UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MASSACHUSETTS FAIR HOUSING CENTER; NATIONAL FAIR HOUSING ALLIANCE, *on behalf of themselves and all those similarly situated*,

Plaintiffs,

v.

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; SCOTT TURNER, *in his official capacity as Secretary of Housing and Urban Development*,

Defendants.

Case No. ___________

MOTION TO EXCEED THE PAGE LIMIT FILED CONTEMPORANEOUSLY

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

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This case involves the latest attempt by the U.S. Department of Housing and Urban Development and Secretary of Housing and Development Scott Turner (collectively "HUD" or "Defendants") to end a decades-old fair housing enforcement apparatus that has dramatically improved equal housing opportunity for all Americans. Congress designed and codified the Fair Housing Initiatives Program ("FHIP") to support a nationwide network of fair housing organizations and other entities dedicated to preventing and eliminating discriminatory housing practices. But in what amounts to the third direct assault on FHIP, HUD seeks to radically overhaul FHIP via its Notices of Funding Opportunity ("NOFOs") for Fiscal Year 2025 ("FY2025") and Fiscal Year 2026 ("FY2026"), terminating the primary source of funding for over 100 of the statutorily defined private nonprofit fair housing enforcement organizations throughout the country. HUD also seeks to zero out funding for fair housing enforcement, investigation, education, and outreach activities—the central purposes of FHIP—and instead channel huge sums to a few entities favored by Defendants.

HUD's restructuring of the program will inevitably decrease fair housing enforcement and education work and decimate the network of fair housing organizations that the FHIP program has helped build up over the decades, in direct contravention of the Fair Housing Act ("FHA").[1] This restructuring is contrary to law and in excess of HUD's statutory authority because it uses FHIP money to frustrate the FHA and departs from Congress's expectations in appropriating the money. It is also arbitrary, capricious, and an abuse of discretion because HUD has not provided a reasoned explanation for its dramatic restructuring of a well-established

[1] The Housing and Community Development Act of 1992 amended the FHA to include FHIP. *See* Pub. L. No. 102-550, § 905, 106 Stat. 3868-3872 (Oct. 28, 1992) ("HCDA") (adding 42 U.S.C. § 3616a to the FHA, 42 U.S.C. §§ 3601–3619). Plaintiffs accordingly refer to FHIP as part of the FHA.

funding program. This restructuring will cause devastating, irreparable harm to Plaintiffs Massachusetts Fair Housing Center ("MFHC") and the National Fair Housing Alliance ("NFHA") and its members. Accordingly, Plaintiffs ask the Court to enter a temporary restraining order vacating and setting aside the FY2025 NOFOs.

FACTUAL BACKGROUND

I. Congress Developed FHIP to Create and Fund Fair Housing Organizations to Prevent and Eliminate Discriminatory Housing Practices.

Following a successful pilot program, Congress amended the FHA to permanently establish FHIP in 1992, and FHIP has subsequently served as the centerpiece for the prevention and remediation of housing discrimination in the country. Recognizing "the proven efficacy of" fair housing organizations that were serving as "a necessary component of the fair housing enforcement system," HCDA, § 905(a)(9), 106 Stat. at 3869, Congress amended the FHA to provide sustainable support for these organizations.

The FHA specifies the activities for which FHIP funds must be awarded. FHIP's chief focus is fair housing enforcement, and the first type of grant enumerated in the statute is the **Private Enforcement Initiative ("PEI")**. PEI grants encompass "a range of investigative and enforcement activities designed to" investigate housing discrimination, "discover and remedy discrimination in public and private real estate markets and real estate-related transactions," and develop models "to respond to new or sophisticated forms of discrimination." 42 U.S.C. § 3616a(b)(2). The FHA also enumerates the **Education and Outreach Initiative ("EOI")**, which serves the core FHIP purpose of educating the general public about fair housing rights and responsibilities, *id.* § 3616a(d), and the **Fair Housing Organization Initiative ("FHOI")**, *id.* § 3616a(c), which builds organizational capacity and can be used to start new fair housing organizations. The FHA requires that HUD "shall" use FHIP funds for each of these purposes. *Id.* § 3616a(b)–(d).

Congress defined the primary recipients of FHIP awards: qualified fair housing organizations (which must have at least two years of experience with enforcement activities like those funded by PEI awards and be engaged in such work at the time of the application) and fair housing organizations (which, at the time of the application, must have at least one year of experience with and be currently engaged in the kinds of work funded by PEI awards). *Id.* § 3616a(h)(1)–(2). Congress also expressly contemplated nationwide use of FHIP funds. The FHA instructs HUD to make FHOI awards in "those areas of the country which are currently underserved by fair housing enforcement organizations" and to evaluate the "national need" for fair housing capacity with FHOI grants. *Id.* § 3616a(c)(2). The statute also mandates both a "national" education and outreach program and "education and outreach programs at the regional and local levels, *id.* § 3616a(d)(1)–(2), and requires the Secretary to submit an annual report to Congress regarding implementation of FHIP, which is to include "a list of all fair housing enforcement organizations funded under this section during the preceding fiscal year, identified on a state-by-state basis." *Id.* § 3616a(j)(3).

Since the creation of FHIP, fair housing groups have remained critical to enforcing fair housing laws. In 1997, the U.S. Government Accountability Office recognized the effectiveness of fair housing organizations in a comprehensive analysis of FHIP, Gov't Acct. Off., GAO/RCED-97-67, Fair Housing: Funding and Activities Under the Fair Housing Initiatives Program (1997) (hereinafter "1997 GAO Report"),[2] and in 2011, a HUD study concluded that FHIP organizations add enormous value to HUD's ability to enforce the FHA. HUD, Off. of

[2] Available at https://perma.cc/DYA9-39WZ.

Pol'y Dev. and Rsch., Study of the Fair Housing Initiatives Program at iii (2011) (hereinafter "2011 HUD Study").[3]

II. HUD has Historically Allocated FHIP Funds Across All Three FHIP Initiatives to a Nationwide Network of Fair Housing Organizations.

Consistent with Congress's stated goal of expanding fair housing enforcement "nationwide," S. Rep. No.102-332 at 98 (1992), HUD has deployed FHIP funding to develop a reliable and geographically diverse network of fair housing organizations, throughout ten HUD-defined regions of the country. By 2011, "organizations that received a FHIP award were located in nearly every HUD region and in every state." 2011 HUD Study at 27. In addition to the program's broad reach, HUD had awarded FHIP funding in a way that ensured no one area received a disproportionate amount. In the first two decades of FHIP, none of the ten regions received over 20% of FHIP awards or more than 23% of total FHIP funding. *Id.* at 24. In FY2024, HUD made more than 100 FHIP awards to eighty-five different organizations, covering nearly every state across the country. *See* FY2024 New FHIP Awards, Ex. 1; FY2024 Multi-Year FHIP Awards, Ex. 11.

For many FHIP recipients, fair housing work is their main work. As the 2011 HUD Study noted, most recipients described fair housing work as their exclusive or primary organizational mission, with just 4% of the study respondents saying that fair housing work was a secondary part of their mission. *Id.* at 28. For many organizations, FHIP awards are their main source of funding. HUD has recognized that "FHIP grew out of a realization among participants that enforce fair housing laws that a need existed for a large, reliable source of funding for fair housing law enforcement activities—especially for use in testing conducted by private fair housing groups that supported HUD's role of enforcing the Fair Housing Act." *Id.* at 10. And

[3] Available at https://www.huduser.gov/publications/pdf/fhip_2011.pdf.

many FHIP recipients receive concurrent FHIP awards under more than one initiative. *See, e.g.*, Exs. 1, 11 (in FY2024, twelve of fourteen FY2024 FHOI recipients also had FY2024 PEI grants); Dec. of L. Rice, Ex. 2 ¶¶ 6–16; Dec. of E. Kemple, Ex. 3 ¶¶ 18, 25.

Since FHIP's inception, the majority of FHIP funding has gone to PEI awards, with the next largest share to EOI. *See* 2011 HUD Study at 19. In FY2024, approximately 77% of FHIP funds went to PEI awards, 16% went to EOI awards, and less than 7% went to FHOI awards. *See* Exs. 1, 11. According to the 1997 GAO Report, the high apportionment of FHIP appropriations to PEI grants was reflective of "the program's emphasis on private enforcement-related activities." 1997 GAO Report at 4.2. Ever since HUD began making multi-year PEI awards, the agency has used portions of each FHIP appropriation to fund not only new awards, but also continuing multi-year PEI awards. *See, e.g.*, Ex. 11 (awarding over $31 million in FY2024 funds to second- and third-year PEI grant recipients).

HUD itself has noted that many recipients have deemed PEI awards "critical" to organizational stability. HUD quoted one organizational representative as saying that "[m]ost important for stability is whether we get a HUD PEI grant from year to year. . . . We rely on FHIP funding for the majority of our casework." 2011 HUD Study at 38. Indeed, MFHC has regularly received PEI funding for the last thirty-two years—accounting for nearly half of the organization's annual budget—while NFHA has regularly received PEI funding for several years. Dec. of V. Hemavathi, Ex. 4 ¶¶ 4–5; Ex. 2 ¶ 12. PEI grants are particularly helpful to organizational stability because they are awarded in three-year increments, providing fair housing organizations with a predictable and stable source of funding. Ex. 3 ¶¶ 10–16. This predictability enables organizations to engage in long-term and strategic planning and make informed decisions about programming, personnel, and physical office space. *See id.*; Ex. 4

¶¶ 10–12. In addition, PEI recipients virtually always receive a new PEI grant when their existing grants expire, so long as they have performed well and satisfied applicable requirements, Ex. 3 ¶ 9, enabling those recipients to count on the availability of those funds beyond the expiration of their existing agreements.

HUD also has consistently awarded FHIP funds almost exclusively to private nonprofit organizations. Congress separately earmarks, and HUD separately distributes, funding for state and local enforcement agencies to do fair housing enforcement through the Fair Housing Assistance Program (FHAP). *See, e.g.*, S. Rep. No. 119-47, at 150 (2025) (for FY2026, "(1) $26,355,000 is for FHAP; (2) $56,000,000 is for FHIP").

For FY2025, HUD has previously signaled its intention to continue administering FHIP in a manner consistent with these historic practices. In its FY2025 Congressional Budget Justification (CBJ) submitted to Congress, HUD proposed allocating $56 million in requested FHIP funding across all three initiatives, including $42.3 million for PEI grants, $2.7 million for FHOI grants, and $10 million for EOI grants. *See* HUD, *2025 Congressional Justifications* 33-3 (2025) (hereinafter "FY2025 CBJ").

After the requested funds were appropriated, *see* Compl. ¶¶ 94–97, HUD in early 2026 posted Assistance Listings contemplating approximately $41.6 million in PEI awards, $4.4 million in FHOI awards, and $9.5 million in EOI awards.[4] The Assistance Listings also contemplate, in keeping with past practice, modest award sizes to a large number of grantees:

[4] *See* Private Enforcement Initiatives, Assistance Listing (last updated Feb. 3, 2026), *available at* https://sam.gov/workspace/assistance/fal/2b1ff4f51a3f4a78aac7bde620b9ba2a/view; Fair Housing Enforcement Initiatives, Assistance Listing (last updated Jan. 19, 2026), *available at* https://sam.gov/workspace/assistance/fal/99eb8ae9d4f242c79b76ee022cecc24a/view; Education and Outreach Initiatives, Assistance Listing (last updated Jan. 20, 2026), *available at* https://sam.gov/workspace/assistance/fal/dc3ce01d1140496a8673754676f26daf/view.

$416,127 on average (and $425,000 maximum) for PEI recipients, $339,414 on average (and $1,500,000 maximum) for FHOI recipients, and $143,243 on average (and $856,830 maximum) for EOI recipients. *Id.* Neither the FY2025 CBJ nor the Assistance Listings contemplated awarding funds to FHAP agencies or the discontinuance of PEI and EOI awards.

III. HUD's FY2025 NOFOs Radically Transform FHIP in Violation of the FHA.

On July 2, 2026, HUD released two FY2025 NOFOs: an FHOI NOFO and an Administrative Enforcement Initiative ("AEI") NOFO (collectively the "FY2025 NOFOs"). The award structure set forth in those NOFOs is a dramatic departure from HUD's past practice, from the proposed allocation in the CBJ, and from the still-posted Assistance Listings. Breaking a hithertofore unbroken historic practice, there will be no new PEI or EOI grants. HUD also is not using any of the FY2025 funds for ongoing, multi-year PEI grants, even though the agency usually sets aside funds for that purpose. *See, e.g.*, Ex. 11 (awarding over $31 million to second- and third-year PEI grant recipients). Instead, HUD is directing $45 million of the FY2025 FHIP appropriation toward just five FHOI grants, ranging from $5,025,000 to $25,000,000, *see* FHOI NOFO, Ex. 5, and $10 million in a so-called "Administrative Enforcement Initiative" NOFO—an initiative category that is not enumerated in the statute and that HUD has not awarded funds to since FY1995, *see* Ex. 3 ¶ 7—which directs that money toward state and local public agencies that typically are separately accounted for by FHAP funding, *see* AEI NOFO, Ex. 6 at 7.[5]

The FY2025 NOFOs further transform FHIP by imposing eligibility criteria that *exclude* nearly all existing nonprofit fair housing organizations. First, AEI grants are only available to

[5] On the same day that it released the FY 2025 FHIP NOFOs, HUD released two FY2026 FHIP NOFOs: a FY2026 EOI NOFO with an application deadline of November 2, 2026, an award date of February 28, 2027, and an award start date of July 1, 2027, *see* EOI NOFO, Ex. 7, and a FY2026 PEI NOFO with an application deadline of November 2, 2026, an award date of February 28, 2027, and a project start date of July 1, 2027, *see* PEI NOFO, Ex. 8 (collectively, "FY2026 NOFOs").

FHAP agencies, not private organizations. Ex. 6 at 7. HUD is redirecting money to these agencies even though, consistent with its past practice (at Congress's express direction),[6] HUD had already earmarked $26 million of the $86 million in the FY2025 appropriation for FHAP awards, as reflected in its budget request. FY2025 CBJ at 33-3. Second, existing fair housing organizations are effectively barred from receiving FY2025 FHOI funding. FHOI awards may not provide more than 50% of the operating budget of the recipient for any one year (the "50% Cap"). *See* Ex. 5 at 13, 19. By limiting all nonprofit FHIP awards to the FHOI category (by eliminating PEI and EOI awards), the NOFO effectively imposes the 50% Cap on <u>all</u> FY2025 recipients. *See* 42 U.S.C. § 3616a(c) (imposing an operating budget limitation for FHOI awards only, not PEI or EOI awards). Because HUD is making the smallest FY2025 FHOI award available over $5 million over two years, the 50% Cap means that a recipient must have an annual budget of at least $5 million. Most existing fair housing organizations have budgets of just $400,000 to $2 million, Ex. 3 ¶ 17, meaning that they are categorically ineligible for FY2025 FHIP funding. Beyond the 50% Cap, the NOFO prohibits recipients from having multiple FHIP awards at the same time. Ex. 5 at 9. As a result, organizations currently receiving multi-year PEI grants cannot apply for an FY2025 FHOI award, even though organizations routinely receive both types of awards to support both enforcement work and capacity building. *See supra* Background (hereinafter "Bg.") § II.

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[6] *See* S. Rep. No. 118-70, at 135 (2023) (for FY2024, "(1) $26,000,000 is for FHAP; (2) $56,000,000 is for FHIP"). The FY2025 appropriation was funded outside the ordinary appropriations process through a continuing resolution (CR) and thus was not accompanied by a committee report. The CR appropriated the same amount of fair housing activities funding as provided in the Transportation, Housing, and Urban Development (THUD) appropriations bill introduced for FY2025, the committee report for which provided $26,400,000 for FHAP and $56,000,000 is for FHIP. *See* S. Rep. No. 118-199, at 140 (2024).

Next, the FHOI NOFO transforms FHIP by imposing amorphous and arbitrary merit and risk review criteria. The NOFO sets out four rating factors used to evaluate applications for FY2025 funding. *See* Ex. 5 at 40–52. One of those factors requires applicants to include a narrative element in their applications explaining how the FHIP award would advance the Administration's priorities related to immigration, "gender ideology," and "the protection of faith-based activities for faith-based organizations." *Id.* at 47. Another narrative element requires applicants to explain how they will "[r]estore fair housing enforcement to its core statutory objectives" without explaining what those objectives are or how fair housing enforcement supposedly has deviated from those objectives. *Id.* In addition to these rating factors, the NOFO awards preference points to certain categories of applicants that fair housing organizations are not eligible for, *id.* at 51–52, disadvantaging them in the application scoring process. The NOFO also imposes amorphous "risk review" criteria, which permits HUD to rely on "news reports" and other unreliable source materials outside the application. *Id.* at 52–54. The plain purpose of these criteria is to transform FHIP by directing funds away from fair housing organizations toward law schools, law firms, religious groups, and other non-fair housing organizations, *see* Ex. 5 at 10–11 (listing intended recipients of FHIP funding), in violation of the FHA. 42 U.S.C. § 3616a(c)(2) (FHOI funds "shall" be used "to help establish, organize, and build the capacity of *fair housing enforcement organizations*" (emphasis added)).

Finally, the FHOI NOFO transforms FHIP by imposing novel award conditions that are vague, irrelevant to fair housing work, and/or at odds with federal law. *See* Ex. 5 at 61 (listing eleven executive orders grantees must comply with). For example, awardees must comply with Executive Order 14,218 ("Immigration Enforcement EO"), which mandates verifying immigration status and seeks to ensure "that Federal payments to States and localities do not, by design or effect, facilitate the subsidization or promotion of illegal immigration, or abet so-called 'sanctuary' policies that seek to shield illegal aliens from deportation," 90 Fed. Reg. 10,581 (Feb. 19, 2025). The FHOI NOFO also requires awardees to comply with the Executive Order 14,168 ("Gender Ideology EO"), which rejects as "false" the notion that "males can identify as and thus become women and vice versa" and purports to require agencies to "ensure grant funds do not promote" this so-called "gender ideology," 90 Fed. Reg. 8,615 (Jan. 20, 2025), and Executive Order 14,182 ("Hyde Amendment EO"), which prohibits recipients from using funding or promoting elective abortion. 90 Fed. Reg. 8,751 (Jan. 24, 2025).

IV. HUD's Other Recent Efforts to Gut FHA Enforcement and Statements Regarding the NOFO Confirm that this Overhaul is Not a Good Faith Effort to Implement FHIP.

HUD's FY2025 NOFOs are the latest in a series of direct assaults on FHIP. In February 2025, HUD summarily terminated seventy-eight FHIP awards, even though fair housing organizations were actively using their grants to provide the fair housing services contemplated by the FHA. *See* Complaint, *Massachusetts Fair Hous. Ctr. v. Dep't of Hous. & Urb. Dev.*, No. CV 25-30041-RGS, Dkt. No. 1 (D. Mass. Mar. 13, 2025) ("*MFHC I*"). Litigation showed that HUD terminated the grants because grantees' statements of work (which had been approved by HUD) contained words like "diversity" and "equity," irrespective of the fact that such phrases—and related work—are consistent with the FHA and the activities contemplated by FHIP. *See MFHC I*, Dkt. Nos. 21-7 (HUD Declaration), 22-2 and 22-3 (Plaintiffs' Declarations). HUD then delayed its administration of FY2024 FHIP funds, risking the appropriation's lapse. *See Nat'l Fair Hous. All. v. U.S. Dep't of Hous. & Urb. Dev.*, No. CV 25-1965 (SLS), 2025 WL 2105567, at *8 (D.D.C. July 28, 2025) ("*NFHA v. HUD*"). HUD finalized the paperwork for ongoing PEI awards only after the agency's delay was challenged in court, and it issued new

FHIP awards only following a court order to do so. *NFHA v. HUD*, Dkt. No. 25 (Temporary Restraining Order).

More generally, HUD is flouting its fair housing enforcement obligations. HUD has fired a significant number of employees in the Office of Fair Housing and Equal Opportunity ("FHEO"), and others have been pushed to leave, such that reports indicate that staffing has fallen by two-thirds in the past eighteen months. *See* Debra Kamin, *Trump Appointees Roll Back Enforcement of Fair Housing Laws*, N.Y. Times (Sept. 22, 2025). One whistleblower disclosed that HUD is abdicating its obligation to pursue meritorious complaints of discrimination, leaving complainants in the lurch and allowing discrimination to go unremedied. *Id.*

HUD's dismantling of fair housing enforcement is no accident: it is part of a deliberate attempt to reshape FHEO, the office that oversees FHIP, text and purpose of the FHA notwithstanding. An internal email from HUD Assistant Secretary of FHEO Craig Trainor to HUD staff the day after publication of the FY2025 NOFOs proclaimed that the agency is "decisively correcting course" in FHA enforcement as part of an "organizational transformation." *See* C. Trainor Message, Ex. 9.

In recent weeks, HUD has also withdrawn over a dozen guidance memoranda—including one that has been in place since 1990—designed to increase access to housing and protect consumers from discrimination. Notice of the Withdrawal of OGC Guidance Documents, 91 Fed. Reg. 44,867 (July 17, 2026). And HUD recently published a Unified Agenda entry foreshadowing the publication of an Interim Final Rule that will "update the qualification requirements for Fair Housing organization applicants under the FHIP program, define the scope of testing conducted under the private enforcement initiative, update the NOFO guidelines, and ensure adequate performance standards and ongoing assessments for grantees." HUD, *Updating* *and revising HUD's regulations implementing the Fair Housing Initiatives Program*, RIN 2529-AB1524, Unified Agenda (2026) (hereinafter "Unified Agenda Entry"). This entry effectively concedes that the FHOI NOFO is inconsistent with existing FHIP regulations.

V. Organizations—Including Plaintiffs and NFHA's Members—Denied FHIP Funds Will Suffer Existential Harm, Crippling Fair Housing Enforcement.

Plaintiff NFHA is a would-be FY2025 FHIP applicant for both EOI and FHOI grants. Ex. 2 ¶ 6. NFHA is also a current PEI recipient, and the second year of NFHA's ongoing PEI grant will end on July 31, 2026. *Id.* ¶ 7. NFHA would ordinarily enter right into the third and final year of its ongoing grant, receiving monies from the FY2025 FHIP appropriation. *Id.* But the FY2025 NOFOs do not provide any funding for ongoing multi-year PEI grants, meaning NFHA will soon go unpaid for this work. *Id.* ¶ 10. NFHA is also aware of at least 50 fair housing organizations that have finished their current PEI grant year and had anticipated immediately starting a new PEI grant year using FY2025 FHIP funds. Ex. 3 ¶ 12.

As a regular recipient of PEI, EOI, and FHOI grants, NFHA has multiple employees whose salaries are paid for in whole or in part by FHIP funding. Ex. 2 ¶ 18. These employees work at all levels within the organization, including in enforcement; education and outreach; member services; creating, developing, and strengthening fair housing enforcement organizations; and finance. *Id.* Without continued FHIP funding, NFHA will have to reduce the number of staff working in many of these areas. *Id.* Because of the limitations that the FY2025 NOFO has placed on NFHA's ability to apply for and receive FY2025 FHIP funding, NFHA anticipates that it will have to consider layoffs in the near future if other funds are not secured to continue this work. *Id.*

In addition, NFHA represents the interests of its approximately 163 operating and supporting member organizations throughout the country, Ex. 2 ¶ 4, many of whom are eligible for FHIP funding and would apply for FY2025 and FY2026 FHIP funding under typical NOFOs but are ineligible for funds for the reasons stated above. Most of NFHA's organizational members rely on FHIP funding to conduct their day-to-day fair housing operations, and many could not survive in the absence of FHIP funding. *Id.* If the FY2025 and FY2026 funds are not available or are too late, many NFHA members will experience serious funding gaps with profound implications for their operations. NFHA members will be forced to stop currently ongoing work, turn away clients, cancel leases, and lay off staff members. Such funding gaps will also worsen the existing budgeting chaos and confusion that have been caused by HUD's recent failure to administer FHIP awards.

Plaintiff MFHC is one such NFHA member. MFHC has eight full-time staff and an annual budget of approximately $800,000. It is in its final year of a three-year PEI grant that totaled $1,275,000. Funding under the PEI grant will expire at the end of August. Nearly half of MFHC's annual budget has been supported by the PEI grant—MFHC has otherwise received state and other small grants to support its fair housing work. MFHC is also a subcontractor on an EOI grant, through which it received $41,000 this year. MFHC anticipated applying for new PEI and EOI grants to continue its nearly forty-year history of FHIP funding when the FY2025 NOFOs were published. MFHC will have to lay off about half its staff if FHIP grants continue to be unavailable in the FY2025 funding cycle, and faces the prospect of closure. Ex. 4 ¶ 12.

There is no funding relief for fair housing organizations on the FY2026 horizon. Although the FY2026 NOFOs contemplate PEI and EOI awards, those awards will not start until July 1, 2027. Ex. 7 at 5; Ex. 8 at 5. Fair housing enforcement and education will decrease for the next year, and many of NFHA's members will not survive the wait. Ex. 2 ¶ 21; Ex. 3 ¶¶ 20, 38; Ex. 4 ¶ 12. Moreover, the FY2026 NOFOs include many of the same defects as the FHOI

NOFO—including the 50% Cap, Ex. 7 at 10; Ex. 8 at 10—that would render NFHA's members ineligible or non-competitive for those funds.

LEGAL STANDARD

The legal standard for a temporary restraining order "mirrors that for a preliminary injunction." *Schnitzer Steel Indus., Inc. v. Dingman*, 639 F. Supp. 3d 222, 226 (D.R.I. 2022) (citing *Harris v. Wall*, 217 F. Supp. 3d 541, 552 (D.R.I. 2016)). Under that standard, "[t]he district court must consider 'the movant's likelihood of success on the merits; whether and to what extent the movant will suffer irreparable harm in the absence of preliminary injunctive relief; the balance of relative hardships [and equities]; and the effect, if any, that either a preliminary injunction or the absence of one will have on the public interest.'" *U.S. Ghost Adventures, LLC v. Miss Lizzie's Coffee LLC*, 121 F.4th 339, 347 (1st Cir. 2024) (citation omitted); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The final two factors—the balance of equities and the public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). "Likelihood of success is the main bearing wall of the four-factor framework." *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 16 (1st Cir. 1996). A "district court is required only to make an estimation of likelihood of success and 'need not predict the eventual outcome on the merits with absolute assurance.'" *Corp. Techs., Inc. v. Harnett*, 731 F.3d 6, 10 (1st Cir. 2013) (citation omitted).

ARGUMENT

HUD violated the APA because the FY2025 NOFOs are contrary to law and arbitrary and capricious. Plaintiffs are already suffering the kinds of injuries that courts deem irreparable, and further harm is imminent in the absence of a temporary restraining order. Defendants' conduct deprives Plaintiffs of essential funding, undermining enforcement of the FHA and leaving

Plaintiffs' clients open to ongoing and increased discrimination without avenues for relief. As a result, the balance of the equities and the public interest weigh in favor of preliminary relief.

I. Plaintiffs Are Likely to Succeed on the Merits of their APA Claims.

The APA requires this Court to hold unlawful and set aside final agency action[7] that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The APA "requires agencies to engage in 'reasoned decisionmaking.'" *Dep't. of Homeland Sec. v. Regents of the U. of California*, 591 U.S. 1, 16 (2020) (quoting *Michigan v. E.P.A.*, 576 U.S. 743, 753 (2015)). Here, Plaintiffs are likely to succeed on their arguments that the FY2025 NOFOs are (A) contrary to law, and (B) arbitrary and capricious.[8]

A. The FY2025 NOFOs Are Contrary to Law and in Excess of Statutory Authority.

The FY2025 NOFOs should be set aside because they are "not in accordance with law" and "in excess of statutory . . . authority." 5 U.S.C. § 706(2)(A), (C); *see also Victim Rts. L. Ctr. v. Cardona*, 552 F. Supp. 3d 104, 127 (D. Mass. 2021) (discussing how these two provisions of the APA travel together). When an agency administers a federal statute, the agency's power to act is "authoritatively prescribed by Congress." *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013). "[A]n agency literally has no power to act . . . unless and until Congress confers power

[7] HUD's publication of the FY2025 NOFOs is a final and reviewable agency action within the meaning of 5 U.S.C. § 704. *See, e.g.*, *HIAS, Inc. v. Trump*, 415 F. Supp. 3d 669, 684 (D. Md. 2020) (deeming a NOFO to be a final agency action where eligibility criteria were outcome determinative and because rights and consequences flowed from the NOFO).

[8] Because the FHA prescribes standards governing the distribution of FHIP funds, the APA's "basic presumption of judicial review" applies. *New York v. Trump*, 171 F.4th 1, 19 (1st Cir. 2026); *see also Rhode Island v. Trump*, 810 F. Supp. 3d 283, 303–04 (D.R.I. 2025) (exception to judicial reviewability under the APA "limited to only a few specific types of decisions, such as an agency's decision not to institute enforcement proceedings and an agency's decision to terminate an employee in the interest of national security" (citation omitted)); *Cf. Am. Pub. Health Ass'n v. Nat'l Institutes of Health*, 145 F.4th 39, 53 (1st Cir. 2025) (statutory provisions directing federal agency "to prioritize or to consider certain . . . objectives" in grantmaking provided judicially manageable standards for evaluating its actions).

upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). "If an agency tasked with administering a statute commits an act outside the scope of the duties it was charged with, it has both exceeded its authority under that statute and has acted in a manner not in conformance with the law." *Nat'l Council of Nonprofits v. McMahon*, No. 25-cv-13242-MJJ, 2026 WL 1876366, at *18 (D. Mass. June 30, 2026) (citing *City of Arlington*, 569 U.S. at 299).

Here, the FY2025 NOFOs (FHOI and AEI) will significantly decrease fair housing enforcement and education from current levels and destroy the ongoing capacity of local nonprofit fair housing organizations. They do so in direct contravention of the text and purpose of the FHA, which instructs that FHIP be used to bolster a national network of fair housing organizations and to increase fair housing education and enforcement. HUD does not have the authority to revise FHIP in such a manner, nor does it have the authority to impose award conditions unrelated to fair housing and outside the bounds of the FHA.[9] Accordingly, the FY2025 NOFOs are contrary to law and in excess of statutory authority.

i. The FY2025 NOFOs' Revision of FHIP Is Contrary to Law.

<u>The FY2025 NOFOs violate the text of the FHA:</u> The FHIP statute states that HUD "*shall*" use any funds set aside for FHIP "to conduct, through contracts with *private nonprofit fair housing enforcement organizations*, investigations of violations of the rights granted" by the FHA "and such enforcement activities as appropriate to remedy such violations," 42 U.S.C. § 3616a(b)(1) (emphasis added), including a range of investigative and enforcement activities prescribed by statute, *id.* § 3616a(b)(2). The statute also provides that funds "shall" be

[9] Because "there is *no difference,* insofar as the validity of agency action is concerned, between an agency's exceeding the scope of its authority (its 'jurisdiction') and its exceeding authorized application of authority that it unquestionably has," *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 299 (2013), these actions also violate the APA because each exceeds HUD's statutory authority. *See* 5 U.S.C. § 706(2)(C).

used to establish and build the capacity of fair housing organizations. *Id.* § 3616a(c). Finally, the FHIP statute requires that HUD "shall" use FHIP funds to "establish a national education and outreach program" and to "establish or support education and outreach programs at the regional and local levels" and "to support community-based education and outreach activities." *Id.* § 3616a(d)(1)–(3). All three provisions reference awarding funds to "fair housing enforcement organizations," which the statute defines as nonprofit organizations "currently engaged" in fair housing investigation and enforcement activities. *Id.* § 3616a(h)(2)(B). And to be eligible for investigation and enforcement funds, an applicant must have at least a year of experience conducting fair housing investigation and enforcement work. *Id.* § 3616a(h)(2)(D).

The FY2025 NOFOs violate these clear statutory guidelines regarding the award of FHIP funds. By directing all FHIP funds *exclusively* to one of the secondary purposes enumerated in the statute (organizational capacity building), the NOFOs ignore the plain statutory directive that FHIP funds "shall" fund investigation, enforcement, education, and outreach activities. The FHOI NOFO also violates the FHOI-authorizing provision by directing funds *not* toward its intended purpose, *see* 42 U.S.C. 3616a(c)(2) (FHOI funds "shall" be used "to help establish, organize, and build the capacity of *fair housing enforcement organizations*" (emphasis added)), but instead toward non-fair housing organizations like law schools, law firms, and religious groups, *see* Ex. 5 at 10–11. Furthermore, the NOFOs effectively prevent all existing fair housing organizations from receiving FHIP funds. The FHOI NOFO imposes a 50% Cap and a categorical exclusion of existing FHIP recipients from FY2025 grants. *See supra* Bg. § III. And private organizations are ineligible for the AEI NOFO. *See id.* Nor do the FY2025 NOFOs provide funds for ongoing PEI awards. Critically, the FY2025 NOFOs prevent the "fair housing enforcement organizations" explicitly referenced in the statute from receiving *any* FY2025 grants. 42 U.S.C. 3616a(c)(2).

The FY2025 NOFOs contradict the purpose of the FHA: Even if the NOFOs do not violate the explicit commands of the statute—which they do—they are contrary to law because they contradict the statute's core objectives. "While the absence of clear statutory guidelines might at times hamper a court's ability to deem agency action contrary to law, it need not always do so. Even where there are no clear statutory guidelines, courts often are still able to discern from the statutory scheme a congressional intention to pursue a general goal." *Union of Concerned Scientists v. Wheeler*, 954 F.3d 11, 21 (1st Cir. 2020) (quoting *Robbins v. Reagan*, 780 F.2d 37, 45 (D.C. Cir. 1985)). "If the agency action is found not to be reasonably consistent with this goal, then the courts must invalidate it." *Robbins*, 780 F.2d at 45.

The FHIP statute could not be clearer about Congress's objectives—to give money to fair housing organizations to conduct fair housing enforcement, investigation, education, and outreach activities throughout the nation, while maintaining and gradually bolstering the capacity of the network of such organizations that Congress found to be vital to effective fair housing enforcement. The FY2025 NOFOs vitiate this goal. The NOFOs zero out funding for enforcement (PEI) and education (EOI) initiatives. And the NOFOs' exclusion of existing fair housing enforcement organizations ensures that (1) the intended recipients of funding will be shut out, (2) the fair housing enforcement and education work ordinarily funded by FHIP will go undone; and (3) the network of local fair housing organizations that the FHIP program has created over the years will be destroyed. *See* Ex. 2 ¶ 21; Ex. 3 ¶¶ 20, 38; Ex. 4 ¶ 12. Instead of funding these statutorily mandated initiatives, and doing so through fair housing enforcement organizations, the NOFOs announce grants that necessarily will go to a far smaller number of grantees with a sharply diminished geographic reach.

Even affording HUD generous discretion in its administration of FHIP funds, its decisions cannot be reconciled with the goals of the FHIP statute. There is no countervailing objective discernible from the statute that is accomplished by the zeroing out of new and ongoing PEI awards and EOI funds or the categorical exclusion of fair housing enforcement organizations from FY2025 funds.

Legislative history confirms that the NOFOs violate the terms and objectives of the statute. In reviewing agency action, "the court must assure itself that the agency 'has exercised a reasoned discretion, with reasons that do not deviate from or ignore the ascertainable legislative intent.'" *Conservation L. Found. of New England, Inc. v. Clark*, 590 F. Supp. 1467, 1473–74 (D. Mass. 1984) (quoting *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 850 (D.C. Cir. 1970)). Here, the FHA explicitly required that millions of dollars in FHIP funds be set aside for PEI and EOI grants in Fiscal Years 1993 and 1994. 42 U.S.C. § 3616a(g). Although the FHA itself does not explicitly prescribe specific amounts to be set aside for PEI and EOI grants for future fiscal years, the legislature's intent to continuously fund these programs is unambiguous. In committee reports accompanying FHIP appropriations, Congress consistently has stipulated that over 90% of FHIP funds be set aside for the PEI and EOI initiatives.[10]

[10] *See* S. Rep. No. 119-47 at 150 (2025) (for FY2026, "$56,000,000 is for FHIP, including not less than $10,400,000 for education and outreach programs, not less than $3,700,000 for fair housing organization initiatives, and up to $40,500,000 for the private enforcement initiative"); S. Rep. No. 118-199 at 140 (2024) (for FY2025, "$56,000,000 is for FHIP, including not less than $10,400,000 for education and outreach programs and not less than $3,700,000 for fair housing organization initiatives," with the balance left for PEI); S. Rep. No. 118-70 at 135 (2023) (same for FY2024).

The FY2026 NOFOs Do Not Cure the FY2025 NOFOs: The FY2026 NOFOs contemplate funding the PEI and EOI initiatives. *See supra* Bg. § V. But HUD's decision to fund these initiatives using a separate appropriation in a distinct fiscal year does not change the fact that FHIP funds from every appropriation "*shall*" be used to fulfill all three functions set forth in the enabling statute. In addition, by the time FY2026 funding becomes available, many potential recipients will already have been forced to significantly cut back on enforcement and education activities or shut down entirely. *Id.* The FY2026 NOFOs thus do not alter the inevitable (and unlawful) outcome of the FY2025 NOFOs: a significant reduction in fair housing enforcement. Further, the FY2026 NOFOs maintain the 50% Cap and the ban on concurrent FHIP awards, imperiling the existing national network of fair housing organizations' ability to obtain those funds to do fair housing work across the nation as Congress intended.

ii. The NOFOs' Conditions Unrelated to Fair Housing Exceed HUD's Statutory Authority.

In the grantmaking context, an agency exceeds its statutory authority where it imposes criteria that advance policy objectives not encompassed by the authorizing statute. *See Nat'l All. to End Homelessness v. Turner*, No. 25-CV-00447-MSM-AEM, 2026 WL 883437, at *5 (D.R.I. Mar. 31, 2026) ("*NAEH*"). In *NAEH*, HUD required that recipients of grants intended to address homelessness (1) not be located in jurisdictions with immigration policies at odds with the current administration, (2) certify that they would "not operate drug injection sites," and (3) "not deny the sex binary in humans or promote the notion that sex is a chosen or mutable characteristic." *Id.* at *2. The court enjoined HUD from imposing these restrictions on recipients because they were unrelated to the purposes and criteria set forth in the statute authorizing the grant program. *Id.* at *5. Similarly, in *City of Providence v. Barr*, 954 F.3d 23 (1st Cir. 2020), the First Circuit held that the Department of Justice exceeded its statutory authority by imposing conditions on federal grants related to immigration enforcement that were not "sufficiently related" to the statute authorizing the grants. *Id.* at 29–30, 36.

Here, multiple conditions imposed by the FY2025 NOFOs are at best unrelated to—and at worst inconsistent with—fair housing enforcement. For example, the Gender Ideology EO and Immigration Enforcement EO respectively require that grant recipients "ensure grant funds do not promote" so-called "gender ideology" and "not, by design or effect, facilitate the subsidization or promotion of illegal immigration." Neither of these conditions are encompassed by the FHA or have any discernible connection to fair housing enforcement. The Gender Ideology EO is further contrary to law because it would affirmatively require recipients not to enforce the FHA's prohibition on discrimination based on transgender status. *See Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020) (firing an employee based on transgender status violates Title VIII); *see Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519 (2015) (likening Fair Housing Act's sex discrimination provisions to those of Title VII).

B. The FHOI NOFO Is Arbitrary and Capricious.

The FHOI NOFO is arbitrary and capricious for three independent reasons. First, the NOFO does not provide reasonable explanations for its radical overhaul of FHIP. Second, the NOFO disregards important reliance interests that Plaintiffs, NFHA's member organizations, and the communities they serve have on HUD's longstanding policies regarding FHIP awards. And third, the reasons provided for the radical overhaul in the NOFO are pretextual.

i. The NOFO Does Not Reasonably Explain Its Radical Revision of FHIP.

"An agency's decision is arbitrary and capricious if the agency relied on improper factors, disregarded 'an important aspect of the problem, offered an explanation that runs counter to the evidence,' or when a reasonable explanation for the agency's decision cannot be discerned." *Gulluni v. Levy*, 85 F.4th 76, 82 (1st Cir. 2023) (quoting *Motor Vehicle Mfrs. Ass'n of the U.S. v.*

State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)). When a federal agency changes an existing policy, it "must ordinarily display awareness that it *is* changing position." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). "An agency may not, for example, depart from a prior policy *sub silentio* . . . . And of course the agency must show that there are good reasons for the new policy." *Id.* This rule applies even where previous policies were reflected in funding decisions, not in formal rules or regulations. *See, e.g.*, *Illinois v. Noem*, 813 F. Supp. 3d 282, 305 (D.R.I. 2025).

Here, the FHOI NOFO does not provide *any* explanation—much less a reasonable one—for its revision of core components of FHIP, including the zeroing out of PEI and EOI funding, the sharp reduction in grantees, and the diminution in geographic scope of the program.[11] The FHOI NOFO also does not acknowledge, much less reasonably explain, the exclusion of existing FHIP recipients from FY2025 grants. And the NOFO does not reasonably explain the imposition of amorphous merit criteria or conditions unrelated or hostile to fair housing.

1. The FHOI NOFO Lacks Any Explanation for Zeroing Out PEI and EOI Grants and Sharply Reducing the Number and Geographic Reach of Grantees.

The FHOI NOFO zeroes out PEI and EOI grants and sharply reduces the total number of nonprofit FHIP grantees—from eighty-five in FY2025 to just five—without explanation. Consistent with the FHA and implementing regulations, HUD historically has funded PEI and EOI grants to a broad array of fair housing organizations across the country. In its CBJ, HUD confirmed its intent to follow this historic practice. FY2025 CBJ at 33-3. And as recently as

[11] By awarding funds that could—and should—have gone to PEI and EOI awards to fair housing organizations, the FHOI NOFO necessarily encompasses HUD's decision not to make those awards. That decision is part and parcel of the FHOI NOFO and thus must be reasonably explained. But none of the FHOI NOFO, the AEI NOFO, *see infra* Argument § I(C), or the contemporaneously issued FY2026 NOFOs reasonably explain that decision.

February 2026, HUD published and/or updated Assistance Listings estimating that it would award $41,612,629.33 in PEI funds and $9,454,040 in EOI funds in FY2025. *See supra* Bg. § II. Those listings estimated that the average amounts of these awards would be $416,127 and $143,243 respectively, *id.*, confirming HUD's intent to abide by its longstanding practice of distributing funds to the large number of geographically dispersed organizations that form a national fair housing enforcement network. The FHOI NOFO marks a radical departure from HUD's historic FHIP practices, the specific projections HUD provided to Congress, and its Assistance Listings for its allocation of FY2025 funds, requiring HUD to provide a reasonable explanation for this sudden shift.

The FHOI NOFO states that it is "a continuation of [the] historical practice of administrative refinement and program improvement." Ex. 5 at 16. Not so. As set forth above, the NOFO attempts to radically overhaul FHIP by defunding its core components and vitiating its central objectives. Nowhere does the FHOI NOFO acknowledge—much less reasonably explain—the zeroing out of funding for PEI and EOI activities, the shift in the number of nonprofit grantees from eighty-five to five, or the attendant diminution in geographic reach of grants. Because "a reasonable explanation for the agency's decision cannot be discerned," *Gulluni*, 85 F.4th at 82, from the FHOI NOFO, these radical shifts in policy are arbitrary and capricious.

Outside the four corners of the NOFO, HUD has acknowledged the radical shift this action represents. HUD published a Unified Agenda foreshadowing the publication of an "Interim Final Rule [that] will update the qualification requirements for Fair Housing organization applicants under the FHIP program, define the scope of testing conducted under the private enforcement initiative, update the NOFO guidelines, and ensure adequate performance standards and ongoing assessments for grantees." Unified Agenda Entry. This entry effectively concedes that the FHOI NOFO is inconsistent with existing FHIP regulations. Whether the unpublished Interim Final Rule will satisfy the requirements of the APA is a question for another day. Today, the FHOI NOFO marks a significant departure from HUD's existing policies and procedures. HUD's failure to explain this departure runs afoul of the APA.

The only information that could be construed as an explanation for the FHOI NOFO appears in the "Purpose" and "Goals and Objectives" sections. The Purpose section states that funding has been allocated to five FHOI components. But it does not mention, much less justify, the zeroing out of funding for PEI and EOI grants, the drastic reduction in the number of grantees, or the stark departure from the projected allocations in the congressional budget justification or the Assistance Listings. Next, the Goals and Objectives section lists three goals: expanding competition, encouraging applicants to secure other resources, and ending waste, fraud, and abuse. These have always been goals associated with FHIP. The NOFO does not assert—much less cite any evidence for the proposition—that FHIP as historically administered has been compromised by a lack of competition, grantees' inability to secure other resources, or waste, fraud, or abuse. The NOFO thus does not explain why these goals justify the radical overhaul of FHIP, including the elimination of PEI and EOI grants, the increase of the minimum grant size, and the drastic reduction in the number of grants. Nor does the NOFO explain how these radical changes further the asserted interests. For example, as explained further below, the NOFO does not explain why the remedy for a perceived lack of competition is to exclude the most experienced and well-qualified applicants that otherwise would compete for the grants.

HUD's conduct here is very similar to circumstances in which other courts have held that unexplained shifts in grant funding policies were arbitrary and capricious. In *Illinois v. Noem*, the

Department of Homeland Security (DHS) issued "target allocations" for grantees in a notice of funding opportunity and then later reallocated funds such that many grantees ultimately received smaller grants. 813 F. Supp. 3d at 292–94. Although the target allocations did not "confer[] any legally enforceable rights on Plaintiffs," the district court held that "[t]he fact that Defendants deviated from an informal decision (i.e., the NOFO) does not absolve Defendants of their responsibility to provide some semblance of adequate reasoning for that change." *Id.* at 305. Similarly, in *New York v. Noem*, 812 F. Supp. 3d 321 (S.D.N.Y. 2025), the court held that DHS did not reasonably explain its decision to reallocate funds between the publication of target allocations and the issuance of final grant awards. *Id.* at 335–36. So too here, HUD's decision—to deviate from its historic funding practices and the specific funding projections listed in its CBJ and Assistance Listings—is arbitrary and capricious because it was unaccompanied by a reasoned explanation.

Furthermore, the NOFO does not reasonably explain how HUD's radical changes will accomplish the statutorily mandated objectives of FHIP. The FHIP statute provides that "[t]he Secretary shall use funds made available under this subsection to conduct, through contracts with private nonprofit fair housing enforcement organizations, a range of investigative and enforcement activities . . . ." 42 U.S.C. § 3616a(b)(2). The statute further requires the Secretary to "establish a national education and outreach program" through grants to fair housing enforcement organizations and other related nonprofits. *Id.* § 3616a(d)(1). The PEI and EOI grants respectively fulfill these statutory mandates directly by awarding funds to address those specific objectives. Indeed, HUD has long recognized the efficacy of these programs in accomplishing those statutory objectives. *See, e.g.*, 2011 HUD Study at iii; HUD Off. of Inspector Gen., Fair Housing Initiatives Program Organizations Promoted Equity in the

Education and Outreach Initiative to Reach Underserved Populations, Audit Rep. No. 2024-BO-0002 (Feb. 16, 2024) ("2024 OIG Audit") (finding EOI grantees effectively achieved FHIP goals).

The FHOI NOFO does not explain how HUD intends to accomplish these objectives despite eviscerating the primary FHIP initiatives intended to fulfill them and the acute reduction in the number and geographic coverage of grantees. An inevitable, already-occurring consequence of the NOFO's overhaul of the program is that existing grantees will sharply reduce enforcement and educational activities or shut down entirely. *See supra* Bg. § V. The NOFO does not even purport to explain how HUD intends to fill the gap.

Moreover, the NOFO will sharply reduce the number of grantees and therefore the geographic reach of FHIP funds. The FHIP statute requires that enforcement grants must be designed to carry out "housing investigative activities in unserved or underserved areas" and "discover and remedy discrimination in the public and private real estate markets and real estate-related transactions" across the country. 42 U.S.C. § 3616a(b)(2). It further requires that FHIP grants "shall establish or support education and outreach programs at the regional and local levels" and "support community-based education and outreach activities." *Id.* § 3616a(d)(2)–(3). In creating FHIP, Congress highlighted the shortcomings of the then-existing pilot FHIP program because it "supported only 28 grants to private enforcement groups nationally," S. Rep. No. 102-332 at 81 (1992), highlighting Congress's clear intent to fund a much larger number of groups across the country. HUD has long recognized that "knowledge of local markets is important to any group working in a fair housing role" and consequently funded FHIP grantees that "target[] their fair housing activities within a particular geographic area." 2011 HUD Study at 29. The FHOI NOFO does not explain how the sharply reduced number of nonprofit grantees—five total—will possibly take on the localized activities throughout the country that are currently conducted by scores of nonprofit grantees in almost every state across the country. *See* 2011 HUD Study at 27; Exs. 1, 11 (FY2024 recipients located in almost every state).

Accordingly, the FHOI NOFO's zeroing out of PEI and EOI grants and the sharp reduction in total number and geographic reach of FHIP grants are not reasonably explained and therefore are arbitrary and capricious.

2. The FHOI NOFO Does Not Reasonably Explain Its Exclusion of Existing FHIP Recipients from FY2025 Funding.

The NOFO does not reasonably explain the confluence of eligibility criteria that make existing fair housing organizations ineligible for FY2025 FHIP funds, including the 50% Cap, the change in the size and number of grants, and the prohibition on receiving concurrent FHIP awards. *See supra* Bg. § III. The three goals and objectives listed in the NOFO do not justify the categorical exclusion of existing fair housing organizations from FHIP.

First, the NOFO touts "expanding competition." Striking the most qualified, longstanding recipients of FHIP funds from competing does not expand competition—it eliminates competition, clearing the way exclusively for inexperienced applicants with lesser expertise, experience, and qualifications. The NOFO cites Executive Order 14332: Improving Oversight of Federal Grantmaking for the proposition that "[d]iscretionary grants should be given to a broad range of recipients rather than to a select group of repeat players." Ex. 5 at 19. But the NOFO's novel requirements—particularly the change to the size and number of FHIP grants—*ensure* that a "select group" receives grants instead of the "broad range of recipients" that FHIP has always funded. In narrowing rather than broadening the applicant pool, the NOFO accomplishes the opposite of its purported motivation.

Of course, all grantmaking agencies have the discretion to incentivize new applicants for grants at the expense of incumbents. The FHIP statute anticipates this balancing by providing funds, through FHOI, "to help establish, organize, and build the capacity of fair housing enforcement organizations." 42 U.S.C. § 3616a(c)(2). HUD has previously accomplished this goal by designating certain grants for new organizations. But neither the FHIP statute nor the invocation of "competition" supports the wholesale exclusion of existing grant recipients, particularly where that exclusion jeopardizes both the activities necessary to carry out the statutory objectives and the continued existence of a national network of entities capable of doing this work in the future.

Second, the NOFO states that the 50% Cap encourages applicants to "secure other resources to supplement the HUD award" and "ensure[s] FHIP funding supports sustainable fair housing partnerships." Ex. 5 at 19. This explanation defies reality. The inevitable result of abruptly imposing the 50% Cap, combined with the NOFO's other innovations, is the significant impairment and winding down of fair housing organizations across the country. *See supra* Bg. § V. Abruptly eliminating these organizations' principal source of funding does not support sustainable fair housing partnerships—it destroys them. The NOFO does not acknowledge, much less reasonably explain, this outcome. To the contrary, the NOFO states that the 50% Cap "is consistent with the history of the FHIP program," based on the 2011 HUD study's statement that "the expectation is that FHIP awards will not provide 100 percent of grantees' total funding." Ex. 5 at 20. But the very next sentence of that study states that "[f]ewer funding sources appear to be available to support enforcement activities, however, so FHIP grants are likely to support a larger share of enforcement activities . . . ." 2011 HUD Study at 33. Far from supporting the NOFO's rationale, the 2011 HUD Study illustrates the unreasonableness of the 50% Cap, particularly as applied to enforcement activities. In any event, the 50% Cap is a far cry from a general expectation that FHIP recipients receive some amount of outside funding and has far more drastic consequences, particularly when imposed without warning just weeks before applications are due. This action sows chaos and disruption and is contrary to action that legitimately and in good faith is designed to support the development of alternative funding sources.

Third, the FHOI NOFO lists "ending waste, fraud, and abuse" as an objective. Ex. 5 at 20-21. As an initial matter, formal reviews of the FHIP program demonstrate that it is functioning effectively. *See, e.g.*, 2024 OIG Audit. The NOFO does not reference any allegations, much less evidence, of waste, fraud, or abuse by any FHIP recipients. Even if the NOFO did identify instances of waste, fraud, or abuse connected with FHIP—which it does not—it does not explain why the wholesale exclusion of nearly all fair housing organizations from FHIP, as opposed to the narrow exclusion of the recipients at fault, is appropriate.

The FHOI NOFO also states that HUD's previous administration of FHIP awards "deviated from the original statutory goals of the FHA and led HUD to promote misguided priorities that led to . . . a backlog of unresolved cases." Ex. 5 at 19. The NOFO adds also that "[i]mplementation of activities that were unsupported by original FHIP program goals resulted in FHEO not fully meeting its intended goals, leading to waste of taxpayer dollars, and too often the production of low-quality, redundant deliverables." *Id.* These conclusory statements—offered without any examples or support—do not reasonably explain the exclusion of existing FHIP recipients. First, HUD is responsible for its own backlog, not FHIP recipients. As HUD has noted, FHIP recipients filter complaints, "reduc[ing] the number of inquiries" submitted to HUD. 2011 HUD Study at 53. FHIP recipients are not the problem—without them, the backlog would be much worse. Second, the NOFO does not say how FHIP recipients supposedly deviated from the FHA's statutory goals. Without any explanation of what deviations supposedly occurred, it is impossible to evaluate this justification. To the extent the NOFO is referring to the submission of disparate impact complaints, FHIP recipients are merely complying with the law. *See Inclusive Communities.*, 576 U.S. at 537 (FHA encompasses disparate impact liability). Finally, the NOFO does not explain why exclusion of nearly all existing FHIP recipients is the proper remedy for this perceived problem. If HUD has identified activities that it believes FHIP recipients should undertake, the more obvious and targeted remedy would be to exclude those activities.

3. The NOFO Does Not Reasonably Explain Its Merit and Risk Review Criteria or Award Conditions.

The NOFO introduces novel scoring and risk review criteria without any explanation. Those criteria require applicants, *inter alia*, to describe how the FHIP award would advance the Administration's priorities related to immigration and "gender ideology." Ex. 5 at 47. The NOFO does not explain how these considerations—which are manifestly unrelated to fair housing enforcement—are relevant in evaluating FHIP applications. The NOFO also requires applicants to explain how they will "[r]estore fair housing enforcement to its core statutory objectives" without explaining what those objectives are or how fair housing enforcement supposedly has deviated from those objectives. *Id.* Without any explanation of the meaning of this requirement, grant applicants are left without any guidance regarding how this element of the application is being evaluated, and courts lack the ability to assess whether HUD's imposition of this requirement is a reasonable exercise of its discretion. The NOFO also does not explain its award of preference points for which previous FHIP applicants are ineligible. *See supra* Bg. § III; Ex. 5 at 51–52. And the NOFO does not explain its imposition of risk review criteria permitting HUD to rely on new and potentially unreliable materials such as "news reports," to penalize applicants. *See supra* Bg. § III; Ex. 5 at 52–54.

The NOFO similarly fails to reasonably explain its requirement that grant recipients comply with award conditions that bear little or no relation to fair housing enforcement. *See supra* Bg. § III; Ex. 5 at 61. Another court in this Circuit already has enjoined HUD from conditioning various grants on compliance with some of the same executive orders at issue here, including the Gender Ideology EO and Hyde Amendment EO. *R.I. Coal. Against Domestic Violence v. Kennedy*, 812 F. Supp. 3d 180, 200 (D.R.I. 2025). The court there held that plaintiffs were likely to prevail on their claim that those conditions were arbitrary and capricious because HUD did not explain why the conditions had been imposed. *Id.* at 193 (rejecting HUD's argument that "the rationale for the conditions is self-evident from the language of the conditions themselves."). So too here, the absence of any explanation renders the award conditions arbitrary and capricious.

ii. The NOFO Ignores Substantial Reliance Interests.

"When an agency changes course," it is "required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Regents*, 591 U.S. at 30, 33. A federal agency violates the APA when it fails to account for reasonable reliance on receiving federal grants. *New York v. Trump*, 171 F.4th 1, 24 (1st Cir. 2026); *see also Woonasquatucket River Watershed Council v. U.S. Dep't of Agric.*, 778 F. Supp. 3d 440, 469 (D.R.I. 2025) (funding freeze was arbitrary and capricious because it failed to account for nonprofit recipients' reliance on receiving the frozen funds).

Here, grantees reasonably have relied on HUD's administration of FHIP consistent with the FHA, historic practice, and multi-year funding agreements. First, the FHA specifically references fair housing enforcement organizations as the primary recipients of FHIP funds, *see* 42 U.S.C. § 3616a, creating a reasonable expectation that fair housing organizations will be able to compete for and ultimately receive FHIP funding. Second, HUD's "longstanding policies" governing the administration of FHIP funding "have engendered serious reliance interests." *Regents*, 591 U.S. at 30 (citations omitted). HUD historically has funded grantees at consistent levels over time—including through multi-year PEI awards and by consistently renewing expiring PEI awards upon expiration, *supra* Bg. § II—allowing recipients to plan their investigation, enforcement, education, and outreach activities over a multi-year time horizon. As HUD has long recognized, "[a] steady source of funding is critical for any fair housing group's survival," 2011 HUD Study at 38, and FHIP funds have been the largest, most reliable source of funding for such groups. *Id.* at 33 (among surveyed fair housing organizations, 67% of enforcement activities and 34% of education and outreach activities funded by FHIP). Indeed, the NOFO acknowledges the strength of this reliance interest, albeit without meaningful consideration. *See* Ex. 5 at 19 ("[T]he manner in which HUD historically administered the FHIP program created an expectation that FHIP funding would be awarded in a manner akin to formula-based funding."). Third, organizations with multi-year PEI funding (including NFHA) have relied on those agreements to hire staff and plan their investigation and enforcement activities for years in advance—precisely as HUD's administration of the PEI program encouraged them to do. *See supra* Bg. § II. The FY2025 NOFOs contemplate awarding all FY2025 FHIP funds to FHOI and AEI grants, meaning none will be left over to fund the multi-year PEI awards HUD already made and leaving even grantees that have continuing grants with a stoppage in funding.

Plaintiffs do not contend that any grantee is entitled to a particular grant. Rather, they have a reasonable expectation that (1) FHIP will be administered consistent with the FHA and the APA, (2) they will not be excluded from competing for funds, (3) they will not be arbitrarily disfavored in the application process, and (4) recipients of multi-year grants will receive funding previously committed to them. The NOFO does not account for these reliance interests. It does not determine whether they are significant, which they are. And it does not weigh these interests against competing policy concerns, or even state what policy concerns are at issue. This failure to account for reliance interests renders the NOFO arbitrary and capricious.

iii. The FHOI NOFO Provides Pretextual Reasons for the Radical Overhaul.

Courts may set aside agency actions where the purported reason for the action was "pretextual." *Dep't of Com. v. New York*, 588 U.S. 752, 780 (2019). That standard is met where the "explanation for agency action . . . is incongruent with what the record reveals about the agency's priorities and decisionmaking process." *Id.* at 785. A court "cannot ignore the disconnect between the decision made and the explanation given." *Id.*

Here, the disconnect between the purported goals of the FHOI NOFO and its unavoidable consequences strongly supports a pretext finding. The objectives listed in the NOFO are expanding competition, encouraging applicants to secure other resources, and ending waste, fraud, and abuse. But by zeroing out PEI and EOI funds, excluding fair housing organizations from competing, and sharply reducing the number of grant recipients, the NOFO will do the opposite—it inevitably will reduce the quantity, quality, and geographic reach of fair housing enforcement work. The plain consequence of the NOFO is that tens of millions of dollars will flow to organizations that do *not* do fair housing work, at the expense of organizations that do. The only reasonable conclusion to draw from these facts is that the FHOI NOFO is not intended to faithfully carry out the FHA, but instead is intended to defund longstanding FHIP grantees and the work they have carried out for decades while funding other priorities that are not consistent with the FHA or the FHIP program's purposes.

Evidence outside the administrative record confirms that the FHOI NOFO's reasoning is pretextual. While "a court is ordinarily limited to evaluating the agency's contemporaneous explanation in light of the existing administrative record," a court "may supplement the record when there is 'a strong showing of bad faith or improper behavior' by agency decision makers." *Town of Winthrop v. F.A.A.*, 535 F.3d 1, 14 (1st Cir. 2008) (cleaned up) (quoting *Olsen v. United States*, 414 F.3d 144, 155 (1st Cir. 2005)). This bad-faith exception "is discretionary with the reviewing court." *Id.*

Here, there is strong evidence of bad faith. HUD has recently, and illegally, attempted (1) to terminate funding agreements with FHIP grantees mid-stream and without any advance notice, *see supra* Bg. § IV (discussing court-ordered reinstatement of terminated grants in *MFHC I*), and (2) to not award appropriated FY2025 FHIP funds at all, *see id.* (discussing court-ordered obligation of FHIP funds in *NFHA v. HUD*). HUD also has slashed its fair housing enforcement headcount by two-thirds and prompted whistleblower complaints regarding its abdication of its fair housing enforcement responsibilities. Moreover, HUD's abrupt shift away from its consistent historic practice, the CBJ, and the Assistance Listings—without acknowledgement or reasonable explanation—further indicates that HUD was not motivated by a sincere intent to faithfully carry out the FHA. This evidence demonstrates HUD's recent commitment not to enforcing the FHA as Congress intended and the Supreme Court has interpreted it, but to eviscerating the FHA.

In addition, Assistant Secretary Trainor's internal email immediately following the publication of the NOFO sheds light on HUD's true intent. *See Dorcas Int'l Inst. of Rhode Island v. United States Citizenship & Immigr. Servs.*, No. 26-CV-132-JJM-PAS, 2026 WL 1622708, at *53 (D.R.I. June 5, 2026) (statements made close in time to challenged decision relevant to pretext analysis). Trainor's email touted HUD's efforts toward "decisively correcting course" in FHA enforcement by rolling back disparate impact enforcement, *see supra* Bg. § IV, even though the FHA inarguably encompasses disparate impact liability, *see Inclusive Communities*, 576 U.S.

at 539 ("Recognition of disparate-impact claims is consistent with the FHA's central purpose."). HUD has even gone so far as to tout during Fair Housing Month the dissenting opinion of Justice Thomas in *Inclusive Communities* rejecting disparate impact. *See* HUD Fair Housing Month Digest, Ex. 10 at 5. These actions underscore the disconnect between the NOFO—which does not mention disparate impact—and HUD's true motivation, which is to gut enforcement of a core component of the FHA.

C. The AEI NOFO is Arbitrary and Capricious.

The AEI NOFO diverts $10 million in FY2025 funding intended for private nonprofit fair housing enforcement organizations to state and local fair housing enforcement agencies, even though $26 million in FY2025 FHAP funds are separately set aside for those agencies. *See supra* Bg. § III. The AEI NOFO marks a sharp break from HUD's historic practice of not awarding FHIP funds to FHAP agencies. *See id.* And it is contrary to the representations in the FY2025 CBJ and the Assistance Listings, neither of which contemplate awarding FHIP funds to FHAP agencies. *See supra* Bg. § II.

For the same reasons that apply to the FHOI NOFO, the AEI NOFO is arbitrary and capricious. First, the AEI NOFO does not acknowledge, much less reasonably explain, HUD's shift in policy. The AEI NOFO says that it "complements" FHAP because "[w]hile FHAP supports ongoing case processing and administration, FHIP AEI supports the development of new administrative capability." Ex. 6 at 11. But the NOFO does not explain why HUD is diverting funds intended for FHIP recipients to achieve that objective. Indeed, HUD has the discretion to award FHAP funds to support new administrative capabilities and could have used FY2025 FHAP funds for that purpose. Significantly, the AEI NOFO also does not explain what "new administrative capabilit[ies]" it intends to fund, why existing capabilities of FHAP agencies are insufficient, or why any of this is of high enough priority to justify diverting funds from FHIP recipients. Second, as with the FHOI NOFO, the AEI NOFO does not account for the reliance interests of existing FHIP recipients, who cannot receive the diverted funding. And third, the pretext evidence discussed above suggests that HUD's stated reasoning in the AEI NOFO masks its true intention—gutting FHA enforcement and decimating the national network of nonprofit fair housing organizations that FHIP has helped create over the years.

II. Plaintiffs Will Suffer Irreparable Harm Absent Prompt Relief.

An injunction is necessary to prevent "substantial injury that is not accurately measurable or adequately compensable by money damages." *Ross-Simons*, 102 F.3d at 19. Such injuries must be "real and immediate." *Biogen Idec MA Inc. v. Trs. of Columbia Univ.*, 332 F. Supp. 2d 286, 296 (D. Mass. 2004) (quotation omitted). "District courts have broad discretion to evaluate the irreparability of alleged harm and to make determinations regarding the propriety of injunctive relief." *Vaquería Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 485 (1st Cir. 2009) (quoting *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 915 (1st Cir. 1989)).

Here, the FHOI NOFO and the AEI NOFO preclude Plaintiffs from receiving FHIP funding from the FY2025 appropriation, which will expire on September 30, 2026. Ordinarily, MFHC and many NFHA members would apply for new FY2025 PEI grants, *see* Ex. 4 ¶ 8, NFHA and many of its members would receive FY2025 PEI funding pursuant to multi-year agreements, Ex. 2 ¶ 7, Ex. 3 ¶ 19, and NFHA and many of its members would apply for FY2025 EOI and FHOI grants, Ex. 2 ¶ 6, Ex. 3 ¶ 19. But the FY2025 NOFOs effectively prevent MFHC, NFHA, and NFHA members from receiving FY2025 FHIP funds. *Supra* Bg. §§ III, V. If they do not receive any FY2025 FHIP funds, Plaintiff MFHC and many of Plaintiff NFHA's members face the prospect of closure. Ex. 2 ¶ 21; Ex. 3 ¶¶ 20, 38; Ex. 4 ¶ 12. This injury—which is directly attributable to HUD's restructuring of the FY2025 FHIP appropriation in the NOFO—constitutes irreparable harm. *Vaquería*, 587 F.3d at 485 (financial harm can be irreparable where it threatens the movant's existence). Aside from this existential threat, Plaintiffs and NFHA's members suffer irreparable harm because they will be forced to stop work, turn away clients, cancel leases, and lay off staff members if they do not receive FY2025 FHIP funds. Ex. 2 ¶ 21; Ex. 3 ¶¶ 20, 38; Ex. 4 ¶ 12; *cf. New York v. Trump*, 133 F.4th 51, 73 (1st Cir. 2025) ("impediments to planning, hiring, and operations" constituted irreparable harm).

Moreover, setting aside the gravity of the impact, a plaintiff suffers irreparable harm if its injuries are not redressable by later court intervention. *See Nat'l Educ. Ass'n-New Hampshire v. N.H. Att'y Gen.*, 806 F. Supp. 3d 166, 207 (D.N.H. 2025). That is the case here because (1) damages are unavailable in this case, *see New Hampshire Hosp. Ass'n v. Burwell*, No. 15-CV-460-LM, 2016 WL 1048023, at *18 (D.N.H. Mar. 11, 2016) (finding irreparable harm in APA case because "plaintiff cannot recover money damages for an APA violation"), and (2) if HUD proceeds with the current FY2025 NOFOs, it will award FHIP funds to other organizations, jeopardizing Plaintiffs' ability to compete for funds pursuant to revised NOFOs in the event they prevail.[12] *See NAEH*, 2025 WL 2638377, at *1 (prospective applicants suffered irreparable harm arising from NOFO that likely violated APA).

III. The Balance of Equities and Public Interest Favor Plaintiffs.

Where the government is a party, as it is here, the Court's inquiries into the balance of the equities and the public interest merge. *See Does 1-6 v. Mills*, 16 F.4th 20, 37 (1st Cir. 2021); *Mass. Fair Hous. Ctr. v. U.S. Dep't of Hous. & Urban Dev.*, 496 F. Supp. 3d 600, 611 (D. Mass. 2020). "[T]he public has an important interest in making sure government agencies follow the

[12] Plaintiffs maintain that the Court retains jurisdiction to order the de-obligation of funds after they have been awarded to other grantees. *See New York v. Noem*, 812 F. Supp. 3d at 330. But in the event HUD disburses these funds or the appropriation lapses prior to the Court taking action, Plaintiffs would be unable to compete for or obtain FY2025 funds.

law." *Neighborhood Ass'n of the Back Bay, Inc. v. Fed. Transit Admin.*, 407 F. Supp. 2d 323, 343 (D. Mass. 2005), *aff'd* 463 F.3d 50 (1st Cir. 2006).

It is beyond dispute that the public is benefitted from both ensuring compliance with the FHA and from preventing the Executive from exceeding its authority. It cannot be said that the public will benefit from the evisceration of FHIP when the very purpose of FHIP is to ensure adequate implementation of an anti-discrimination statute and to protect the public's right to equal housing opportunity. And the very purpose of limitations on agency authority and separation of powers more generally is to protect the public from an unchecked government. *Clinton v. City of New York*, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring). The public interest will also be advanced by ensuring that grantees can provide the services funded by FHIP grants—including PEI and EOI grants—which are designed to serve communities. By contrast, HUD will suffer no cognizable harm from disbursing grant funds consistent with the FHA, Congressional intent and expectation, and HUD's long-standing practice, at least until this controversy is adjudicated. In any event, the government "cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required." *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015) (citation omitted). Accordingly, all four factors in the analysis favor immediate relief to protect Plaintiffs and the public alike.

CONCLUSION

Plaintiffs respectfully ask the Court to enter a temporary restraining order that preserves the status quo by vacating and setting aside the FY2025 NOFOs. Plaintiffs further request that the Court suspend the statutory lapse of the funds at issue in the NOFOs, *see* 31 U.S.C. § 1502(b) (authorizing suspension of lapse of budgetary authority while lawsuit is pending); otherwise, FY2025 FHIP funds will revert to the U.S. Treasury on September 30, 2026.

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Respectfully submitted,

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** Pro hac vice applications filed contemporaneously*