ASSISTED HOUSING MANAGEMENT

A Legal Compliance Guide for Owners & Managers of HUD-Assisted Housing Sites

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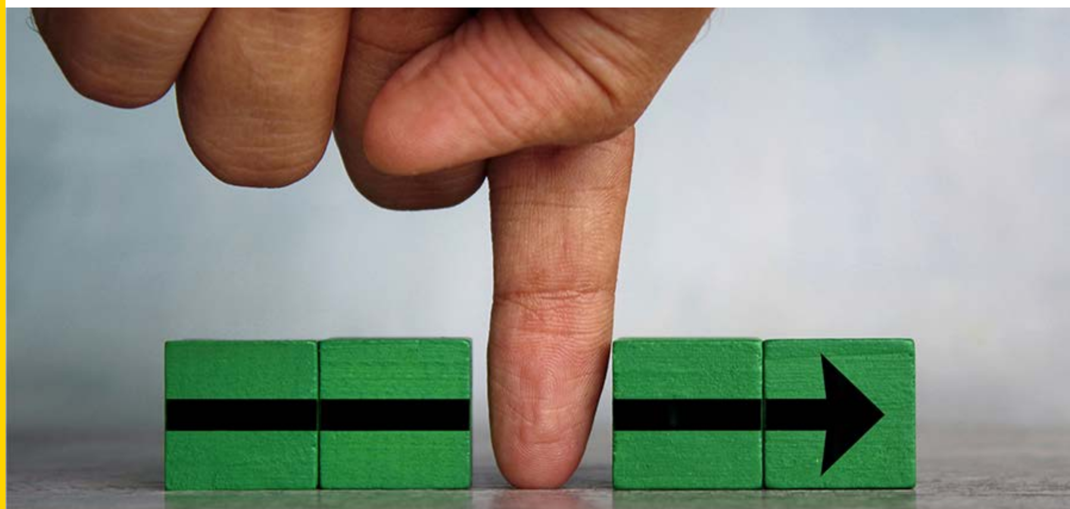
HUD Delays Implementation of HOME Final Rule Amid Regulatory Freeze

Be prepared to implement expanded tenant protections if and when the changes take effect.

On Jan. 6, 2025, HUD published the HOME Final Rule, an update to the regulations governing the HOME Investment Partnerships Program. The latest rule represents the most significant update to the HOME program since 2013. The update was intended to refine and streamline existing regulations, align them with federal housing policies, and implement recent legislative changes.

The final rule introduced strengthened tenant protections intended to secure more stable housing for residents. Notably, HUD has opted to retain the current eviction notice period, choosing not to extend it to 60 days as was initially proposed. However, it's important to



HUD HAS NOT YET PUBLISHED THE UPDATED HOME LEASE ADDENDUM.

note that the implementation of these new provisions has been delayed.

Initially, it was set to take effect on Feb. 5, 2025. According to a Jan. 31 HUD notice, the effective date of the final rule is delayed until April 20, 2025. This decision follows a memo issued by President Trump on Jan. 20, 2025, titled "Regulatory Freeze Pending Review." This memo directed all federal agencies to suspend new or pending regulations for review. The memorandum outlined specific actions, including prohibiting the issuance of new rules, retracting rules that had been sent to the Office of the Federal Register (OFR) but had not yet been published, and considering a 60-day delay for regulations already published but not yet effective.

While the memorandum suggested a 60-day postponement, HUD opted for a 90-day delay, extending the HOME Final Rule's implementation to April 20, 2025. HUD emphasized that this extension would allow for a thorough review of any legal, factual, or policy concerns related to the rule. While HUD is reviewing the rule, owners may take the time now to become fully acquainted with the revised regulations, especially the enhanced tenant protections, to ensure they are prepared if and when the changes take full effect. We'll go over these expanded protections and highlight HUD's decision to not extend the notice to evict to 60 days as originally proposed.

HOME Tenancy Addendum Requirement

The final rule introduced the HOME tenancy addendum requirement, which standardizes tenant protections across all HOME-assisted rental housing. The HOME tenancy addendum is a required attachment to all leases for tenants in HOME-assisted rental units. It establishes a uniform set of tenant protections that owners must adhere to, strengthening the rights of tenants and ensuring compliance with HOME program regulations.

The mandatory tenancy addendum ensures tenants' rights are explicitly included in their lease agreements. The addendum builds on existing HOME requirements for leases, such as the inclusion of provisions from the Violence Against Women Act (VAWA), by adding more comprehensive protections covering tenant rights. HUD has not yet published

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DON'T MAKE SEPARATE RULES THAT EXCLUDE HOME TENANTS FROM AMENITIES AVAILABLE TO MARKET-RATE TENANTS.

the updated HOME lease addendum that incorporates these provisions.

Tenant Notice Requirements

Under the Final Rule, owners participating in the HOME program must provide clear, detailed written notices to tenants whenever an adverse action is proposed. An adverse action can include a range of decisions that affect tenants, such as lease terminations, non-renewals, rent increases, or charges for tenant-caused damages. By standardizing the process, HUD wants to make sure tenants are given adequate notice and an opportunity to understand and respond to these actions. The new requirements mandate that adverse action notices include:

- A detailed explanation of the reason for the proposed action, such as a lease violation, nonpayment of rent, or other good cause;
- The specific date on which the action will take effect, allowing tenants adequate time to prepare or respond; and
- Information on tenants' rights to contest or remedy the issue, where applicable.

The final rule preserves the 30-day notice period for lease terminations or non-renewals, as established in the HOME statute. HUD had initially proposed extending the notice period to 60 days to provide tenants with additional time to find alternative housing, but feedback from stakeholders led to the decision to keep the original time frame. In addition, the rule requires that tenants be notified within five business days of any changes in ownership or management of the property. For impending property sales or foreclosures, tenants must be given at least 30 days' notice, enabling them to prepare for potential disruptions.

Unit Entry, Access to Common Areas

Among the revisions in the final rule are enhanced rules governing an owner's right to enter a tenant's unit and tenant access to common areas in HOME-assisted rental housing.

Unit entry. HUD has established stricter guidelines for when and how owners or their agents may enter a tenant's unit. These rules are designed to protect tenants' privacy while allowing staff to perform necessary maintenance, inspections, or emergency repairs. The rule says owners must provide tenants with at least two days' notice before entering their unit, except in emergencies. This notice must specify the purpose of the entry, ensuring that tenants are fully informed and prepared. For example, if the owner needs to conduct routine maintenance, inspect a unit, or show the property to prospective renters, the reason must be clearly communicated in advance.

In cases of emergencies, such as a fire, flood, or gas leak, property owners are permitted to enter the unit without prior notice. However, if the tenant and all adult household members are absent during such an entry, the owner must leave a written statement in the unit detailing the date, time, and purpose of the entry.

Use of common areas. The final rule also strengthens tenants' rights to access and use the common areas in HOME-assisted properties. Common areas, such as community rooms, gyms, pools, play areas, storage spaces, and outdoor facilities foster a sense of community and improve tenants' quality of life. HUD's updates make it explicitly clear that owners must provide reasonable access to all common areas for tenants of HOME-assisted units.

Importantly, property owners are prohibited from implementing discriminatory practices that restrict tenants of HOME-assisted units from using these facilities while allowing unrestricted access for other residents. For instance, an owner cannot establish separate rules that exclude HOME-assisted tenants

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SECURITY DEPOSITS MUST BE FULLY REFUNDABLE AND CAN'T EXCEED TWO MONTHS' RENT.

from a gym or pool available to market-rate tenants.

The rule also emphasizes the need for equitable access to amenities such as elevators, rooftop gardens, and storage spaces. Any attempts to segregate or deny access to these areas based on a tenant's participation in the HOME program are strictly prohibited.

Physical Condition of Unit, Site

The final rule covers tenant protections related to the physical condition of units in HOME-assisted rental housing. These changes are intended to ensure that tenants live in safe, sanitary, and well-maintained homes while holding owners accountable for addressing deficiencies promptly.

Unit standards. The final rule mandates that owners maintain HOME-assisted units and sites in compliance with federal property standards and applicable local housing codes. Units must be safe, sanitary, and in good repair throughout the affordability period. This requirement applies to both the physical condition of individual units and the overall site, including common areas and outdoor spaces.

Owners must provide tenants with clear timelines for completing routine maintenance and repairs, ensuring that tenants are informed about when issues will be addressed. The rule also prohibits owners from charging tenants for normal wear and tear, limiting tenants' financial responsibility to damages caused by negligence, recklessness, or intentional acts.

Relocation for life-threatening conditions. One significant protection introduced in the final rule is the requirement to relocate tenants if life-threatening deficiencies in their unit or the site cannot be resolved immediately. For example, if a tenant's unit is affected by issues such as severe structural damage, flooding, or exposure to hazardous materials, the owner must provide alternative accommodations.

Tenants must be relocated to a housing unit or lodging that is decent, safe, sanitary, and in good repair until the deficiencies are resolved. The relocation must be at no additional cost to the tenant, ensuring that tenants are not financially burdened by temporary housing needs. HUD anticipates that this relocation requirement will primarily apply in situations where repairs cannot be completed on the same day the deficiency is identified.

Legal Recourse, Anti-Retaliation Protections

The final rule explicitly grants tenants in HOME-assisted rental housing the right to organize and participate in tenant associations. Owners are prohibited from retaliating against tenants for exercising their rights, such as reporting unsafe conditions, requesting repairs, or organizing tenant associations. And tenants have the right to contest adverse actions and seek legal remedies without fear of harassment or eviction.

Right to organize. This right mirrors those already established in other HUD programs, including Multifamily Housing programs. This protection ensures that tenants can:

- Convene meetings in common areas without interference from owners or managers;
- Distribute literature and information relevant to tenant concerns; and
- Advocate collectively for improvements in housing conditions, property management practices, or tenant services.

HUD notes that tenant organizations are particularly valuable in larger projects, where individual tenants may feel overwhelmed or unsupported in addressing property-wide concerns.

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Prohibitions against retaliation. The final rule's anti-retaliation provisions protect tenants who choose to organize or participate in tenant associations, report unsafe or inadequate housing conditions, or request enforcement of lease provisions. The rule defines retaliation broadly to include any adverse action taken by a property owner or manager in response to a tenant exercising their rights. This could involve actions such as constructive eviction which is a way to recover a unit outside of lawful eviction processes by reducing or discontinuing services to the tenant, such as maintenance or utilities. Other retaliatory actions include harassing tenants or their lawful guests or unreasonably interfering with a tenant's comfort, safety, or enjoyment of their unit.

SECURITY DEPOSITS MUST BE FULLY REFUNDABLE AND CAN'T EXCEED TWO MONTHS' RENT.

Security Deposit Requirements

Another area of tenant protection in the final rule involves security deposits. Security deposits must now be fully refundable and cannot exceed two months' rent. The rule also explicitly prohibits the use of surety bonds or security deposit insurance as a substitute for traditional security deposits. While such alternatives have been marketed as flexible solutions, HUD has determined that they could create financial risks and complexities for low-income tenants, such as ongoing premiums or hidden fees.

To further protect tenants, the final rule requires owners to provide detailed, itemized lists of any charges deducted from a tenant's security deposit. Owners must promptly refund the remaining balance of the deposit after deductions have been made. The rule also clarifies that tenants cannot be charged for normal wear and tear or for damage not caused by their negligence, recklessness, or intentional acts.

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How to Handle Medicare Advantage Flex Cards When Calculating Income

Automatically including all Flex Card benefits as income can lead to certifications that exceed the maximum income limit.

MOST FLEX CARD BENEFITS SHOULD NOT BE COUNTED AS INCOME WHEN DETERMINING ELIGIBILITY.

Many Medicare Advantage enrollees rely on supplemental benefits to afford essential items like groceries and medical products. Some owners may have mistakenly included all flex card benefits as income, possibly leading to income certifications that may have exceeded the maximum income limit. HUD recently issued updated guidance that provides clarification on this issue.

In a Frequently Asked Questions (FAQ) document, HUD confirmed that only Flex Card funds used for rent and utilities should be included in income calculations. All other supplemental benefits provided through Flex Cards, such as those used for groceries, over-the-counter medications, or transportation, should not be counted as income.

What Supplemental Benefits Do MA Plans Offer?

Many Medicare Advantage plans provide supplemental benefits beyond standard Medicare coverage. These benefits must be primarily health-related or qualify as Special Supplemental Benefits for the Chronically Ill (SSBCI), meaning they are designed to improve the overall health and well-being of enrollees. Common Medicare Advantage supplemental benefits include:

- Dental, Vision, and Hearing Coverage. These are services like eye exams, prescription glasses, dental cleanings, and hearing aids.
- Prescription Drug Coverage (Medicare Part D). Many MA plans include drug coverage to help reduce medication costs.
- Wellness and Fitness Programs. These include gym memberships, virtual fitness programs, and health coaching.
- Transportation Assistance. This includes non-emergency transportation to medical appointments.
- In-Home Support Services. These include assistance with daily living activities, such as meal delivery and home modifications.
- Flex Cards for Eligible Expenses. These are preloaded debit cards that can be used for health-related expenses, groceries, and, in some cases, rent and utilities.

Excluded Benefits

HUD has made it clear that most Medicare Advantage Flex Card benefits should not be counted as income when determining eligibility for rental assistance. Only in cases where an enrollee explicitly uses Flex Card funds to pay for rent or utilities should those amounts be included in income calculations. For everything else, whether it's groceries, over-the-counter medications, transportation, or other health-related expenses, the funds should remain excluded.

This reverses any approach that treats Flex Card benefits as additional income, even when enrollees never used them for rent or utilities. Unless there is specific evidence or confirmation that a beneficiary has used the funds for housing costs,

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the amount should not factor into rent determinations.

With regard to verification, HUD says the vast majority of MA supplemental benefits will be excluded from income determinations, and thus do not need to be verified, including benefits on Flex Cards that are used for anything other than rent and utilities. This is because beneficiaries should not be expected to keep a record of all purchases made and may not have straightforward access to such records from vendors that administer benefits through a Flex Card. According to HUD, there would be too many normal commercial transactions, such as using the card when checking out at the grocery store, purchasing a specialized food item recommended by their physician, or paying for over¬-the¬-counter medication.

HUD says owners should generally assume that benefits administered through Flex Cards have not been used to pay for rent and utilities unless the owner has information to suggest otherwise, or the enrollee self-reports that they're applying the funds toward housing costs. If a family reports that they receive MA benefits to help pay for rent and utilities, owners must attempt to collect third-party documentation of the expenses and may accept the self-certification when third-party documentation isn't available.

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HUD Lowers Blood Lead Level Threshold for Children Under 6

You must take four steps when you learn a child at your site has an EBLL at or above the new threshold.

YOU MUST COMPLY BY EITHER APRIL 17 OR JULY 16, DEPENDING ON WHERE YOUR SITE IS LOCATED.

HUD recently published a notice modifying its elevated blood lead level (EBLL) threshold, reducing it to 3.5 micrograms of lead per deciliter of blood (μg/dL) for a child under the age of 6. This change aligns with updated CDC recommendations and aims to enhance the protection of children living in HUD-assisted housing. HUD had maintained an EBLL threshold of 5 μg/dL, even though the Centers for Disease Control and Prevention (CDC) had lowered its Blood Lead Reference Value (BLRV), the term it uses instead of EBLL, to 3.5 μg/dL in May 2021.

The recently published notice establishes a phased compliance approach, requiring HUD-assisted housing to meet the new EBLL standard by April 17, 2025, in states, territories, and local jurisdictions where the blood lead action threshold is already at or below the CDC's current BLRV. In areas where the action threshold is higher than the CDC's BLRV or where no threshold exists, compliance is required by July 16, 2025. Initially, HUD proposed a universal six-month compliance deadline but revised this approach in favor of a two-tiered system, allowing for a 90-day and a 180-day compliance period depending on existing local standards.

HUD determined that six months was unnecessary in cases where owners had already been aware of the CDC's level since 2021, had access to existing training materials on HUD Exchange, and operated in jurisdictions that had already adopted equal or more stringent standards. However, in areas without pre-existing standards or where thresholds exceeded the CDC's BLRV, HUD concluded that additional time was necessary, granting a 180-day period for compliance.

How to Respond to EBLL Notifications

There are four steps you must take when a child is found to have an EBLL at or above the new threshold at your site:

Verify and provide notice. Once an EBLL case for a child under 6 in an assisted housing unit is reported, verification and notice requirements are triggered. If the original EBLL report didn't come from a health care provider or local public health department, you need to immediately verify the child's blood lead level with one of those sources. The verification doesn't need to be written verification. If there's no response, HUD must be contacted for assistance in obtaining verification. Even if the child has moved out of the unit by the time the verification occurs, the response requirements still apply to that unit.

Within five business days of verification, you must inform the local health department, the HUD Field Office, and the Office of Lead Hazard Control and Healthy Homes (*leadregulations@hud.gov*). These notifications should be sent via email but must not contain personally identifiable information such as the child's name or test results unless they are securely transmitted.

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Conduct environmental investigation. Once verification is complete, the next step is to conduct an Environmental Investigation (EI) within 15 calendar days. A certified risk assessor must inspect the affected unit, known as the index unit, to determine whether lead-based paint hazards or other sources of lead exposure are present. The investigation will assess potential risks in paint, dust, soil, and water, ensuring a comprehensive approach to identifying hazardous conditions. If the local health department has already conducted an evaluation, its findings may be used to meet this requirement.

Following the investigation, the owner must notify both HUD and the occupants of the affected unit about the results. This notification must be provided within 10 business days to HUD and within fifteen calendar days to the residents.

If lead hazards are identified, all assisted residents in the property must be informed that an investigation was conducted, while ensuring that the specific identity of the child remains confidential. The owner must also assess other assisted units in the building where children under 6 live or are expected to reside.

The timeline for these additional risk assessments depends on the size of the property. For buildings with 20 or fewer assisted units, risk assessments must be completed within 30 days. For larger properties with more than 20 assisted units, the time frame extends to 60 days. If lead hazards are found in these additional units, remediation must be completed within either 30 or 90 days, depending on the property size. There is an exception to the requirement for additional risk assessments if the owner can provide documentation that the assisted units have already undergone lead-based paint evaluations and hazard control measures within the previous 12 months, then further assessments may not be necessary.

Perform necessary repairs. Addressing identified lead hazards is a critical next step. Any lead-based paint hazards found in the index unit must be controlled or eliminated within 30 calendar days of receiving the EI results.

Remediation must be performed by a certified lead abatement or renovation firm, and the work is not considered complete until a clearance examination confirms that the hazards have been properly addressed. The clearance results must be submitted to HUD within 10 business days and shared with the affected residents within 15 calendar days.

Keep all records. Proper recordkeeping is essential. All records must be retained for the life of the site and disclosed. These records include all EBLL response actions, notifications, and remediation efforts.

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OMB Pause in Federal Financial Assistance Creates Confusion, Uncertainty

The legal landscape surrounding the funding freeze remains unsettled.

SENATORS EXPRESSED CONCERN OVER THE CONSEQUENCES OF THE EXECUTIVE ACTIONS ON AMERICANS WHO RELY ON HUD ASSISTANCE.

Over the past few weeks, a series of executive actions by the Trump administration has led to a temporary federal funding freeze affecting a broad range of federal programs. The process began on Jan. 27 when the Office of Management and Budget (OMB) issued a memorandum instructing all federal agencies to "pause all activities related to obligation or disbursement of all Federal financial assistance." On its face, this memo would freeze trillions of dollars in grants, loans, and other assistance already appropriated by Congress.

The Trump administration then spent the following day narrowing the scope of the announcement by saying that it didn't apply to programs that provide "direct benefits to Americans," such as Social Security, Medicare, Medicaid, and "rental assistance." A series of subsequent notices said FHA single-family mortgage insurance, "Ginnie Mae activities," and multifamily project-based rental assistance also were excluded from the directive.

The uncertainty over federal funding is significant, as local housing agencies and community organizations depend on federal dollars to pay for routine repairs to major construction projects. Although certain housing programs were later identified as exempt, many housing-related grants and loans were subject to the freeze, causing disruptions.

On Jan. 29, OMB formally rescinded its earlier memo that had ordered federal agencies to pause the disbursement of funds. Despite the technical rescission of the memo, the situation grew more complicated when White House Press Secretary Karoline Leavitt addressed the matter on Twitter. In her post, Leavitt emphasized that while the OMB memo had been rescinded, this action did not equate to a complete rollback of the federal funding freeze. According to her, the underlying executive orders governing federal spending remained in full force and would continue to be rigorously implemented. This clarification led to considerable confusion among agencies and stakeholders who were left uncertain about whether all paused funding had been fully restored or if certain disbursements might still be subject to delay or review.

HUD Response and Developments

In response to the original OMB memo, HUD's Office of Public and Indian Housing sent a memo to executive directors stating that "HUD is currently reviewing each grant program in accordance with the guidance provided to agencies. The Tenant-Based Rental Assistance Program is no longer subject to the pause. Public housing agencies (PHAs) will receive the February tenant-based rental assistance payments as scheduled." However, all other grants to PHAs were paused. PHAs could not access critical funding systems like the Line of Credit Control System (LOCCS). This system is used to process grant disbursements. The temporary freeze threatened not only new awards but also the flow of funds needed to maintain

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existing funding to community development initiatives and support for homelessness programs.

Also, in another email from HUD's Office of Multifamily Housing Programs, HUD confirmed that rental assistance payments for Multifamily project-based rental assistance remained operational and were not subject to the pause.

With the memo withdrawn, HUD quickly moved to restore operations. In an email, HUD's Office of Public and Indian Housing notified its executive directors that the Line of Credit Control System (LOCCS) had been reopened, allowing public housing agencies to resume their normal funding processes.

In the end, while the rescission of the OMB memo did restore access to many critical funds, the press secretary's remarks underscored an ongoing uncertainty in federal funding policy and whether funding flows might become restricted in the future.

Congressional Response

In the wake of the federal funding freeze, Senators Elizabeth Warren and Tina Smith, both key figures on the Senate Banking, Housing, and Urban Affairs Committee, wrote a pointed letter to the Trump administration. Their correspondence sought immediate clarification on which HUD programs were being affected by the funding freeze and demanded detailed information on the criteria that would determine when or if these programs would resume full operations.

The senators expressed concern over the ambiguity and the potentially far-reaching consequences of the executive actions. They argued that, without clear answers, Americans who rely on HUD grants, loans, and other forms of assistance to secure or maintain safe housing could face serious hardships. The letter criticized what they described as "reckless actions" that not only jeopardize essential services for vulnerable populations but also undermine the constitutional role of Congress in overseeing federal appropriations. The letter emphasized that Congress has the sole power to appropriate funds and that any attempt by the executive branch to unilaterally withhold spending should be scrutinized closely. In their view, the lack of clear communication regarding the affected programs added unnecessary uncertainty.

Legal Challenges to Federal Funding Freeze

The legal landscape surrounding the funding freeze remains unsettled and reflects the disputes about the balance of power between the executive branch and Congress regarding spending priorities. The outcome of these legal challenges could shape the administration's efforts to control federal spending. So far, federal judges have questioned the administration's authority to suspend funds that Congress has already appropriated.

In response to the original OMB memo, lawsuits were filed and the federal funding freeze faced a series of legal setbacks. A federal judge in the District of Columbia temporarily blocked the order in response to a lawsuit filed by Democracy Forward. And shortly after, attorneys general in 22 states and the District of Columbia also filed a lawsuit against the order, arguing that President Trump had gone far beyond his legal powers when he moved to "pause" trillions of dollars in funding already allocated by Congress.

And, recently, the 1st U.S. Circuit Court of Appeals rejected the Trump administration's bid to challenge a lower court's restraining order against the funding freeze. In its decision, a panel of three appellate judges noted that the Justice Department had not demonstrated any specific harm that would result from leaving the judge's restraining order in place. The department had sought a pause on the lower court's order while it continued to challenge the ruling in court, arguing that the order was too vague and that a stay was necessary to avoid disruption.

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TIMELINE OF THE FEDERAL FUNDING FREEZE ROLLOUT

Jan. 27: Acting Director of the Office of Management and Budget (OMB), Matthew Vaeth, signed a memorandum directing all federal agencies to "temporarily pause the obligation or disbursement of federal financial assistance."

Jan. 28: The pause was scheduled to take effect at 5:00 p.m. ET. Federal agencies were to immediately halt new obligations, disbursements under open awards, and other funding-related actions.

- Minutes before the freeze, a U.S. District Judge intervened by issuing an emergency order temporarily blocking the implementation of the memo for existing programs.
- OMB issued a clarification memo that stated the pause did not apply to programs not implicated by the president's executive orders. Programs providing direct benefits such as Social Security, Medicare, SNAP, student loans, and several targeted sectors including small business, Head Start, and rental assistance were not subject to the pause.
- HUD's email communications indicated that while Tenant-Based Rental Assistance payments (a critical benefit for public housing agencies) would continue as scheduled, all other HUD grants to PHAs were paused until further notice.
- HUD's Office of Multifamily Housing Programs confirmed that rental assistance payments for Multifamily project-based rental assistance remained operational and were not subject to the pause.

Jan. 29: The Trump administration officially rescinded the OMB memo calling for the funding freeze in response to legal challenges and pressure from advocates and congressional leaders.

- HUD sent an email to executive directors clarifying that the pause ended and that access to LOCCS had been restored.
- Despite the rescission, White House Press Secretary Karoline Leavitt emphasized on social media that this action was a "rescission of the OMB memo" only and not a full rollback of the President's broader executive orders. In other words, while the immediate pause was undone, the administration's overall review of federal funding (and potential future freezes on select programs) was still in effect.

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