May 29, 2026

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Henrietta Owusu
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Re: HOME Investment Partnerships Program: Further Program Updates and Streamlining Proposed Rule, Docket ID FR–6144–P–09, RIN 2506–AC50

We, the undersigned Attorneys General of New York, Washington, Rhode Island, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, and Vermont ("the States"), write in opposition to Section III of the U.S. Department of Housing and Urban Development's (HUD's) Notice of Proposed Rulemaking ("Proposed Rule"), which states, in full:

> **III. Application of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to the HOME Program**
> HUD reminds HOME program recipients that grants must be administered in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601–1646) (PRWORA) and any applicable requirements that HUD, the Attorney General, or the U.S. Citizenship and Immigrations Services may establish from time to time to comply with PRWORA.

HOME Investment Partnerships Program: Further Program Updates and Streamlining, 91 Fed. Reg. 23,194, 23,201 (proposed April 30, 2026). For the reasons detailed below, HUD should remove Section III from the Proposed Rule.

I. Background

On November 26, 2025, HUD published a Notice interpreting PRWORA. 90 Fed. Reg. 54,363 (Nov. 26, 2025) (the "HUD PRWORA Notice"). In this Notice, HUD offered a new interpretation of the term "Federal public benefit" under PRWORA. Specifically, HUD "interpret[ed] PRWORA to apply to all HUD programs related to public or assisted housing . . . unless a more specific federal statute applies." *Id.* at 54,364. HUD further "applied the provisions

of PRWORA to its Community Planning and Development programs and grants," asserting that "these grant programs are subject to the eligibility and verification provisions under PRWORA." *Id.* HUD listed the HOME program as one of the Community Planning and Development programs covered by PRWORA. *Id.* The HUD PRWORA Notice did not acknowledge ongoing litigation between the States and various federal agencies regarding the scope of the term "Federal public benefit" under PRWORA.

On December 4, 2025, the States amended their complaint in that lawsuit to add claims against HUD and its Secretary challenging the HUD PRWORA Notice. Third Amended Complaint, *New York v. U.S. Dep't of Justice* No. 25 Civ. 345 (D.R.I.), ECF No. 76. On December 8, 2025, HUD agreed that, among other things, it "will never enforce or in any way apply the HUD PRWORA Notice, including the interpretations of PRWORA expressed in that Notice," to any "conduct occurring prior to" a judgment on the merits in that litigation. Stipulation, *New York v. U.S. Dep't of Justice,* No. 25 Civ. 345 (D.R.I.), ECF No. 80. There has not yet been a judgment on the merits in that case, and HUD's agreement remains in effect. Stipulation, *New York v. U.S. Dep't of Justice,* No. 25 Civ. 345 (D.R.I.), ECF No. 102.

II. HUD's Application of PRWORA to the HOME Program in Section III of the Proposed Rule is Unlawful.

Section III of the Proposed Rule appears to straightforwardly violate HUD's agreement that it "will never enforce or in any way apply the HUD PRWORA Notice, including the interpretations of PRWORA expressed in that Notice," to any "conduct occurring prior to" a judgment on the merits in the ongoing litigation between the States and HUD. Stipulations, *New York v. U.S. Dep't of Justice,* No. 25 Civ. 345 (D.R.I.), ECF Nos. 80, 102. Section III of the Proposed Rule "reminds HOME program recipients" that "grants *must* be administered in accordance with all applicable immigration restrictions and requirements, including" PRWORA. 91 Fed. Reg. at 23,201 (emphasis added). HUD has agreed not to apply PRWORA to the HOME program; Section III of the Proposed Rule purports to "remind" all grantees that PROWRA applies to the HOME program; thus, it appears to violate the agreement. *Id.*

In addition, as the States have detailed in the ongoing litigation, HUD's application of PRWORA to HOME is unlawful for at least three independent reasons.

First, the application of PRWORA to the HOME program is arbitrary and capricious. HUD has failed to consider the weighty reliance interests that States have in their ability to continue using HUD-funded programs without the need to implement an onerous immigration status verification system. *See* Motion for Summary Judgment 16-25, *New York v. U.S. Dep't of Justice*, No. 25 Civ. 345, (D.R.I.), ECF No. 91. HUD has made no effort to assess whether there were reliance interests that would be upset, let alone consider whether those interests were significant. Also, HUD has failed to consider the substantial costs of applying PRWORA to its programs like HOME, such as compliance costs on funding recipients like the States, which would be required to expend significant time and resources to implement new processes to verify immigration status for services that have never before required that burdensome step. *Id.* And HUD has not expressly acknowledged its change in position as to its historical interpretation of PRWORA.

Second, the sole legal justification that HUD has provided for applying PRWORA to the HOME program is contrary to the PRWORA statute in three respects. First, HUD has asserted that "*any* grants [HUD] administers" are automatically subject to PRWORA, regardless of whether the benefits they provide fall within the definition of "Federal public benefit" in PRWORA. 90 Fed. Reg. at 54,364. Second, HUD has interpreted the phrase "eligibility unit" in PRWORA to modify only the term "family"—thus making clear that HUD applies the statute to programs without eligibility criteria. *Id.* Third, HUD "interprets PRWORA to apply to all HUD programs *related to* public or assisted housing" on the theory that such programs "*are* 'public or assisted housing'" within the meaning of that term in PRWORA. *Id.* (emphasis added).

All of those legal interpretations are incorrect. Block grants do not fall within PRWORA unless they are used to provide benefits that satisfy Section 1611(c)(1)(B). *See New York v. U.S. Dep't of Justice*, 804 F. Supp. 3d 294, 324-25 (D.R.I. 2025). Programs without eligibility criteria are not subject to PRWORA at all, as HUD itself has since conceded. *Id.* at 321-23; *see* Defendants' Opposition to Motion for Summary Judgment 21, 30, *New York v. U.S. Dep't of Justice*, No. 25 Civ. 345 (D.R.I.), ECF No. 99. And PRWORA does not encompass all benefits "related to" public or assisted housing; it includes only "public or assisted housing" itself. 8 U.S.C. § 1611(c)(1)(B). That distinction is significant. Other provisions of PRWORA explicitly include or exclude items "related to" certain benefits. *See id.* § 1611(b)(1)(A) (excluding medical benefits provided they are "not *related to* an organ transplant procedure") (emphasis added), (c)(2)(A) (excluding contracts or professional licenses for any nonimmigrants "whose visa for entry is *related to* such employment in the United States") (emphases added). And the Supreme Court has often emphasized the capacious breadth of terms like "related to." *See Maracich v. Spears*, 570 U.S. 48, 60 (2013) ("everything is related to everything else" (citation omitted)). When Congress chose to omit the term "related to" from Section 1611(c)(1)(B), its decision must therefore be presumed intentional. *See City & Cnty. of San Francisco v. EPA*, 604 U.S. 334, 344 (2025) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (citation omitted)).

Third, HUD has failed to undertake notice-and-comment rulemaking to apply its interpretation of PRWORA to particular HUD programs, including HOME. Before a federal agency can adopt or repeal a "legislative" or "substantive" rule—i.e., one that "creates rights, assigns duties, or imposes obligations, the basic tenor of which is not already outlined in the law itself"—it must generally go through the notice-and-comment process. *See La Casa Del Convaleciente v. Sullivan*, 965 F.2d 1175, 1178 (1st Cir. 1992); 5 U.S.C. § 553. HUD has not undertaken notice and comment with respect to the revised interpretation of "Federal public benefit" under PRWORA espoused in the HUD PROWRA Notice. Further, the Proposed Rule does not itself propose any particular interpretation of PRWORA or propose any relevant text, rather it purports to "remind[] HOME program recipients" that PRWORA applies. 91 Fed. Reg. at 23,201.

For the foregoing reasons, the States request that HUD remove Section III from the Proposed Rule.

Sincerely,

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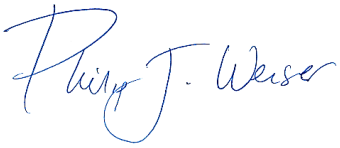

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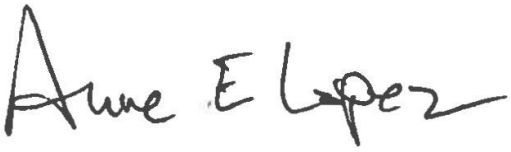

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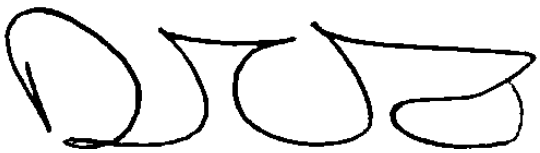

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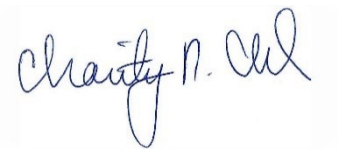

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