$34,957 million for the Section 8 Housing Assistance Payment Renewal Account;
- \$2,836 million for Housing Choice Voucher Administrative Fees;
- \$15 million for new HUD-VASH vouchers;
- \$10 million for HUD-VASH tribal vouchers;
- \$30 million for Family Unification Program / Foster Youth to Independence program vouchers;
- \$156 million for the Family Self-Sufficiency program;
- \$18,543 million for Section 8 Project-Based Rental Assistance;
- \$3,300 million for the Community Development Block Grant;
- \$1,250 million for the HOME Investment Partnerships Program;
- \$529 million for the Housing Opportunities for Persons with AIDS; and
- \$4,417 million for Homeless Assistance Grants.

Though these do not represent all of HUD's programs and expenses, the programs listed above total over \$74 billion dollars. However, the RIA does not describe nor analyze the costs or beneficial impacts to them. Similarly, the RIA does not analyze or articulate how the proposed rule would quantitatively impact any of the multiple federal agencies that it would cover.

In addition to not providing an agency-by-agency breakdown of costs, benefits, and alternatives, the proposed rule also explicitly ignores substantial provisions of the proposed rule. The RIA states that "... provisions (§ 200.218 [disparate impact], § 200.219 [discriminatory event services]) are not analyzed in detail because they are not expected to produce meaningful economic effects."¹¹ It is hard to believe that such a wide-ranging change to disparate impact liability as is being proposed would not have a substantial economic impact. If that is the case, OMB should provide quantitative analysis showing that it would not have a significant economic impact.

It is NAHRO's understanding that this proposed rule could impact \$1.1 trillion in grant funding, a non-negligible percentage of the American economy, but OMB only provides a short 30-page RIA that is devoid of any quantitative analysis of the costs or benefits of the rule.¹² For this reason, the proposed rule does not meet the requirements of executive order 12866.

Housing Agencies Are Not Subject to This Rule as They Are Governed by the Terms and Conditions of their Annual Contributions Contracts

It is NAHRO's position that housing agencies are not subject to the requirements of this rule because housing agencies are subject to their annual contributions contracts (ACCs). The U.S. Housing Act of 1937 states that the "... [HUD] Secretary may make annual contributions to public housing agencies to assist in achieving and maintaining the lower income character of their projects. The Secretary shall embody the provisions for such annual contributions in a contract guaranteeing their payment."¹³ The U.S. Department of Housing and Urban Development in mutual agreement with housing agencies have created annual contributions contracts that govern the housing agency's rights and responsibilities. Absent

¹¹ RIA, p. 2.

¹² Lee, Bruce Y., Forbes, "The New Trump OMB Rule: Organizations And The Public Raise Concerns," <https://www.forbes.com/sites/brucelee/2026/07/05/the-new-trump-omb-rule-organizations-and-the-public-raise-concerns/>.

¹³ 42 U.S.C. § 1437c(a)(1).

amending the statutes giving HUD the authority to enter into these contracts with housing agencies, the Department lacks the authority to subject housing agencies to the requirements of this proposed rule. If the federal government wishes to subject housing agencies to the type of requirements noted in this rule it must come to a mutual agreement with housing agencies to change the terms of the ACCs.

Section III - General Concerns with the Proposed Rule

Terminology is Vague

One of the primary problematic trends in this rule is that it uses vague terminology in multiple provisions. In this context, vague means that a term is so imprecise that a person of ordinary intelligence must guess at its meaning. Vagueness is problematic because it does not give fair notice of prohibited conduct to grantees while it allows arbitrary enforcement of broad, ill-defined terms.

The proposed rule requires that grantees “demonstrably advance the President’s policy priorities,”¹⁴ effectuate “the national interest,”¹⁵ not “. . . take actions that could significantly damage the reputation of . . . the Federal agency making the award, or the Federal Government,”¹⁶ or bar spending funding on activities that further “diversity, equity, inclusion, and accessibility” policies or practices.¹⁷ These are all broad terms that are not defined within the proposed rule.

The terms listed above and other similarly broad ones pose two problems for grantees. First, it is not clear to grantees from reading these terms what the actual prohibited conduct is. For example, many of the activities that public housing agencies conduct (e.g., providing vouchers to veterans, providing financial literacy classes, providing rental search assistance for voucher holders) are activities that could be said to increase equity or accessibility. It is unclear if these activities would be prohibited by the proposed rule. Second, as the terms are so broad, the potential for the government to abuse enforcement of them is high. This proposed rule will allow officials at HUD to claim that anything is not in the “national interest” and threaten to terminate funding. The end result of placing this much discretion on individual officials is that those HUD officials will employ personal standards and enforcement of these provisions will be erratic and arbitrary.

Funding streams will be viewed as unreliable if this proposed rule, as written, were to go into effect. Creating inconsistent funding streams will hinder the provision of federal rental assistance and impede the supply of new affordable housing units. This will, in turn, raise market rental prices and increase the price of new homeownership.

This Proposed Rule Will Cause Less Affordable Housing to Be Built Because of the Uncertainty It Creates

This proposed rule will make federal funding streams inconsistent and unreliable. As a result, private developers will not be able to count on them when creating their capital stacks for development projects. Absent having reliable federal funding, many developments and projects that could be developed will never start. For example, many developments employ HOME Investment Partnerships (HOME) funding as gap financing for affordable housing developments. Knowing that these HOME funds might be terminated

¹⁴ Proposed § 200.205(b)(1).

¹⁵ Proposed § 200.340(a)(2).

¹⁶ Proposed § 200.332(i).

¹⁷ Proposed § 200.300(b)(1).

at any point if an official at HUD deems a project not in the “national interest” means that developers will avoid using these funds to ensure project stability. In many instances, projects will not be able to “pencil out” without federal funding. Fewer projects will lead to higher rental prices and higher homeownership costs across the nation in the medium to long term. Similarly, provision of project-based vouchers in the Housing Choice Voucher program will be inconsistent and unreliable for developers with similar effects as described above.

The Proposed Rule Should Be Guidance Instead of a Regulation

The proposed rule states that it would be promulgated as regulatory text. The rule states that an “. . . objective of this rulemaking is to clarify the status of the 2 CFR regulatory text as an OMB regulation.”¹⁸ If OMB does not withdraw the proposed rule, we strongly urge OMB not to make it a regulation, but to instead make it guidance that individual agencies can choose to follow or not. If the proposed rule is promulgated as a regulation, it would force agencies to follow each of its provisions without having any quantitative analysis of what this rule would do or how it would impact the greater economy. The RIA that came with the proposed rule avoided any quantitative discussion of its impact by federal agency. As such, we do not know what the costs to the economy of this rule will be. If OMB were to issue it as guidance, each federal agency could take the directive and structure it as necessary to mitigate the negative impacts to the economy. As written, the proposed rule creates too much risk, uncertainty, and arbitrary enforcement for any entity to rely on federal funding. Issuing this as guidance will allow agencies greater time to implement the proposed rule in a way that does not damage the economy as badly as the proposed rule currently will.

OMB May Lack the Authority to Promulgate this Proposed Rule

It does not appear clear that the Office of Management and Budget has the authority to promulgate this proposed rule. The proposed rule states that “OMB is authorized under 31 U.S.C. 503 to, among other things, provide ‘overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements.’”¹⁹ It is not clear that a rule as sweeping and broad as this one can be characterized as providing “overall direction and leadership” when it appears to be micro-managing how a federal agency must treat its grantmaking. Additionally, given how broad and undefined several of the reasons for terminating funding, it is unclear if the Office is really “establishing financial management policies and requirements” or if it’s claiming Congress’s spending powers for its own. Finally, nothing in 31 U.S.C. § 503(a)(2) gives OMB the authority to issue a government-wide regulation.²⁰

If OMB insists on promulgating this regulation, it should provide a more detailed analysis of the authority from which it is drawing.

¹⁸ 91 Fed. Reg. 32,200.

¹⁹ 91 Fed. Reg. 32,201.

²⁰ NAHRO acknowledges that this authority may exist in other statutes.

Section IV - Specific Concerns with the Proposed Rule

Alignment with Administration Priorities (Proposed § 200.202)

The proposed rule states that a federal program must be designed to “[a]lign with administration policies and priorities.”²¹ NAHRO believes that this statement contradicts Congress’s role in authorizing new programs. Statutes created by Congress determine programmatic policies and priorities. The administration already has a role in assisting Congress in properly writing their statutes by providing technical assistance to drafters as they are writing legislation and producing the President’s proposed budget. The executive branch only has discretion on programmatic activities to the extent that Congress explicitly delegates that authority on a per program basis to a federal agency.

Grantee and Proposal Selection (Proposed § 200.205)

The proposed rule requires a review of discretionary awards by the federal agency. As a part of this review process, “. . . Federal agencies must perform pre-issuance reviews to ensure that Federal award proposals selected for funding are consistent with . . . the national interest.”²² Additionally, as part of the pre-issuance review “. . . senior appointees (or their designee) . . .” must apply certain principles to their review.²³ One principle is that the “. . . [d]iscretionary awards must . . . demonstrably advance the President’s policy priorities.”²⁴ When conducting the review “. . . senior appointees (or their designee) must not ministerially ratify or routinely defer to the recommendations of others, but must use their independent judgment when evaluating Federal award proposals.”²⁵

Taken together, the language cited above in the proposed rule would move discretionary awards by federal agencies away from an objective process to one that is dominated by political interference. First, there is no clear definition of what the “national interest” is. This would give any political appointee the power to deny a discretionary grant to any entity by claiming that the entity is not acting in the national interest. Second, the proposed rule states that any discretionary grant must advance the “President’s policy priorities.”²⁶ This shifts funding decisions from Congress to the executive branch. It might be the case that Congress has allocated funding to an activity that is not aligned with the President’s policy priorities. This provision reinterprets all funding decisions made by Congress through an executive branch lens. Finally, the requirement that the political appointee not defer to the recommendations of others but use their own judgment would mean that political appointees would be less likely to utilize the expertise of agency staff and more likely to make decisions on the basis of personalized judgment than subject matter expertise.

This politicized review of grants will create instability in funding streams for certain HUD programs. Discretionary grants disbursed by HUD, like the Continuum of Care program or the Choice Neighborhoods grants, will no longer be distributed according to objective criteria but will instead be distributed more arbitrarily according to the judgment of the political appointee conducting the review. To the extent that the political appointee performing the review changes, even within the same administration, the criteria

²¹ Proposed § 200.202(a)(1)(iii).

²² Proposed § 200.205(b).

²³ Proposed § 200.205(b).

²⁴ Proposed § 200.205(b)(1).

²⁵ Proposed § 200.205(c).

²⁶ Proposed § 200.205(b)(1).

will change with each person appointed (each individual will have a different idea of what advancing President's policy priorities entails or being aligned with that national interest are). This will make it difficult for Continuums of Care to operate and will likely result in a larger population of people experiencing homelessness. Additionally, to the extent that Choice Neighborhood funds are used to spur greater development beyond rehabilitating Public Housing, for example, those projects will be put in jeopardy. Typically, greater community investment relies on multiple funding sources, but with the Choice Neighborhoods funding facing erratic disbursements, private developers will not want to rely on that funding in any community development project. The end effect will be to constrain the development of additional affordable housing. Even if reviewers made no changes to grants before their distribution, assigning this review authority to a select set of officials will create long delays, resulting in the similar funding instability.

Ability to Terminate or Suspend Funds (Proposed § 200.211 and Proposed §§ 200.340-343)

The proposed rule states that the "[t]he Federal agency or pass-through entity, to the extent permitted by law, may terminate a Federal award in part or its entirety if the Federal agency or pass-through entity, including if a Federal award does not effectuate . . . the national interest . . ."²⁷ The proposed rule does not define "national interest." This provision would generally apply to discretionary grants, but not to block grants, grants based on a statutory formula, disaster recovery grants, or to grants where legislation establishes an entitlement to the funds on the part of the recipient.²⁸

As NAHRO understands this proposed regulation, it would not empower HUD to have discretionary authority to terminate funds for the core components of the Housing Choice Voucher program (with the administrative fee or the housing assistance payments) nor would it apply to the core components of the Public Housing program (neither the Operating Fund nor the Capital Fund) which are based on formulas. Nonetheless, NAHRO is concerned that it could apply to certain awards associated with those programs.

For example, in the Housing Choice Voucher program, HUD has the ability to distribute Housing Assistance Payment (HAP) set-aside fees.²⁹ While these fees are for specific purposes determined by appropriations language in yearly bills, NAHRO is concerned that the proposed rule's discretionary ability to terminate funds would be applicable to these fees. Frequently, HAP set-aside fees are used for shortfall funding (i.e., they are used as supplementary funding for PHAs when their HAP funding does not meet the rental needs of the people in the voucher program). The proposed rule could create a situation where HUD denies a housing agency shortfall funding because some activity that the housing agency is conducting is defined as not in the "national interest." For example, a housing agency may have a program to incentivize and assist voucher holders to move to areas of opportunity which, in some instances, may increase the cost per voucher. The Department may determine that this is not in the "national interest" and deny shortfall funding to the housing agency. The Housing Choice Voucher program also includes special administrative fees. Some of these special administrative fees may be distributed by the Secretary's discretion. This would allow the Department to deny special administrative fees to agencies that the Department view as not acting in the "national interest."

Similarly, there are set-aside funds for the Public Housing program where NAHRO is concerned that the

²⁷ Proposed § 200.340(a)(2).

²⁸ Proposed § 200.340(b)(2).

²⁹ See Notice PIH 2026-12, Revision 2, <https://www.hud.gov/sites/default/files/hudclips/documents/PIH-2026-12.pdf>.

OMB proposed rule would apply. For example, the Operating Fund shortfall funding allows HUD to distribute operating funds based on an application process.³⁰ Similarly, funds associated with the Capital Fund like the Emergency Safety and Security Grants may all be subject to this discretionary termination or suspension mechanism.³¹ Once again, NAHRO is concerned that the Department will have too much leeway in arbitrarily suspending or terminating funds when it deems a housing agency's actions not in the "national interest."

Requirements for Pass-Through Entities (Proposed § 200.332) – Termination for Reputational Damage

The proposed rule states that subrecipients should not ". . . take actions that could significantly damage the reputation of the pass-through entity, the Federal agency making the award, or the Federal Government."³² The rule also states that "[i]f the Federal agency determines that such significant reputational harm has occurred, it may either direct the pass-through entity to terminate the subaward or terminate the Federal award to the pass-through entity."³³

Any final rule should clarify that housing agencies are neither pass-through entities nor are the landlords or tenants subrecipients when the housing agency is participating in the Housing Choice Voucher program or is running Public Housing. A housing agency may potentially be a pass-through entity if it received another federal grant and then uses subrecipients (e.g., as part of a Continuum of Care). In these limited scenarios, the proposed rule could be harmful to housing agencies. Once again, the primary issue is that the proposed rule does not define what "actions that could significantly damage the reputation" of the pass-through entity, the federal agency, or the government as a whole are. Without a clear definition, it will be impossible to apply this provision equitably. Instead, the rule as it is structured, has the potential to be easily abused such that government officials may claim any action that they dislike, even permitted actions, will damage the government's reputation and will be susceptible to terminated funding.

Specific Conditions (Proposed § 200.208) – New Terms and Conditions

The proposed rule states that "[t]o the extent permitted by law . . . the Federal agency may: (i) Add specific conditions when a Federal award is made; and (ii) Add or remove specific conditions through the period of performance."³⁴ The rule provides certain examples of specific conditions that may be added (reproduced below from the text of the rule):

- Requiring payments as reimbursements rather than advance payments;
- Withholding authority to process to the next phase until receipt of evidence of acceptable performance;
- Requiring additional or more detailed financial reports, which may include requiring information on payments to subrecipients, contractors, and vendors;
- Requiring additional project monitoring, which may include financial integrity-related site visits with the goal of improving the financial integrity of the program or recipient organization;
- Requiring the recipient or subrecipient to obtain technical or management assistance; or

³⁰ See Notice PIH 2026-10, <https://www.hud.gov/sites/default/files/hudclips/documents/PIH-2026-10.pdf>.

³¹ See Notice PIH 2023-10 REVISED, <https://www.hud.gov/sites/default/files/OCHCO/documents/2023-10pihn.pdf>.

³² Proposed § 200.332(i).

³³ Proposed § 200.332(i).

³⁴ Proposed § 200.208(b)(1).

- Establishing additional prior approvals.³⁵

The proposed rule also states that the federal agency or pass-through entity may adjust terms and conditions based on an analysis of specific factors including (factors below are reproduced from the text of the rule):

- Review of OMB-designated repositories of Government-wide data (for example, SAM.gov) or review of its risk assessment (see [Proposed] § 200.206);
- The recipient's or subrecipient's history of compliance with the terms and conditions of Federal awards, including the Federal award the Federal agency is adjusting (see also [Proposed] § 200.339);
- The recipient's or subrecipient's ability to meet expected performance goals as described in [Proposed] § 200.211; or
- A determination of whether a recipient or subrecipient has inadequate financial capability to perform the Federal award.³⁶

Additionally, the federal agency may “. . . include program-level specific Federal award conditions . . . in any Federal award made under a Federal program that the Federal agency determines presents elevated programmatic risk related to program administration, program oversight, or effective monitoring of the use or expenditure of Federal funds by recipients or subrecipients.”³⁷ This leaves the federal government broad authority to change the terms and conditions of awards in almost any scenario. It would be very easy for any federal agency, or HUD, to find “elevated programmatic risk related to program administration.” Alternatively, the proposed rule allows for adding additional terms in the name of “program oversight” which any intervention would fall under. Any change to a term or condition could be argued to be “program oversight.” Similarly, “effective monitoring of the use or expenditure of Federal funds by recipients or subrecipients” could be used to justify regulations that impose the harshest of administrative burdens that hinder program implementation. Each category alone could justify most actions with the combination of them giving the ability to unilaterally change the terms and conditions of federal financial assistance in almost any conceivable instance.

As NAHRO understands the regulatory text, this ability to add new terms and conditions applies to all federal financial assistance and not to just discretionary grants (i.e., HUD may try to claim this authority and apply it to the Housing Choice Voucher program and the Public Housing programs). For example, HUD may claim this authority to try and require a reimbursement system for Public Housing funding while simultaneously withholding payments until housing agencies provide unreasonably strict evidence of acceptable performance. This gives HUD the authority to impose strict accounting requirements on Public Housing that will massively increase reporting requirements and compliance burdens. These types of accounting changes in the Public Housing world will sabotage the efficient and effective performance of the Public Housing system.

Similarly, the proposed rule allows HUD to implement vast changes to the Housing Choice Voucher program absent any new congressional authorization. For example, HUD could claim that the ability to add new specific conditions might allow it the power to add additional requirements of housing agencies that manage the Housing Choice Voucher program. HUD could add conditions that it has requested in

³⁵ Proposed § 200.208(d).

³⁶ Proposed § 200.208(c).

³⁷ Proposed § 200.208(f).

prior President's budgets like prohibiting housing agencies from issuing new vouchers, requiring mandatory work requirements, requiring mandatory term limits, or adding terms that require housing agencies to sign recovery agreements if the housing agency does not "comply" with Housing Choice Voucher rules.

Finally, this proposed provision will lead to far less development of affordable housing. The typical affordable housing development employs a wide variety of funding streams from both the public and private sector. No developer will want to count on public funding streams (e.g., Housing Choice Voucher project-based vouchers, Project-Based Rental Assistance, HOME, etc.) if they know that new terms and conditions can be applied to those funding streams at any point. This will lead to many fewer, if any, new units across the country and will eventually lead to higher rental and homeownership prices for the general public.

Statutory and National Policy Requirements (Proposed § 200.300) – Limits on Diversity, Equity, and Inclusion, and Accessibility

The proposed rule bars federal agencies or pass-through entities from using federal awards for "[d]iversity, equity, and inclusion" or "diversity, equity, inclusion, and accessibility" "policies, principles, or practices" that may violate "[f]ederal anti-discrimination laws."³⁸ While the proposed rule clarifies that this includes "racial preferences" or "... activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation," the proposed rule does not provide a proper definition of diversity, equity, inclusion, and accessibility.³⁹

The lack of a definition for diversity, equity, inclusion, and accessibility activities means that proposed rule likely impacts a wide variety of activities that housing agencies may currently engage in. These activities include the following:

- Providing financial literacy classes or help accessing financial literacy classes for families;
- Helping families move to areas of opportunity in the Housing Choice Voucher program;
- Including wait list preferences for people experiencing homelessness in Public Housing and the Housing Choice Voucher program;
- Including wait list preferences for veterans in the Public Housing and the Housing Choice Voucher program;
- Giving scholarships to the children of families in the Public Housing and the Housing Choice Voucher program;
- Helping people with disabilities locate and lease up homes in the Housing Choice Voucher program;
- Helping veterans access counseling or other programs that may assist in their day-to-day lives;
- Helping survivors of domestic violence or survivors of human trafficking access appropriate counseling;
- Helping children access libraries or reading programs; and
- Increasing self-sufficiency for residents receiving federal rental assistance.

Most of the activities that a public housing agency conducts that help support families (e.g., providing financial literacy classes) or build thriving communities could be classified as equity or accessibility

³⁸ Proposed § 200.300(b)(1).

³⁹ Proposed § 200.300(b)(1).

activities under the proposed rule as it is currently structured. The above list is not a complete list of activities that a housing agency may conduct but serves as an example of the types of activities that will be prohibited by this proposed rule as it is currently structured.

Prohibition of Using Federal Awards to Promote or Support Theories of Disparate-Impact Liability (Proposed § 200.218)

The proposed rule states that “[t]o the maximum extent permitted by law, Federal agencies must eliminate the use of disparate-impact liability in all contexts relevant to Federal awards.”⁴⁰ Recipients and sub-recipients may “[n]ot adopt, issue, or enforce disparate-impact liability standards in administering programs or activities supported by a Federal award.”⁴¹

As NAHRO understands the text of the proposed rule, HUD would not be able to publish guidance on disparate impact liability. This may have an adverse impact on all HUD grantees as disparate impact liability still exists in federal case law. Thus HUD grantees, like housing agencies, would still be susceptible to disparate impact suits where guidance from HUD on disparate impact would help them know what steps to take to avoid potential litigation. This will increase litigation risks as HUD grantees will be uninformed about existing disparate liability risks. Additionally, it is not clear if HUD “. . . eliminat[ing]the use of disparate-impact liability in all contexts . . .” means that HUD would be required to prohibit federal funds from being used for disparate-impact activities, even if the federal funds are being used to defend in a disparate impact case.⁴²

English Language (Proposed § 200.111)

The proposed rule states that “[a]ll Federal financial assistance announcements, applications, and Federal award information must be in the English language and must be in terms of U.S. dollars.”⁴³ The quoted text appears to be the entirety of this provision. It is not clear if this provision is meant to apply only to federal agencies such as HUD or if the prohibition against using other languages to communicate federal financial assistance announcements will apply further downstream to programs like the Housing Choice Voucher program or the Public Housing program. This new provision will make it hard for agencies to attract landlords to the Housing Choice Voucher program who may be better versed in a language other than English. It will also make it difficult to serve family members who may be versed in languages other than English.

Domestic Preferences for Procurements (Proposed § 200.322) – Expansion of Build America, Buy America

The proposed rule states that “[t]o the greatest extent practicable and consistent with law, Federal agencies must include terms and conditions in Federal awards to maximize the use of goods, products, and materials produced in the United States. If included in a Federal award, these requirements must also be included in all subawards, contracts, and purchase orders under Federal awards.”⁴⁴ The proposed rule also states that “[f]ederal agencies providing Federal financial assistance for infrastructure projects must

⁴⁰ Proposed § 200.218(a).

⁴¹ Proposed § 200.218(c).

⁴² Proposed § 200.218(a).

⁴³ Proposed § 200.111.

⁴⁴ Proposed § 200.322(a).

implement the Buy America preferences”⁴⁵

In HUD, the Buy America Preference (BAP) instituted by the Build America, Buy America initiative is only applicable to iron and steel, construction materials, and manufactured products used in federally funded infrastructure projects. According to NAHRO’s membership, at this time, most items, with the exception of steel, do not have systems in place to determine if the item was made in America. The U.S. Department of Housing and Urban Development has created a process by which developers building affordable housing can apply to HUD for waivers for various funding streams if there is a needed product that can not be found to be made in America. As NAHRO understands this language, if “[f]ederal agencies must . . . maximize the use of goods, products, and materials produced in the United States” then HUD will no longer be able to offer these waivers.⁴⁶ This will stop new construction and preservation efforts and drastically limit the supply of new affordable housing units. Additionally, the language here seems to extend the BAP to all products, not just iron, steel, construction materials, and manufactured products. Again, the end result will be a drastic shortage in the products that housing agencies and developers will be able to purchase and will stop or severely limit the construction of new affordable housing units.

Conferences (Proposed § 200.432) – Pre-approval for Conferences

The proposed rule states that “[t]he costs for attending conferences are allowable only if participation in the conference is expressly approved by the Federal agency and included in the terms and conditions of the Federal award.”⁴⁷ As NAHRO understands this proposed language, it applies to all federal financial assistance.

This is unworkable in the affordable housing space. There are too many potential conferences and HUD is not aware of all of them to be able to integrate them into the terms and conditions of each particular agency’s awards. For example, NAHRO typically hosts three conferences across the country annually. The locations change (with the exception of one conference which is always held in Washington, D.C.) so that agencies in different parts of the country will typically be able to find a national conference near them. NAHRO’s affiliated regional chapters (composed of multi-state areas) also hold conferences. Finally, various state chapters either individually, or in combination with an adjacent state, hold conferences.

The topics and content at the different regions for each conference do not necessarily overlap. A state conference may focus more on maintenance, inspections, or pest control issues, while the national conference may focus on preparing for the implementation of upcoming regulations or new technical systems that HUD is rolling out. So larger PHAs may send maintenance staff to a smaller conference, while sending their executive director or department heads to the national conference. Because national organizations, regional organizations, and state organizations are often affiliated but typically distinct entities, each organization is making its own decisions about when and where to host conferences. There may not be a master list of all the conferences being held in a given year. This will make it almost impossible for HUD staff to know when and where each conference is being held and then updating the terms for each particular housing agency. NAHRO believes that HUD lacks the staffing capability to be able to do this. Enactment of this rule will prevent many agencies from attending conferences and receiving the information they need to efficiently and effectively run their programs.

⁴⁵ Proposed § 200.322(b).

⁴⁶ Proposed § 200.322(a).

⁴⁷ Proposed § 200.432(b).

For example, HUD is currently in the process of implementing sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016. The enforcement date for this massive regulation is January 1, 2027, though this has been delayed numerous times throughout its implementation. Housing agencies rely on these conferences to ensure that their staff are best positioned to make the appropriate changes to their policies and are aware of the technical challenges on instituting changes in the Inventory Management System / Public and Indian Housing Information Center (IMS/PIC). Agencies are able to learn about the latest news from HUD at these conferences while also exchanging best practices about how best to implement the changes with other agencies. Additionally, not being able to attend these conferences will leave agencies in the dark about other upcoming HUD changes. While HUD does have an email list of executive directors, it is NAHRO's understanding that the list is not always accurate and that sending an email to an executive director does not necessarily translate to the staff at the agency seeing it. For agency staff to remain informed and learn the latest developments, it is crucial that they attend the conferences.

Finally, NAHRO is concerned that this might create a chilling effect for associations when federal agencies ask for feedback. This rule prevents associations from providing useful feedback for fear of having their conferences blacklisted. While this may seem like a good idea for the federal agency in the short term, in the medium to long term it will mean that HUD and other federal agencies will not receive valuable feedback that could allow them to anticipate and fix problems before guidance, regulations, and technical systems go online. This will lead to worse implementations of regulations and technical systems and will likely lead to interruptions in housing assistance.

Memberships, Subscriptions, and Professional Activity Costs (Proposed § 200.454) – Preapproval for Membership Organizations

The proposed rule states that “[c]osts of the recipient’s or subrecipient’s membership in professional, civic, business, and technical organizations are allowable if necessary to fulfill the award requirements. Such costs must receive prior written approval of the Federal agency.”⁴⁸

The text of this provision in the proposed rule may prevent agencies from joining membership organizations that help them to efficiently and effectively use federal funds. For example, NAHRO and other membership organizations allow a space for its membership to collaborate and share best practices about how to best run HUD programs. Additionally, NAHRO may help with technical assistance like informing a housing agency how to contact the appropriate office in HUD to request additional funding during a shutdown when the loss of life or property is at stake. Membership organizations help keep members informed about new laws that will impact them (e.g., the Housing Opportunity Through Modernization Act of 2016) and keep them informed about HUD’s plans for implementation through the regulations and guidance phases of implementation. Associations like NAHRO also provide networking and professional development opportunities. The associations frequently work collaboratively with HUD to inform the membership of upcoming changes to rules and how they should be implemented.

The end result of this provision will be that fewer housing agencies will join membership organizations and will be less able to effectively run HUD’s programs. Additionally, this will have the effect of chilling appropriate feedback from membership organizations which will result in worse outcomes and wasted federal funds over the medium and long term.

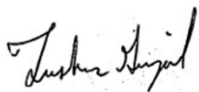
⁴⁸ Proposed § 200.454(a).

Lobbying (Proposed § 200.450) – Voter Registration

The proposed rule prevents nonprofits from “[e]stablishing, administering, contributing to, or paying the expenses of a voter registration campaign, voter registration drive, or any similar activity, or paying the expenses of another entity engaged in such activities”⁴⁹ While this restriction only applies to nonprofits and does not prevent a housing agency from engaging in this activity, it will still impact voter registration drives as housing agencies that may want to provide this service to a community might normally invite a nonprofit to set it up and run it. This occurs because the nonprofit will likely best know federal and state laws on voter registration, while the housing agency will be better positioned to know federal and state laws related to housing. Nonetheless, this provision will prevent housing agencies from offering this service to their communities if nonprofits are unable to do this. It is unclear what the benefit is of making voter registration more difficult. As this is a service that helps communities participate in civic life, NAHRO recommends that the final rule not include this provision.

The National Association of Housing and Redevelopment Officials thanks the Office of Management and Budget for the opportunity to share these comments. If the Office has any questions or comments on these points or any other issue, please feel free to reach out to me at tgurjal@nahro.org.

Sincerely,



Tushar Gurjal,
Senior Policy Manager
National Association of Housing and Redevelopment Officials

⁴⁹ Proposed § 200.450(c)(1)(iii).