State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

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Submitted via Electronic Submission to Regulations.gov

Eric Wall, Director of Policy
Office of Disaster Recovery and Resilience
Small Business Administration
409 3rd Street SW
Washington, DC 20416

RE: Comment on Interim Final Rule Entitled "Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance," RIN 3245-AI71, Document No. 2026-01797, 91 FR 3813 (January 29, 2026)

Dear Director Wall:

I. Introduction

The Attorneys General of California, Arizona, Colorado, Connecticut, Delaware, the District of Columbia, Hawai'i, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, and Washington submit this comment in response to the above-referenced Interim Final Rule ("IFR") issued by the Small Business Administration ("SBA"). As explained in this letter, SBA should rescind the IFR and not repromulgate it as a final rule.

At its core, the IFR seeks to preempt state and local permitting requirements, which are designed to ensure safety, legal compliance, and quality control, to hasten the commencement of building activities funded in whole or part by SBA's Disaster Loan Program. To carry out this preemption, the IFR permits a borrower wishing to avoid state and local permitting requirements to provide a self-certification from the borrower's builder (or the borrower themselves, if they are not working with a builder) that the builder has complied, and will continue to comply, with non-preempted state and local requirements.

As explained in this letter, the SBA has no legal authority to preempt state or local requirements in this manner. Congress did not grant SBA authority to override any state and local laws, let alone those having to do with the core local function of permitting. Regardless, SBA's claim that state and local permitting requirements conflict with the Disaster Loan Program is

unavailing. Permitting regulations are within the purview of state and local police power, and they do not frustrate the core objectives of the Disaster Loan Program. Evidence from recent disasters shows that state and local permits are not causing an undue delay in the disbursement and use of SBA funds. The IFR does not cite to any probative evidence to the contrary. Finally, the IFR's drastic and preemptive self-certification program is unnecessary and counterproductive.

In addition, the IFR is procedurally unlawful. SBA's justifications for issuing the IFR without required prior written notice and comment are unsupported by evidence and are contrary to core directives of an executive order designed to maintain federalism principles.

The timely provision of assistance to victims of devastating disasters continues to be of paramount importance to state and local officials. But the IFR is an unlawful and unhelpful tool that is likely to hinder, not help, individuals harmed by natural disasters. The SBA should rescind the IFR.

Alternatively, if the SBA proceeds with finalizing the IFR, SBA should at minimum (1) allow state and local agencies to determine what constitutes a "complete" application under 13 C.F.R. § 123.803 and (2) require builders or borrowers who utilize the self-certification process under 13 C.F.R. § 123.805 to notify state and local agencies of their intent to proceed with construction without a permit, and to provide to the relevant state or local agencies a copy of the plans that they self-certify with SBA. Though this would not resolve the significant issues inherent in the IFR, it would at least facilitate state and local agencies' ability to monitor projects self-certifying under the SBA program and ensure that properties comply with building codes and health and safety regulations.

II. Background

A. The Disaster Loan Program

The Disaster Loan Program was established through Section 7(b) of the Small Business Act in 1958.[1] Through the Disaster Loan Program, SBA offers four types of loans: (1) physical disaster home loans, which are low-interest, fixed-rate loans to disaster survivors designed to help repair or replace residential property damaged or destroyed in declared disasters, (2) physical disaster business loans, which are low-interest, fixed-rate loans to disaster survivors designed to help repair or replace commercial property damaged or destroyed in declared disasters, (3) economic injury disaster business loans, which are low-interest, fixed-rate loans to small businesses to help recover from economic injury, and (4) military reservist economic injury disaster loans.[2] The two loan types most directly related to construction, and therefore relevant to state and local permitting requirements, are the physical disaster home and business loans.

[1] *See* Pub. L. No. 85-536 (1958).

[2] 13 C.F.R. §§ 123.2(a), 123.5(a). A different provision of the Small Business Act, Section 42, authorizes SBA to offer interim guaranteed disaster loans (with financial institutions) to affected small business. *Id.* § 123.5(b).

Physical disaster home loans have a typical loan limit of $500,000 for repair or replacement of a primary residence.[3] Physical disaster business loans have a typical loan limit of $2,000,000.[4]

B. State and Local Permitting Requirements

Except for the few federal statutes that regulate construction on a national basis, government regulation of construction for the public health, safety, and welfare has been left to state and local governments for generations.[5] This deference to state and local governments is a result both of the local character of construction and the limitations on the federal government found in Tenth Amendment jurisprudence.[6] Moreover, this regulatory power fits firmly within state and local governments' police power.[7] This power includes enforcing building codes through a permitting process that requires governmental review of design plans, designer and contractor licenses, and insurance prior to construction.[8] Permit requirements are useful, reasonable, and essential to the general welfare because they ensure compliance with building codes and other health and safety regulations.[9]

C. EO 14377 and the IFR

On January 23, 2026, President Trump signed Executive Order 14377. As relevant here, the order instructed the Secretary of Homeland Security ("Secretary"), acting through the Administrator of the Federal Emergency Management Agency ("FEMA"), and the SBA Administrator, to consider promulgating regulations that (1) preempt state or local permitting processes, and other similar pre-approval requirements, that each agency claims to have unduly impeded the timely use of federal emergency-relief funds by homeowners, businesses, or houses of worship in rebuilding such structures following a disaster, and (2) replace preempted state or local permitting regimes, or other similar pre-approval requirements, with a requirement that builders self-certify to a federal designee from each agency that they have complied with all applicable substantive state and local health and safety standards with respect to the structure proposed to be rebuilt using federal emergency-relief funds.[10] The order also directed the Secretary and the SBA Administrator to publish proposed regulations to this effect within 30 days of the order, and final regulations within 90 days of the order.[11]

Six days after President Trump's executive order, SBA issued the IFR.[12] The IFR adds a new subpart to SBA's regulations implementing the Disaster Loan Program. At bottom, the IFR's

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[3] *Id.* § 123.105(a)(2). Different limits apply to loans for different purposes. *See id.* § 123.105(a).

[4] *Id.* § 123.202(a). This limit includes any economic injury loans the business has received. *Id.* This limit may be waived if the business is a major source of employment. *Id.*

[5] *See* 6 Bruner & O'Connor Construction Law § 16:1 (2026 update).

[6] *Id.* (citing Rotunda and Nowak, Treatise on Constitutional Law § 4.10 (2d ed. 1992)).

[7] *See* 9A McQuillin Mun. Corp. § 26:215 (3d ed. 2026 update) (citing, *e.g.*, *Hunter v. Adams*, 180 Cal. App. 2d 511 (1st Dist. 1960); *Bethlehem Evangelical Lutheran Church v. City of Lakewood*, 626 P.2d 668 (Colo. 1981)).

[8] *Id.*

[9] *See* 9A McQuillin Mun. Corp. § 26:215.

[10] Exec. Order 14377 § 3(a) (Jan. 23, 2026).

[11] *Id.* § 3(b).

[12] 91 Fed. Reg. 3813 (Jan. 29, 2026).

new rules seek to override any state or local permitting requirement[13] where such requirement is the but-for cause of a delay of more than 60 days in a borrower's commencement of"Disaster-Related Activities."[14] To effectuate this purpose, the IFR declares that compliance with state or local requirements is not necessary if the state or local permitting requirements cause such a delay.[15] It requires any party seeking to avoid such state or local permitting requirements to provide a certification by the borrower's builder that the builder has complied (and will continue to comply) with non-preempted state or local requirements.[16] The IFR states that "non-preempted rules and regulations include, but are not limited to, building codes, health and safety requirements, inspection requirements (which may be conducted by local government inspectors or qualified, independent third-party inspectors), and any other processes required to obtain a certificate of occupancy at the completion of Disaster-Related Activities."[17] The IFR considers this self-certification from the builder sufficient authorization to proceed with disaster-related activities.[18] The IFR also limits state and local governments from enforcing preempted state or local permitting requirements.[19]

The IFR took effect on January 29, 2026, the day it was promulgated. SBA has posted to its website two new forms, SBA 3520 and SBA 3521, that together allow borrowers' builders (and borrowers themselves, if they are not working with a builder) to self-certify that they have complied with non-preempted state and local requirements.[20]

III. Discussion

A. The IFR Unlawfully Exceeds SBA's Statutory Authority Because Congress Has Not Delegated Preemption Power to SBA

Federal agencies "are creatures of statute and as such literally have no power to act except to the extent Congress authorized them."[21] Here, SBA purports to preempt certain state and local permitting requirements. But agencies cannot "pronounce on pre-emption absent

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[13] The IFR defines "State or Local Requirement" as "any provision of any state or local law, regulation, ordinance, code, or administrative practice that imposes a requirement to have a permit or imposes another approval requirement as a condition precedent to conducting Disaster-Related Activities, but does not include, for the avoidance of doubt, any substantive underlying requirements that would form the basis of the permit or approval." 13 C.F.R. § 123.801(c).

[14] *Id.* § 123.803. The IFR defines "Disaster-Related Activities" as "any real property repairs, rehabilitations, replacements, or any associated activities financed in whole or in part by an approved SBA Disaster Loan." *Id.* § 123.801(a).

[15] *Id.* § 123.804(a).

[16] *Id.* § 123.805.

[17] *Id.*

[18] *Id.* § 123.804(b).

[19] *Id.* §§ 123.804(c), 123.806.

[20] SBA Form 3520, available at https://tinyurl.com/4vkw7waz; SBA Form 3521, available at https://tinyurl.com/4djzz22z.

[21] *Marin Audubon Soc'y v. FAA*, 121 F.4th 902, 912 (D.C. Cir. 2024) (quotation marks and brackets omitted).

delegation by Congress"[22] because preemption requires the expression of a "clear and manifest" congressional purpose.[23] The IFR is plainly outside of its lawful authority because Congress has not delegated to SBA the power to preempt state and local laws.

SBA cites one statutory provision for its power to issue the IFR: 15 U.S.C. § 634(b)(6), which states that the SBA Administrator may "make such rules and regulations as [s]he deems necessary to carry out the authority vested in him by or pursuant to this chapter."[24] Nowhere does the referenced chapter delegate to the SBA Administrator the authority to preempt state and local laws. This absence is notable because Congress knows how to authorize the head of an agency to carry out a preemption clause if it wants to.[25] It has not done so here.

SBA's unfounded view of its authority to preempt state and local laws has troubling implications. If SBA can override state and local permitting requirements by merely proclaiming that they conflict with a vague and arbitrary description of the purpose of a federal program, with no statutory delegation, federal agencies could take a virtually limitless "because I said so" approach that encroaches onto numerous areas of state and local police power. Under this theory SBA could, for instance, take the position that basic building safety codes—standards that ensure a building is structurally sound—add time and cost to construction and therefore conflict with the SBA's program goals. A preemption landscape of this sort is contrary to the principles of state sovereignty that are foundational to our federalist system.

B. The IFR Is Arbitrary and Capricious Because No Evidence Supports Its Claim that State and Local Permitting Requirements Conflict with the Disaster Loan Program

Even setting aside the issue of SBA's statutory authority to preempt, its attempt to do so on the grounds that state and local permitting requirements conflict with Congressional intent behind the Disaster Loan Program is arbitrary and capricious because no evidence supports that conclusion. Case law is clear that agency action is arbitrary and capricious if it relies upon inadequate or inaccurate evidence that does not support the agency's conclusions.[26]

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[22] *Wyeth v. Levine*, 555 U.S. 555, 577 (2009).

[23] *New York v. F.E.R.C.*, 535 U.S. 1, 18 (2002).

[24] 15 U.S.C. § 634(b)(6).

[25] *See, e.g.*, 49 U.S.C. §§ 5125 (authorizing Secretary of Transportation to determine whether a state, local, or tribal government regulation is preempted by federal regulations on the transportation of hazardous materials), 31141 (authorizing the Secretary of Transportation to determine whether a state regulation of commercial motor vehicles is unenforceable because it is less stringent than federal regulation).

[26] *See, e.g.*, *Cigar Ass'n of Am. v. FDA*, 132 F.4th 535, 540 (D.C. Cir. 2025) ("[A]gency action is arbitrary and capricious if it relies upon a factual premise that is unsupported by substantial evidence."); *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (D.C. Cir. 2008) ("It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data . . . .").

1. Background on Conflict Preemption

"[O]ur Constitution establishes a system of dual sovereignty between the States and the Federal Government."[27] The exception to this dynamic of concurrent authority is found in the Supremacy Clause, which provides that federal law prevails in a conflict between federal law and state or local law.[28] However, because the "the promise of liberty" lies in the "tension between federal and state power[,]" courts assume that Congress "does not exercise [preemption power] lightly."[29] Therefore, "if Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'"[30] That is why "[i]n every preemption analysis, whether Congress intended to preempt a state or local law is the "ultimate touchstone."[31] "Invoking some brooding federal interest" does not support preemption.[32]

Indeed, consideration of whether a state or local law is preempted "starts with the assumption that the historic police powers of the States are not to be superseded by [a] Federal Act unless that is the clear and manifest purpose of Congress."[33] Further, "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption.'"[34]

There are three ways in which Congress can demonstrate its intent to preempt—express, field, and conflict preemption.[35] Express preemption is straightforward. If Congress has explicitly stated in statutory language that it intends to override a state or local law, its intent requires no investigation.[36] In the absence of explicit statutory language, field preemption may support invalidating a state or local law where the state or local law regulates conduct in a field where Congress intended the federal government to occupy the entire field.[37] Finally, conflict preemption may invalidate a state or local law if it actually conflicts with federal law.[38]

Conflict preemption itself has two subcategories. The first is impossibility preemption—a state or local law may be invalidated where it is impossible for a private party to comply with

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[27] *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991).

[28] U.S. Const., art. VI, cl. 2; *see Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324 (2015). Preemption analysis is the same whether it is a state law or local ordinance which is being subjected to scrutiny. *Hillsborough County v. Auto. Med. Labs.* 471 U.S. 707, 713 (1985).

[29] *Gregory*, 501 U.S. at 459-60.

[30] *Id.* at 460 (quoting *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65 (1989)).

[31] *Wyeth,* 555 U.S. at 565.

[32] *Virginia Uranium, Inc.* v. *Warren*, 587 U.S. 761, 767 (2019) (lead opinion of Gorsuch, J.).

[33] *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)); *see also Hillsborough County*, 471 U.S. at 716 (describing "presumption" that state and local regulation of health and safety matters can constitutionally coexist with federal regulation).

[34] *Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2008) (quoting *Bates v. Dow Agrosciences LLC,* 544 U.S. 431, 449 (2005)).

[35] *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990).

[36] *Id.*

[37] *Id.* at 79.

[38] *Id.*

both state and federal requirements.[39] The second is obstacle preemption—a state or local law may be preempted where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[40] What qualifies as "a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects,"[41] but courts are reluctant to find that state or local law interferes with the full purposes and objectives of Congress.[42] Any alleged obstacles "must be fairly high before the Court will infer preemption."[43] The state or local law must yield to the federal regulation only "[i]f the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect."[44] Mere "tension" between the federal and state or local law is insufficient.[45] Rather, a conflict exists "only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'"[46]

SBA does not claim that the Disaster Loan Program expressly preempts state and local permitting requirements, nor could it, as the statute authorizing the program does not mention permitting. Nor does SBA claim that Congress believes the federal government entirely occupies the field with respect to permitting requirements. Instead, SBA suggests that state and local permitting requirements pose an obstacle to the Disaster Loan Program by frustrating the goal of providing "rapid, effective deployment of assistance in the wake of a disaster to avoid additional harms to victims of disasters."[47] This falls far short of an appropriate justification to preempt permitting requirements that have historically been within the purview of state and local police powers.[48] The Supremacy Clause gives precedence to "the *Laws* of the United States,"[49] not the "priorities or preferences of federal officers."[50] SBA cannot declare even "inconsistent state regulation" preempted "just because it frustrates" SBA's preferred means of implementing the statute.[51] Instead, to show that state and local permitting requirements conflict with the Disaster Loan Program, SBA must show how the "purpose of the act cannot otherwise be accomplished"[52] due to state and local permitting requirements. They have not done so here.

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[39] *Id.*

[40] *Id.* (quoting *Hines v. Davidowitz,* 312 U.S. 52, 67 (1941)).

[41] *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000).

[42] *See* 2 Rotunda and Nowak's Treatise on Const. Law § 12.4(d) (2025 update) (citing *CTS Corporation v. Dynamics Corp.*, 481 U.S. 69 (1987)).

[43] *Id.*

[44] *Crosby*, 530 U.S. at 373 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 n.20 (1941)).

[45] *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 256 (1984).

[46] *Jones v. Rath Packing Co.*, 430 U.S. 519, 544 (1977) (Rehnquist, J., dissenting in part and concurring in part) (quoting *Kelly v. Washington*, 302 U.S. 1, 10 (1937)).

[47] 91 Fed. Reg. at 3814.

[48] *See supra* note 7.

[49] U.S. Const. art. VI, cl. 2 (emphasis added).

[50] *Kansas v. Garcia*, 589 U.S. 191, 212 (2020).

[51] *Mozilla Corporation v. Federal Communications Comm'n*, 940 F.3d 1, 80 (D.C. Cir. 2019) (quotation marks omitted).

[52] *Crosby*, 530 U.S. at 373.

2. SBA's Justifications Do Not Show that State and Local Permitting Requirements Conflict with the Disaster Loan Program

SBA does not come close to showing that state and local permitting requirements defeat or even frustrate the purpose of the Disaster Loan Program. SBA alleges that it has "identified recurring delays caused by state and local permitting requirements,"[53] but does not identify or document a single example. SBA also asserts that "[s]ome of these victims have delayed disbursement of their SBA loans, while others who have received loan proceeds cannot use them and will soon begin accruing interest and payment obligations, adding insult to injury."[54] But SBA provides no examples, numbers, or facts to support any one of its vague, conclusory statements and it makes no attempt to connect its claims to state or local permitting processes.[55]

SBA ignores that there are several reasons why a survivor may not be ready for Disaster Loan disbursements other than permitting requirements. For example, in California, survivors of the January 2025 Los Angeles wildfires have cited out-of-pocket rebuilding costs, insufficient or delayed insurance payouts, feelings of confusion about the recovery process, and environmental safety concerns as more significant obstacles to rebuilding than permitting requirements.[56] In fact, most surveyed survivors of total losses who intend to rebuild their properties had not applied for a building permit as of late 2025.[57]

SBA cites California as an example of the supposed problem with permitting requirements, stating that "only 15% of destroyed structures received rebuild permits within one year" of the January 2025 wildfires in Los Angeles.[58] But SBA does not provide any basis or data in support of this assertion. This statement also suffers from the same flaw as above: it does not account for the myriad of factors other than permitting speed that contribute to the overall number of homes with permits, such as delayed or insufficient insurance payouts or out-of-pocket costs.[59] In fact, the $33.9 billion that Governor Newsom has requested from the Trump

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[53] 91 Fed. Reg. at 3814.

[54] *Id.*

[55] The closest SBA comes is found in its justification for forgoing the required prior written notice and comment, *see infra* Section III.D, in which they claim that "SBA has authorized over $3 billion with respect to the January 2025 wildfires in California ($2 billion of which was approved within the first 75 days of the disaster declaration), yet approximately only $600 million has been disbursed." 91 Fed. Reg. at 3814. Even if these figures are true, they provide no evidence showing that any delay in disbursement is due to state and local permitting requirements. SBA also cites Congress's criticism of the SBA (not state or local governments) in 2007 for slowly responding to victims' needs in the aftermath of Hurricanes Rita and Katrina. *Id.* at 3814 n.1. How SBA's failures in response to prior disasters supports the national preemption of current state or local permitting requirements is left unexplained.

[56] *Community Voices: La Fire Recovery Report*, DEP'T OF ANGELS at 27 (Jan. 2026), available at https://tinyurl.com/32hchdjn ("Department of Angels Report"); *see also, e.g.*, Levi Sumagaysay, *Many L.A. fire survivors face insurance delays and can't return home a year later*, CALMATTERS (Jan. 7, 2026), https://tinyurl.com/3ukb2z9z.

[57] Department of Angels Report at 27-28.

[58] 91 Fed. Reg. at 3815.

[59] *See* Department of Angels Report at 27; Sumagaysay, *supra* note 56.

administration and Congress[60] would do far more to help the survivors of the Palisades and Eaton fires than an unhelpful focus on overriding state and local permitting regulations. Yet that funding has not been granted.

SBA also claims that the typical building permit process in Denver, Colorado, supposedly takes ten months, compared to the process in Dallas, which SBA claims typically takes two months.[61] To support these figures, it cites a blog post from Hover Architecture, an architecture firm in Colorado with a portfolio primarily focused on car washes.[62] It is not clear where Hover Architecture received its data, the methodology it used to produce it, or its overall reliability as a source.[63] Regardless, the blog post is not relevant. It is narrowly focused on building permit approval for a subset of commercial properties and, importantly, does not focus on permit approval timelines in the wake of disasters, which are often streamlined for affected properties.

Moreover, SBA does not provide any basis for why it determined that 60 days is the threshold for a permit review timeline consistent with the Disaster Loan Program's purpose.

Ultimately, and irrespective of its claims about alleged permitting delays, SBA does not show how "the purpose of the [Disaster Loan Program] cannot otherwise be accomplished"[64] as a result of state and local permitting requirements. SBA does not claim, for example, that state and local governments are diverting Disaster Loan Funds from their intended purposes,[65] defying Congress's terms or conditions,[66] or intruding on SBA's authority.[67]

3. Evidence Shows That State and Local Governments Have Taken Significant Action to Streamline Permit Review Times

Beyond these fundamental defects in the IFR, there is also no empirical reason to accept SBA's claims that state and local permitting requirements conflict with the Disaster Loan Program because even a basic review of the facts on the ground shows that state and local

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[60] *See* Josh Haskell*, Gov. Newsom urges Trump to act on $33.9B disaster aid request for California wildfire victims*, ABC7 LOS ANGELES (Dec. 12, 2025), https://tinyurl.com/yd5kc8d9.

[61] 91 Fed. Reg. at 3815.

[62] *Id.* at 3815 n.4; *see About Us,* HOVER ARCHITECTURE, https://hoverarchitecture.com/about/ (last visited Feb. 17, 2026); *A Growing Portfolio of Projects*, HOVER ARCHITECTURE, https://hoverarchitecture.com/projects/ (last visited Feb. 17, 2026).

[63] For its data on Denver's permit approval time, the blog post includes a link (in the hyperlinked text, "Current average is 293 days") to what appears to be a website for the City of Denver: https://tinyurl.com/mr47yy8u. It appears that Hover Architecture took its data for the city of Denver from the tab labeled "Major Commercial." Other tabs show much lower average permit approval times. No other data is provided for the other cities.

[64] *See Crosby*, 530 U.S. at 373.

[65] *See Shapp v. Sloan*, 480 Pa. 449, 472 (1978).

[66] *See Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 9, 15 (2013) (finding preemption where an Arizona state law required state officials to reject the use of a federal form required by federal law).

[67] *See Hughes v. Talen Energy Marketing, LLC*, 578 U.S. 150, 164 (2016) (finding preemption where Maryland program directly interfered with federal authority).

governments have acted to improve permit review timelines. The following examples from California, Colorado, Maine, and New Jersey demonstrate why.

California

President Trump's Executive Order 14377, which instigated SBA's issuance of the IFR, attacks the State of California and local governments in Los Angeles County for purported delays in the recovery process.[68] It accuses elected leaders of not taking "even the minimum action necessary" to streamline regulations to allow survivors to move forward and rebuild their lives.[69] This faulty premise seems to underlie the IFR. But it is far from the truth.

Though the State of California does not issue building permits, California has taken several steps to streamline the local permitting process for survivors of the Palisades and Eaton fires. Specifically, Governor Newsom has, among other actions:

- Issued Executive Order N-4-25, which, among other recovery actions, suspended the California Environmental Quality Act ("CEQA") and permit requirements under the California Coastal Act for the affected areas. It also instructed the Department of Housing and Community Development ("HCD") to coordinate with local governments to identify and recommend procedures to establish rapid permitting and approval processes to speed up reconstruction efforts, with the goal that local agencies would complete approvals necessary for permit issuance within 30 days.[70]
- Issued Executive Order N-14-25, which, among other recovery actions, directed the California Coastal Commission to avoid interfering with the Governor's directives allowing property owners to rebuild their properties without having to undertake permitting or other procedures under the California Coastal Act.[71]
- Issued Executive Order N-20-25, which, among other recovery actions, (1) updated the Governor's previous executive orders waiving permitting requirements under the Coastal Act and CEQA by clarifying the scope of the waivers and providing that local planning or permit approval is determinative of eligibility for these suspensions, (2) expedited rebuilds of recently constructed homes by allowing them to be rebuilt to approved specifications, (3) helped speed access to original plans held by local planning and building departments, to minimize delays in rebuilding, and (4) extended deadlines for

[68] *See* Exec. Order 14377.
[69] *Id.* § 1.
[70] Press Release, Governor Gavin Newsom, Governor Newsom signs executive order to help Los Angeles rebuild faster and stronger (Jan. 12, 2025), available at https://tinyurl.com/yc79mnkx.
[71] Press Release, Governor Gavin Newsom, Governor Newsom cuts red tape, further suspends Coastal Commission rules to help LA firestorm survivors rebuilt (Jan. 27, 2025), available at https://tinyurl.com/4czyzjnp.

construction permits, to limit the administrative burden for homeowners seeking to rebuild.[72]

- Issued Executive Order N-29-25, which, among other recovery actions, (1) expanded suspensions of the California Coastal Act and CEQA in the city of Los Angeles, creating parity among homeowners in the city and allowing homeowners to fast-track their entire rebuilding project, (2) exempted residents who are rebuilding homes from the requirement to install rooftop solar and battery storage systems to reduce up-front costs, while retaining the "Solar Ready" requirement to ensure these structures can support future installation of solar energy systems, and (3) suspended changes to building codes that would go into effect on January 1, 2026, when not all homeowners will have finalized their plans to rebuild, to create certainty for homeowners and avoid the need to change plans, while retaining updated fire safety requirements.[73]

- Signed special session legislation including $4 million to provide local agencies with additional planning review and building inspection resources for the purpose of expediting building approvals.[74]

- Signed Assembly Bill 253,[75] which streamlines the permit approval process for residential properties by authorizing applicants to hire private, third-party professionals to review an applicant's plan for compliance with state and local building codes and health and safety regulations if a local agency's permit review is estimated to, or does, take longer than 30 days.[76]

- Through a public-private partnership, deployed a new AI tool to facilitate the approval of building permits, supported development of pre-approved plans to bypass plan check requirements, and launched a rebuilding resource to guide homeowners through the rebuilding process and connect them to pre-approved plans, modular homes, and other pathways to expedite the permitting and construction process.[77]

Local jurisdictions have also taken significant steps to speed up the permitting process, including by implementing their own self-certification processes. For example, the City of Los

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[72] Press Release, Governor Gavin Newsom, Governor Newsom cuts more red tape by further streamlining permitting laws to accelerate rebuilding Los Angeles (Feb. 13, 2025), available at https://tinyurl.com/4e6cxecb.

[73] Press Release, Governor Gavin Newsom, Six months after the LA fires, nation's fastest residential cleanup nears completion as Governor Newsom signs streamlining executive order, joins local leaders to unveil blueprint for rebuilding (July 7, 2025), available at https://tinyurl.com/4jp4u4wf.

[74] Press Release, Governor Gavin Newsom, Governor Newsom signs $2.5 billion bipartisan relief package to help Los Angeles recover and rebuild faster from firestorm (Jan. 23, 2025), available at https://tinyurl.com/yk4d9dxp; *see also* SBx1-3, 2025-26 Spec. Sess. (Cal. 2025).

[75] Assemb. B. 253, 2025-26 Reg. Sess. (Cal. 2025). AB 253 took effect the same day it was signed on October 10, 2025. *Id.* § 8.

[76] *Id.* § 5 (codified at Cal. Health & Safety Code § 17960.3).

[77] *See* Press Release, Governor Gavin Newsom, Governor Newsom announces launch of new AI tool to supercharge the approval of building permits and speed recovery from Los Angeles Fires (Apr. 30, 2025), https://tinyurl.com/k6f5my9m.

Angeles has taken the following actions, among others, to streamline the permitting process for survivors of the Palisades and Eaton fires:

- Issued an emergency executive order that established a one-stop-shop to swiftly issue permits in all impacted areas (the "LA One-Stop Rebuilding Center"), directed city departments to expedite all building permit review/inspections, and established a fast track for rebuilding "like for like" homes of similar size and in substantially the same location as the damaged or destroyed home, consistent with the Governor's executive orders, including by waiving city discretionary review processes for such homes.[78]

- Allowed Palisades residents to obtain the original plans for their lost homes at the LA One-Stop Rebuilding Center, consistent with Governor Newsom's Executive Order N-20-25, which suspended the state law that required City of Los Angeles officials to seek the consent of the person who designed a building plan before releasing it to the building owner.[79]

- Issued an emergency executive order that, among other recovery actions, directed City Departments to develop ways to streamline permitting for owners who rebuild all-electric, more fire-resistant homes.[80]

- Issued an emergency executive order that established Los Angeles' first ever plan check Self-Certification program, which allows qualified architects to self-certify that their plans meet the California Residential Code, forgoing the need for plan check.[81]

- Issued an executive directive that took a step forward to using Artificial Intelligence technology to help support City staff review of project plans against building and zoning codes, saving time and expediting the rebuilding process for residents.[82]

- Issued an emergency executive order that further streamlined the permitting process for those seeking to rebuild beyond 110%, including an expansion of the scope of single-

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[78] *See* Press Release, Mayor Karen Bass, Mayor Bass Issues Sweeping Executive Order to Clear Way for Angelenos to Rebuild Their Homes Fast (Jan. 13, 2025), available at https://tinyurl.com/mua6etdv. Mayor Bass revised Emergency Executive Order No. 1 after Governor Newsom issued Executive Order N-20-25. *See* Press Release, Los Angeles Mayor Karen Bass, Mayor Bass Updates Emergency Executive Order 1 to Clear Bureaucratic Barriers, Continue Speeding Up the Rebuild (Mar. 18, 2025), available at https://tinyurl.com/5f3atv3v.

[79] Press Release, Mayor Karen Bass, New Help Available for Palisades Residents Seeking Their Building Plans (Mar. 5, 2025), available at https://tinyurl.com/ywadyte3.

[80] Press Release, Mayor Karen Bass, Mayor Bass Issues Emergency Executive Order to Help Palisades Residents Expedite Rebuilding of More Fire-Resistant Homes (Mar. 21, 2025), available at https://tinyurl.com/4ajdfe7c.

[81] Press Release, Mayor Karen Bass, Mayor Bass Issues New Executive Actions to Further Expedite Rebuilding Process Ahead of Trip to Sacramento (Apr. 23, 2025), available at https://tinyurl.com/69564pph.

[82] *Id.*

family home projects eligible for the State's emergency suspension of CEQA and the California Coastal Act.[83]

- Issued an emergency executive order that launched a pre-approved standard plan pilot program for single-family homes, creating a public-facing, virtual library of pre-approved, code-compliant designs to fast-track rebuild projects.[84]
- Issued an emergency executive order that introduced a set of emergency measures designed to streamline the rebuilding process for commercial properties located within the Palisades Commercial Village and Neighborhoods Specific Plan area, including properties in the Coastal Zone.[85]

The County of Los Angeles has further taken the following actions, among others:

- Approved a comprehensive recovery plan that included streamlined processes for response and recovery, including expediting permitting, reducing bureaucratic hurdles, and removing impediments to access funding.[86]
- Established a one-stop rebuilding shop to assist survivors navigate the rebuilding process, including permitting.[87]
- Created a self-certification pilot program that allows California licensed architects and engineers to self-certify that their building plans comply with the Los Angeles County Building Code, eliminating the need for a full plan check review.[88]
- Enacted an ordinance that temporarily eases certain development restrictions in unincorporated areas impacted by the fire. It allows the County to facilitate faster reconstruction and permitting for properties suffering irreparable damage, establish a framework for temporary uses that support recovery, and maintain the streamlined Disaster Recovery Permit program with reduced fees and flexible development standards.[89]

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[83] Press Release, Mayor Karen Bass, Mayor Bass Issues New Executive Actions to Further Streamline Palisades Rebuilding (Jul. 23, 2025), available at https://tinyurl.com/2hwc4xft.

[84] *Id.*

[85] Press Release, Mayor Karen Bass, Mayor Bass Issues New Executive Order to Further Streamline Rebuilding of Businesses and Commercial Properties in Pacific Palisades (Oct. 29, 2025), available at https://tinyurl.com/2k22m7tk.

[86] Press Release, Supervisor Barger, L.A. County Supervisors Approve Implementation of Comprehensive Plan for Recovery from Devastating January 2025 Fires (Jan. 28, 2025), available at https://tinyurl.com/4699r2x5.

[87] Press Release, Supervisor Barger, L.A. County One-Stop Rebuilding Shop Now Serving Eaton Fire Survivors (Feb. 12, 2025), available at https://tinyurl.com/39whabt9.

[88] Press Release, Supervisor Barger, Los Angeles County Launches Building Plan Self-Certification Pilot Program to Help Fire Survivors Rebuild Faster (May 20, 2025), available at https://tinyurl.com/39whabt9.

[89] Press Release, Supervisor Barger, Barger Champions Continued Support for Eaton Fire Survivors with Ordinance Extension (Oct. 7, 2025), available at https://tinyurl.com/rcrp2udt.

Additionally, the cities of Pasadena and Malibu enacted rebuilding ordinances that, among other things, streamline review of "like-for-like" rebuilding, facilitate use of temporary housing for recovery, and ease zoning restrictions for rebuilding damaged properties.[90]

These efforts have paid off. Permitting times have accelerated dramatically across these jurisdictions.[91] Local agencies have been issuing home rebuilding permits approximately three times as fast as permits for single-family homes and ADUs in the five years before the fires,[92] and all four fire-affected jurisdictions were processing permits with fewer than 60 calendar days of local review time, inclusive of all rounds of review across all involved agencies.[93]

This is not new information to SBA. Los Angeles County Supervisor Kathryn Barger met with the SBA Administrator on February 4, 2026, where she emphasized that the County had streamlined their permitting process and that the timeline for completing all rounds of agency review of permits is 31 business days.[94]

These metrics illustrate that local permitting requirements are not the cause of a greater-than-60-day delay in rebuilding. Agency staff review time averages significantly less than 60 days, even when multiple rounds of review are required due to plans needing correction. Total permitting timelines include time that plans are back with homeowners and their builders to make necessary corrections, but even those timelines are significantly expedited compared to standard, non-disaster processes.

Colorado

Recent experience in Colorado also directly contradicts the claim that state and local permitting requirements unduly interfere with disaster recovery. In 2021, the Marshall Fire tore through front range communities, causing over $2 billion in damage.[95] In response to the

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[90] André Coleman, *Pasadena Issues First Rebuild Permits After Eaton Fire as Council Moves to Waive Fees*, PASADENA NOW (Aug. 28, 2025), https://tinyurl.com/mv47ctr3; Malibu, CA., Ordinance No. 524 (2025).

[91] Liam Dillon, *Trump moves to take over Los Angeles wildfire recovery from local and state authorities*, POLITICO (Jan. 27, 2026), https://tinyurl.com/5h8vukup ("local governments are approving projects in the areas that burned at a pace that has been faster than is typical"); *see* Ben Christopher, *After devastating fires, L.A. made one part of rebuilding easy. There's much more to do*, CALMATTERS (Jan. 7, 2026), https://tinyurl.com/bdd72vux ("by historic standards, the Los Angeles recovery has been on the speedy side so far . . . [b]ased on the pace of permitting, Los Angeles' reconstruction is on a relatively fast track.").

[92] Press Release, Governor Gavin Newsom, Governor Newsom announces funding for LA fire survivors to access pre-built housing to further speed recovery and maintain neighborhood character (Feb. 6, 2026), available at https://tinyurl.com/y9a5ktr9.

[93] *See Rebuilding LA—Rebuilding Dashboard*, STATE OF CAL., https://tinyurl.com/4ntzc59h (last visited Feb. 28, 2026) (showing 43 calendar days of agency review time for Los Angeles County, 16 calendar days for the City of Los Angeles, 43 calendar days for the City of Malibu, and 44 days for the City of Pasadena).

[94] *See* Press Release, Supervisor Barger, Supervisor Barger Issues Statement Following Meeting with Federal Administrators Today (Feb. 4, 2026), available at https://tinyurl.com/bdsvhnej.

[95] *See* Christian Murdock, Official: 2021 Colorado wildfire losses surpass $2 billion

Marshall Fire, the Colorado Department of Public Health and Environment released modified procedures for the treatment of asbestos when demolishing and renovating structures that were damaged or destroyed in the fire. These modified procedures sought to streamline the demolition and renovation process by waiving state demolition permitting requirements where no portion of the structure was still standing or sampling of building materials could not be done safely. However, to protect human and environmental health, the modified procedures required approval from CDPHE to renovate or demolish buildings damaged by the fire if sampling for asbestos could be safely performed.[96] These modifications streamlined the rebuilding effort while still protecting Coloradans from the dangers of asbestos exposure.

In addition, following the Marshall Fire, affected counties and towns implemented streamlined permitting processes to expedite the fire recovery process. For example, in early 2022, Boulder County established a streamlined permitting process for rebuilding structures destroyed by the fire.[97] The modified permitting process exempted redevelopments from Site Plan Review and provided allowances for changes to pre-existing structures.[98] The town of Superior also provided code exemptions to expedite the rebuilding process following the Marshall Fire. Specifically, the town allowed the owners of property destroyed by the fire to opt out of the 2021 International Energy Conservation Code, the requirement for an automatic fire sprinkler system, and the Wildland Urban Interface Code.[99] Together, these efforts helped Colorado rebuild after the Marshall Fire twice as fast as the national average for rebuilding following a natural disaster.[100] This demonstrates that state and local permitting requirements in Colorado do not conflict with the Disaster Loan Program and instead allow for complementary programs to help families and communities recover after disasters while protecting the entire community and local environment.

Maine

Maine recently streamlined the permit review process for construction in its coastal zone by expanding its permit-by-rule program to include additional construction activities. The permit-by-rule program allows permit applicants to receive a permit while avoiding the environmental review process for low-impact activities in or near protected natural resources.[101]

(Oct. 27, 2022); *see also* Rocky Mountain Insurance Information Association, Colorado Wildfire Information, (accessed January 29, 2026).

[96] CDPHE Modified Procedures for Asbestos Abatement, Marshall Wildfire, (Dec. 2021), https://tinyurl.com/4r3zkh74; 5 C. Colo. Reg. 1001-10:B-III(E) ("No person may commence an abatement or demolition project without first obtaining the appropriate approval notice (i.e. an asbestos approval notice or a demolition approval notice) from the Division.").

[97] Resolution 2022-029: A resolution approving Boulder Count Community Planning & Permitting Docket at 1, https://tinyurl.com/ax3fxfmn.

[98] *Id.*

[99] Town of Superior, Marshall Fire Rebuild Affidavit, https://tinyurl.com/2wj3bu9m.

[100] Shay Castle, KUNC, *Marshall Fire homes being rebuilt twice as fast as post-disaster national average* (May 9, 2023), https://tinyurl.com/yk4t2v6y.

[101] *See* Me. Code of Rules §§ 096-305-1 *et seq.*

Because properties in the coastal zone are prone to natural disasters, this effort will help streamline the permit review process in the aftermath of disasters.

Maine has also proposed an emergency bill pending in the current Legislature that would make it easier for individuals and businesses to repair or rebuild docks, piers, wharves, and associated structures that have been significantly damaged by storms, particularly those used for commercial fishing or other "functionally dependent uses."[102] The bill would exempt survivors who own these commercial properties from a variance requirement to demonstrate that their land could not generate a reasonable return without the variance. This too would greatly streamline the permit review process for commercial property owners following a disaster.

New Jersey

New Jersey has existing processes that facilitate permit review times for rebuilding efforts after a disaster.

First, in the wake of a disaster, residential and commercial property owners can request an emergency authorization from the New Jersey Department of Environmental Protection's (NJDEP) Division of Land Resource Protection (Division) to conduct necessary land and development activities if there is an imminent threat to public health, safety, welfare or property, or a significant degradation to the environment, if work is not commenced immediately. The provisions within the Coastal Zone Management rules,[103] Freshwater Wetlands Protection Act rules,[104] and Flood Hazard Area Control Act rules[105] require that the Department issue or deny an emergency authorization request within 15 calendar days of receipt.

Second, as a result of Superstorm Sandy in 2012 and to ensure the timely allocation of FEMA's State Hazard Mitigation Grant Program for elevation grant applications, NJDEP and FEMA implemented a Procedural Clarification establishing a review process for FEMA to determine if further consistency consultation with the NJDEP Division of Land Resource Protection is required. The review process establishes a procedure for FEMA's efficient environmental review of grant applications to ensure consistency with state regulations pertaining to development, including the Coastal Zone Management rules,[106] Freshwater Wetlands Protection Act rules,[107] and Flood Hazard Area Control Act rules.[108] The Procedural Clarification is currently being updated to reflect standards pursuant to New Jersey's January 20, 2026 adoption of the Resilient Environments and Landscapes rulemaking which modernizes land

[102] Legis. Doc. No. 2143, 2d Reg. Sess. 2026 (Me. 2026). A "functionally dependent use" is defined as a use that cannot be located away from the coastal waters, 44 C.F.R. § 59.1, and these uses often require variances from zoning requirements as part of the permitting process due to their proximity to the water.

[103] N.J. Admin. Code § 7:7-2.4.

[104] *Id.* § 7:7A.

[105] *Id.* § 7:13.

[106] *Id.* § 7:7.

[107] *Id.* § 7:7A.

[108] *Id.* § 7:13.

development rules to better support New Jersey communities, residents, and businesses in building resilience to sea level rise, extreme weather, and chronic flooding.

Third, on April 5, 2021, and as part of its continued commitment to customer service and efficiency improvements, New Jersey adopted the eSubmission rulemaking. Through this rulemaking, coastal zone management, freshwater wetlands, and flood hazard area authorizations under the purview of the Department's Division of Land Resource Protection, were amended to require electronic submission. The applicable authorizations included general permits, individual permits, water quality certificates, freshwater wetland transition area waivers, and any flood hazard area verifications that are submitted in conjunction with an application for a general permit authorization, individual permit, or transition area waiver. Since the operative date of October 5, 2021, the aforementioned applications have only been accepted through NJDEP Online.[109] This effort has improved communication with applicants and their representatives, simplified internal coordination, and improved processing timelines.

Finally, New Jersey has implemented General Permits by Certification, which are online permits available for activities with minimal environmental impact. Authorization is issued automatically upon submission and certification of compliance through the Department's electronic system. These permits authorize activities including, but not limited to, a 400 sq. ft. or less expansion of a single-family home or duplex; development of a single-family home on a bulkheaded lagoon lot; reconstruction of a residential or commercial development within the same footprint and expansion or relocation of the footprint of a residential or commercial development provided specific criteria are met. The certification requires that compliance the development meets requirements or codes of municipal, state, and federal law in addition to other Coastal Zone Management rules, including flood hazard areas.[110] General Permits by Certification are subject to an audit to ensure compliance with applicable standards.

In sum, SBA provides no support for its claim that state and local permitting requirements conflict with the Disaster Loan Program such that the purpose of the program is essentially defeated. It presents no evidence that state and local permitting requirements are the but-for cause of significant delays in the disbursement of its funds and ignores other factors that directly contribute to delays in rebuilding. In fact, evidence on the ground in California, Colorado, Maine, and New Jersey shows the very opposite.

C. The IFR Is Arbitrary and Capricious Because It Is Vague and Will Result in Significant and Disruptive Legal Uncertainty in the Aftermath of Disasters

1. The IFR is Unclear About How a State or Local Permitting Requirement Can Be a But-For Cause of Delay and What Constitutes a Complete Application

In addition to the reasons cited above, the IFR should be rescinded because it is impermissibly vague. Two important principles underline the value of clarity in the regulatory process: "first, that regulated parties should know what is required of them so they may act

[109] NJDEP Online Business Portal, https://tinyurl.com/8ctdd69v.
[110] N.J. Admin. Code §§ 7:7-9.25.

accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way."[111] The IFR defies these principles because it is does not sufficiently define what a "but-for cause" of a delay is or what constitutes a "complete application," leaving unclear when a state and local permitting requirement is supposedly preempted.

Permits are not approved instantaneously upon receipt by a local agency. That is by necessity, as the purpose of the permit process is to review the application for compliance with building and other health and safety codes, which takes at least some amount of time. Moreover, applications are not automatically granted irrespective of their content—it is common (and necessary) for local agencies to point out corrections that the applicant needs to make to satisfy the underlying requirements.[112] Making the corrections takes time and is outside the local agencies' control. The IFR does not take this common and necessary dynamic into account. It merely declares that any state or local permitting requirement is preempted if it is the "but-for" cause of a delay of more than 60 days since the date of the application. But it does not specify whether time spent by the applicant toward making corrections is counted toward this 60-day timeline. If not, an applicant could apply for a permit, receive required corrections back from the local agency expeditiously, and avail themselves of the self-certification process with a non-code-compliant plan if the process passes the arbitrary 60-day threshold. The IFR is unclear about whether it intends to allow this entirely unlawful and dangerous scenario.[113]

Additionally, though the IFR states that this 60-day timeline begins upon the "submission of all complete applications or requests for approval . . . to proceed with Disaster-Related Activities,"[114] it does not clarify what a "complete" application or request for approval is. Without a clear definition, the IFR in effect leaves this interpretation to the self-certifying builder or the borrower. Therefore, it is easy to envision construction commencing on a property despite a local agency deeming a permit application incomplete due to missing documentation. This could happen without the local agency knowing about the construction, since an incomplete application will not put the local agency on notice of the 60-day timeline envisioned by the IFR.

2. The IFR Will Create Legal and Physical Risk by Creating Questions About Whether a Property is Code-Compliant

Further, the self-certification process in the IFR will create legal uncertainty and physical risk for borrowers, contractors, and state and local governments. The IFR invites contractors to self-certify that they have complied with local building and health and safety codes to the satisfaction of SBA, an agency with no expertise in the relevant localities' building and health

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[111] *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

[112] *See* 7 Cal. Real Est. § 25:28 (4th ed.)

[113] Compounding the confusion is the current header on the SBA website, which states that applicants "may qualify for" the self-certification program if the applicant has "applied for a local permit more than 60 days ago, but still [hasn't] received approval." *See Disaster assistance*, SMALL BUS. ADMIN., https://tinyurl.com/2ukpdu4z (last visited Feb. 27, 2026). This elides the concept of the "but-for cause" entirely and suggests that an applicant can qualify for self-certification regardless of the reason their permit has not been approved within 60 days.

[114] 13 C.F.R. § 123.803.

and safety codes.[115] Without a permit, this self-certification essentially leaves unanswered the question of whether critical requirements have been met on a rebuilt property, adding significant legal (and physical) risks to the occupants of the property.

Self-certification programs can be implemented by jurisdictions with authority to enforce the substantive regulations underlying the waived permit requirements, and indeed are already in place in the City of Los Angeles and the County of Los Angeles.[116] Additionally, AB 253, described above, functions in a similar manner statewide in California by authorizing applicants to hire third-party professional planners to review residential building permits after 30 days of local review, and to present their certified reports to local agencies for review within 10 business days.[117] The City of Los Angeles's and the County of Los Angeles's self-certification plans and AB 253 define which projects are eligible and require certification by a state-licensed engineer or architect, who face discipline and potential loss of license if they were to negligently or intentionally self-certify a non-compliant plan.[118] The City of Los Angeles's and the County of Los Angeles's self-certification plans also employ random audits and include penalties for non-compliance.[119]

Critically, self-certification programs deployed by local governments ensure that local agencies have a certified copy of the architectural blueprint and engineering specifications of a home as it goes into construction. This allows local agencies to create and enforce an inspection schedule and enables local inspectors to compare the home in construction to approved plans.[120]

By contrast, the SBA self-certification program allows any contractor—licensed or not—or even an individual borrower to certify compliance with state and local regulations, regardless of their expertise or experience.[121] And it appears to allow a contractor to self-certify a plan as

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[115] *See id.* § 123.805.

[116] Emergency Executive Order No. 6 (Apr. 22, 2025); *Self-Certification Pilot Program Implementation Guide For Licensed Architects*, CITY OF LOS ANGELES, DEPARTMENT OF BUILDING AND SAFETY (Aug. 27, 2025), available at https://tinyurl.com/69zv465s ("City Self-Certification Program"); *Building Plan Self-Certification Pilot Program*, LA County Recovers, https://tinyurl.com/mw4fr9nc (last visited Feb. 14, 2025) ("County Self-Certification Program").

[117] *See* Cal. Health & Safety Code § 17960.3. AB 253 supplements but does not override local self-certification programs like the ones in place in the City of Los Angeles and the County of Los Angeles. *See id.* § 17960.3(e).

[118] *See* City Self-Certification Program; County Self-Certification Program; Cal. Health and Safety Code § 17960.3(c).

[119] *See* City Self-Certification Program; County Self-Certification Program.

[120] *See, e.g.*, Los Angeles County Ordinance §§ 108.1 ("All construction or work for which a building permit is required shall be subject to inspection by the Building Official . . . ."), 108.2 ("Work requiring a building permit shall not be commenced until the permit holder or the permit holder's agent shall have posted or otherwise made available an inspection record card so as to allow the Building Official to conveniently make the required entries thereon regarding inspection of the work."); Los Angeles City Ordinance §§ 91.108.1, 91.108.2 (parallel provisions to Los Angeles County ordinances).

[121] For example, in New Jersey, development requires compliance with rules regarding environmentally sensitive coastal resources, freshwater wetlands, flood hazards areas, and stormwater depending upon which resources are present on a given site. NJDEP also delineates sewer service areas based on environmental sensitivity and planning considerations, including wetlands, threatened and

compliant *even if already informed by a local agency that the plan does not meet safety standards and needs correction*.[122] Though SBA threatens penalties against contractors, it only does so for "knowingly making a false statement."[123] In other words, if a permit has not been approved within 60 days of the application, regardless of the reason, a contractor may avoid liability for *actually* violating state and local building codes and health and safety regulations so long as its signatory did not *believe* it was violating them. In short, SBA's self-certification program replaces a system designed to ensure that building plans meet health and safety regulations with a system rife with risk and reliant on the good faith of individual contractors and borrowers with little or no experience with building codes.[124]

The SBA self-certification program not only creates risk that building plans will be deficient; it also jeopardizes local agencies' ability to ensure that buildings are ultimately constructed to minimum safety standards. Because the IFR does not require builders to provide local agencies with a copy of the plans that they self-certify to SBA or even to notify local agencies that they intend to start construction, local agencies may have no information about which properties are proceeding with SBA self-certification. And it leaves local agencies without an approved plan to compare against a home in construction. Therefore, despite purporting not to preempt local building inspections or substantive building standards, the rule seriously undermines the tools local agencies have to perform inspections and enforce state and local standards. This not only creates safety risk and potential insurability issues for occupants, but also significant legal risk for builders, architects, and potentially local agencies.

Indeed, one significant risk posed by the IFR is its potential conflict with *federal* law. FEMA Public Assistance ("PA") and Hazard Mitigation Grant Program ("HMGP") funding require compliance with current codes and standards, verified through independent government inspections. Bypassing permits may mean there will be no official documentation for compliance, which can lead to de-obligation of FEMA funds for permanent work or loss of eligibility for mitigation grants tied to National Flood Insurance Program ("NFIP") compliance. NFIP mandates permit issuance for all floodplain development.[125] If communities fail to enforce permitting, they risk NFIP probation or suspension, which eliminates eligibility for mitigation projects in Special Flood Hazard Areas and increases insurance costs. Communities might also lose Community Rating System ("CRS") points or discounts, which will also lead to higher

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endangered species habitat, Category One waters and associated buffers, state planning areas, and impacts to New Jersey Pollutant Discharge Elimination System-regulated facilities. SBA's self-certification program would necessitate expertise in the identification of all regulated areas and obligation to analyze alternatives and minimize, mitigate, and avoid impacts, in order to comply with state standards, statutes, and federal requirements. However, SBA's self-certification program requires no such expertise from a builder signing its self-certification form.

[122] *See* 13 C.F.R. § 123.805; SBA Form 3520.

[123] SBA Form 3520.

[124] Moreover, the SBA self-certification program threatens to poke inconsistent holes in a regulatory regime that is meant to apply broadly. Not all disaster survivors apply or are eligible for the Disaster Loan Program. Therefore, SBA's preemption effort applies inconsistently within communities, creating further confusion among local agencies and disaster survivors.

[125] *See* 44 C.F.R. § 60.3.

insurance costs and reduced participation in the CRS program, ultimately rendering the CRS program ineffective.

The IFR ignores these and other potentially harmful consequences. For example, because the SBA self-certification program creates uncertainty over whether a builder has complied with building codes and health and safety regulations,

- Properties may not properly integrate hazard mitigation measures, which are most cost-effective during reconstruction, and could result in the survivor being at further risk in future disasters.
- Appraisers may ascribe a lower value to a property that has been self-certified through SBA's program.
- Insurers may be hesitant to insure borrowers that have used SBA's self-certification program or raise premiums for that borrower.
- Even borrowers who live adjacent to properties that used SBA's self-certification program may see their insurance premiums rise due to the increased risk.
- Building code violations discovered during inspection could delay the rebuilding process, increase costs, and lead to litigation.
- Houses of worship that utilize SBA's self-certification program and may have significant occupancy during disasters could pose physical risks to those inside or near the property.

At bottom, this misguided and arbitrary rule defeats its own stated purpose to help disaster survivors return to their lives. It creates circumstances in which an occupant of a property rebuilt via self-certification is more likely to inhabit an unsafe structure and may not know until well after the process is complete.

3. SBA Should at Minimum Allow State and Local Agencies to Determine What Constitutes a Complete Application and Require Builders or Borrowers to Notify State and Local Agencies of the Intent to Proceed Under the Self-Certification Program

Though SBA should rescind the IFR since it is unlawful and will impose harmful consequences on borrowers and state and local agencies, two changes would provide needed clarity to local agencies looking to ensure that properties meet critical health and safety standards.

The first is to allow local agencies to define what a "complete" application is under 13 C.F.R. § 123.803. As of now, the IFR contains no definition for what constitutes a complete application, in effect leaving this determination up to the self-certifying builder or borrower. As noted above, this opens the door to construction proceeding 60 days after the submission of the borrower's permit application even when that permit application was incomplete. The best way to provide clarity while accounting for the varying needs of different jurisdictions is to explicitly state in the IFR that state and local agencies must determine that an application is complete

before the 60-day period in the IFR commences. State laws can provide a model for this mechanism.[126]

The second is to require builders or borrowers to notify the relevant state and local agencies if they intend to proceed with construction under SBA's self-certification program. Without this mechanism in the IFR, a builder could commence construction 60 days after a permit application was submitted without state or local agencies ever knowing. By the time the state or local agency learns about the construction, it may be costly and difficult to inspect the property to ensure code compliance. If the state or local agency learns about the construction after the property is completely constructed, the property may pose unknown, but potentially severe, safety risks to the borrower and their community. Adding a simple requirement that self-certification applications notify state and local agencies and attach the plan that they have self-certified would at minimum put state and local agencies on notice that construction has commenced and of potential deficiencies in the plan, allowing them to ensure that construction proceeds according to health and safety standards.

Though these changes would not resolve the underlying problems with the IFR, they would promote health and safety by allowing state and local agencies to ensure that properties meet underlying health and safety standards, which the IFR explicitly states are not preempted.[127]

D. The IFR Was Unlawfully Promulgated and Violated the APA's Requirement to Provide Notice and Allow for Public Comment

Under the APA, an agency must typically provide prior notice and an opportunity for public comment before a rule becomes effective.[128] The APA's notice-and-comment procedure is no mere check-the-box requirement—rather, the ability to comment on proposed rules protects the public's rights

> to present their views to the government agencies which increasingly permeate their lives. The interchange of ideas between the government and its citizenry provides a broader base for intelligent decision-making and promotes greater responsiveness to the needs of the people . . . . When substantive judgments are committed to the very broad discretion of an administrative agency, procedural safeguards that assure the public access to the decision-maker should be vigorously enforced.[129]

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[126] *See, e.g.*, Cal. Gov. Code § 65913.3(b)(1)(A) ("A local agency or state agency shall determine whether an application for a postentitlement phase permit is complete and provide written notice of this determination to the applicant . . . .").

[127] 13 C.F.R. §§ 123.801(c), 123.805.

[128] 5 U.S.C. § 553(b), (c).

[129] *Buschmann v. Schweiker*, 676 F.2d 352, 357 (9th Cir. 1982).

"[I]t is antithetical to the structure and purpose of the APA for an agency to implement a rule first, and then seek comment later."[130]

SBA violated this statutory notice-and-comment requirement by promulgating the IFR and making it effective immediately without any advance notice or opportunity to comment. SBA claims that it was permitted to circumvent this congressional requirement because it found "good cause to issue this rule as an interim final rule without prior written notice and comment and with an immediate effective date."[131] But an agency's summary claim of "good cause" to circumvent the APA notice-and-comment requirements that Congress has seen fit to impose on agencies is entitled to no deference.[132]

SBA's stated reasons to support its claim that good cause exists to circumvent these procedures are conclusory and lacking in evidentiary support. Where, as here, an agency is "lacking record support proving the emergency" that it claims, its attempt to circumvent notice and comment and promulgate a rule with immediate effect is unlawful.[133]

First, SBA claims that "[d]isaster recovery efforts are ongoing and currently being impeded."[134] SBA does not even cite which disaster(s) it is referring to, let alone how those anonymous efforts are being impeded. SBA then states that "[b]orrowers are currently experiencing undue delays in the repair, rehabilitation, and replacement of their homes and businesses, frustrating the effectiveness of SBA loans in promptly providing needed federal assistance following a Presidentially-declared disaster."[135] For support, it cites an example that approximately $600 million funds have been disbursed with respect to the January 2025 wildfires in California out of more than $3 billion authorized.[136] But again, SBA ignores the facts on the ground, which show that a number of factors, including delayed or insufficient insurance payouts and high out-of-pocket costs, have contributed significantly to delays in reconstruction activities while state and local permitting requirements have been meaningfully streamlined.[137]

SBA's remaining assertions are an exercise in imprecision. They argue that "[c]ontinued delay of assistance would exacerbate housing and business instability, economic harm, and public safety and health risks in current and future disaster areas," that "[c]ontinued delay preventing the use of assistance proceeds will further harm victims—many of whom will soon

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[130] *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018); *see Chrysler Corp. v. Brown*, 441 U.S. 281, 316 (1979) ("In enacting the APA, Congress made a judgment that notions of fairness and informed administrative decisionmaking require that agency decisions be made only after affording interested persons notice and an opportunity to comment.").

[131] 91 Fed. Reg. at 3814.

[132] *See, e.g.*, *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) ("[A]n agency has no interpretive authority over the APA; we cannot find that an exception applies simply because the agency says we should. Moreover, the good-cause inquiry is meticulous and demanding." (citations and quotation marks omitted)).

[133] *See, e.g.*, *id.*, 755 F.3d at 707.

[134] 91 Fed. Reg. at 3814.

[135] *Id.*

[136] *Id. See supra* note 55.

[137] Department of Angeles Report at 27; *see supra* Section III.B.

begin accruing interest and payment obligations on disbursed loans—despite not being able to commence repair, rehabilitation, or replacement of the destroyed or damaged home or building," that "[t]he immediate problems faced by borrowers, if not addressed, will be repeated by inevitable and unpredictable future disasters," that "[t]he ongoing delay of assistance to many borrowers poses a threat of rendering the Disaster Loan Program ineffective in a time of crisis," and "[i]mmediate regulatory clarity is necessary to ensure uniform administration of the SBA Disaster Loan Program nationwide."[138] This is no more than a list of declarations without a single piece of evidence to bolster them and each of them relies on the unfounded premise that local permitting is somehow the but-for cause of the purported delays the rule claims to address. To justify bypassing the notice-and-comment requirements, "something more than an unsupported assertion is required."[139] SBA has not ventured to provide that here.

E. The IFR Was Promulgated Against the Dictates of EO 13132

President Clinton signed Executive Order 13132 on August 10, 1999.[140] EO 13132 instructs federal agencies to be guided by federalism principles, including that "[t]he national government should be deferential to the States when taking action that affects the policymaking discretion of the States and should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government."[141] Accordingly, EO 13132 instructs federal agencies to consult with state and local officials when establishing national standards or when the agency foresees a potential conflict between federal and state or local law.[142] It also instructs agencies to consult with state and local officials and provide them notice and opportunity to comment when they attempt to preempt state or local law through rulemaking.[143]

SBA included a statement of compliance with EO 13132 in the IFR,[144] but it has made no attempt to follow its instructions. EO 13132 is clear that agencies should proceed cautiously in preempting state and local law, and heavily involve state and local officials when it attempts to do so. Not only does SBA seek to inappropriately encroach upon state and local police powers, it made no attempt to consult with state and local officials before promulgating the IFR. SBA states that doing so was "impracticable" given the "emergency nature" of the IFR.[145] But this comment letter has already shown how SBA has not come close to justifying how the IFR needed to be issued on an emergency basis. Regardless, the mere invocation of an emergency is insufficient. If an agency can defy the principles of federal deference merely by using "emergency" as a magic word, then that deference is nullified.

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[138] 91 Fed. Reg. at 3814.
[139] *Sorenson*, 755 F.3d at 707.
[140] Exec. Order No. 13,132 (Aug. 10, 1999).
[141] *Id.* § 2(i).
[142] *Id.* §§ 3(d)(3), 4(d).
[143] *Id.* §§ 4(e), 6(c)(1).
[144] 91 Fed. Reg. at 3815.
[145] *Id.*

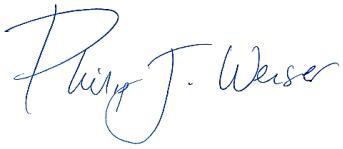
IV. Conclusion

Because the IFR is arbitrary, capricious, and unlawful; because SBA has no evidence that state and local permitting requirements conflict with the Disaster Loan Program; and because SBA promulgated it unlawfully without advance notice, comment, or consultation with the states, SBA should rescind the IFR and not repromulgate it as a final rule.

Sincerely,

ROB BONTA
California Attorney General

KRIS MAYES
Arizona Attorney General



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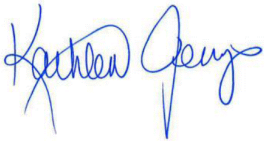

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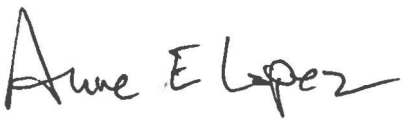

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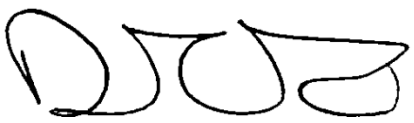

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