March 2, 2026

Kelly Loeffer
Administrator, U.S. Small Business Administration
409 3rd St., SW
Washington, DC 20416

Public Comments in Response to Improving SBA Disaster Loan Ability To Provide Meaningful and Timely Assistance (RIN 3245–AI71)

Dear Administrator Loeffler:

The Natural Resources Defense Council (NRDC) writes in response to the Small Business Administration's (SBA) solicitation of public comments concerning the agency's published notice of an Interim Final Rule announcing SBA's intent to preempt state and local permitting and approval requirements related to rebuilding post-disaster.

NRDC is an international, non-profit environmental organization with more than three million members and online activists. NRDC advocates to increase the resilience of communities to the unavoidable impacts of climate change, reduce greenhouse gas emissions that cause climate change, safeguard human health, and ensure safe drinking water for all.

NRDC is opposed to the Interim Final Rule. First, SBA's Interim Final Rule is an unconstitutional usurpation of the historic police powers of the state. Second, SBA fails to satisfy the Administrative Procedure Act's (APA) "good cause" exception, and thus, fails to give the public a legally adequate opportunity to comment. Third, SBA's Interim Final Rule will have a chilling effect on substantive state and local building requirements, which will undermine rebuilding safer and more resilient in the face of worsening extreme-weather disasters.

NRDC urges SBA to carefully consider these submitted comments and to repeal the Interim Final Rule.

I. SBA's purported preemption of "state and local permitting requirements … precedent to construction" is unconstitutional.

SBA's Interim Final Rule is an unconstitutional intrusion on the historic police powers of the state in violation of the 10th Amendment.

The Supremacy Clause of the U.S. Constitution provides that: "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to

the Contrary notwithstanding."[1] Federal preemption occurs "by direct operation of the Supremacy Clause."[2]

Federal law can preempt state law in two ways. First, federal law can expressly preempt state law when a federal statute or regulation contains explicit preemptive language. Second, federal law can impliedly preempt state law when Congress's preemptive intent is implicit in the relevant federal law's structure and purpose. Under "obstacle" preemption, a subset of implied conflict preemption law, state laws are preempted where the challenged state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[3]

However, courts may not find state measures preempted "unless that was the clear and manifest purpose of Congress."[4] As stated by Justice Gorsuch in *Virginia Uranium, Inc. v. Warren*, "[a]bstract and unenacted legislative desires" not reflected in a statute's text cannot form the basis of a valid preemption claim.[5] Any "[e]vidence of pre-emptive purpose" must be "sought in the text and structure of the statute at issue."[6]

The "text and structure" of Section 7(b) of the Small Business Act, which authorizes the Disaster Loan Program, provides no evidence that it was the "clear and manifest purpose of Congress" to preempt state and local permitting and approval requirements related to rebuilding post-disaster. Based on the statutory text, Congress established the Disaster Loan Program to provide direct loans to help businesses, nonprofit organizations, homeowners, and renters repair or replace property damaged or destroyed in a federally declared disaster.[7] Much of the "text and structure of the statute" addresses the types of loans available,[8] different loan requirements,[9] raising public awareness about the loan program,[10] and outlining the duties of the SBA Administrator in disbursing the loans.[11] While section 636(b)(10) addresses the reducing of delays, the focus is not on state and local actions, but instead, improving SBA's communication with loan applicants to reduce processing delays.[12]

In addition, in the Interim Final Rule announcement, SBA provides no evidence that state and local law are interfering with the accomplishment and execution of Congress's objectives in creating and funding the Disaster Loan Program. Nothing in the text nor structure of the Disaster Loan Program authorizing statute demonstrates Congress had any intent to preempt state and local permitting authority, let alone "clear and manifest" intent. All statutory references to reducing delays and processing timeliness are directed at the operations of the SBA, not the role state and local governments may play, even tangentially, in the disaster recovery goals of the loan program. SBA

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[1] U.S. Const. art. VI, para. 2.
[2] *Brown v. Hotel & Restaurant Employees & Bartenders Int'l Union Local 54*, 468 U.S. 491, 501 (1984).
[3] *Arizona v. United States*, 567 U.S. 387, 399 (2012); *Hines v. Davidowitz,* 312 U.S. 52, 67 (1941).
[4] *Arizona v. United States*, 567 U.S. 387, 400 (2012); *Wyeth v. Levine,* 555 U.S. 555, 565 (2009).
[5] 587 U.S. 761, 778 (2019)
[6] *Id.* (quoting *CSX Transp., Inc. v. Easterwood*, 507 U. S. 658, 664 (1993).
[7] 15 U.S.C. 636(b)(1)(A).
[8] 15 U.S.C. 636(b)(1)
[9] 15 U.S.C. 636(b)(3)
[10] *See e.g.*, 15 U.S.C. 636(b)(5) (detailing how the SBA Administrator shall communicate availability of the program to disaster survivors).
[11] *See e.g.*, 15 U.S.C. 636(b)(7) (proscribing the number of disaster assistance employees the SBA Administrator must hire to operate the program).
[12] 15 U.S.C. 636(b)(10).

fails to demonstrate that 15 U.S.C § 636(b) shows the "clear and manifest purpose of Congress" was to preempt state and local permitting authority.

Instead, SBA references Senate Report 110-64 (2007) as evidence that "Congress intended the Small Business Act's Disaster Loan Program to provide rapid, effective deployment of assistance in the wake of a disaster to avoid additional harms to victims of disasters."[13] SBA claims "frustration" of this purpose warrants preemption.[14] While the report states, "the SBA failed in its mission to respond quickly and effectively to victims' needs in the weeks and months following the [2005] hurricanes," Congress lays the blame squarely on the SBA. The report and associated SBA reform bill solely address improving SBA's operations and procedures to improve efficiency in disbursement of the loans. Neither the report nor the text and structure of the SBA reform bill say *anything* critical about states and localities, let alone establish a clear Congressional intent to preempt state and local permitting requirements related to rebuilding post-disaster.

As Congress provided no "clear and manifest" intent to preempt state and local permitting requirements in "the text and structure of the statute" enacting the SBA's Disaster Loan Program, the SBA's Interim Final Rule is unconstitutional.

II. SBA fails to satisfy the Administrative Procedure Act's "good cause" exception and thus denies the public a legally adequate opportunity to comment.

SBA did not satisfy the APA's "good cause" exception. Thus, the Interim Final Rule is procedurally inadequate.

Under the APA, when an agency wants to issue a new regulation, it must publish a proposed rule in the *Federal Register*, allow a public comment period, consider those comments, and then publish a final rule with a reasoned explanation.[15] These APA procedures apply when agencies issue, delete, or modify their rules.[16] However, the APA permits agencies to forgo notice-and-comment when the agency, "for good cause finds", the standard process for rulemaking is "impracticable, unnecessary, or contrary to the public interest."[17] Generally, courts have held that the good cause exception should be "narrowly construed and only reluctantly countenanced," and that agency findings of good cause should be closely scrutinized.[18] When invoking the "contrary to the public interest" rationale, agencies must "point to something specific that illustrates a particular harm that will be caused by following" ordinary rulemaking procedures.[19]

SBA states that "delaying implementation to allow for advance notice and comment and delaying the effective date would be impracticable and contrary to the public interest."[20] As supporting

[13] 91 FR 3813, 3814 (Jan. 29, 2026).
[14] *Id.*
[15] 5 U.S.C. §553
[16] *Id.* §553(d).
[17] *Id.* § 553(b)(3)(B)
[18] Util. Solid Waste Activities Grp. v. EPA, 236 F.3d 749, 754 (D.C. Cir. 2001) (quoting Tenn. Gas Pipeline Co. v. FERC, 969 F.2d 1141, 1144 (D.C.Cir.1992); *accord* Nat. Res. Def. Council v. Nat'l Highway Traffic Safety Admin., 894 F.3d 95, 114 (2d Cir. 2018); United States v. Reynolds, 710 F.3d 498, 507–08 (3d Cir. 2013); U.S. Steel Corp. v. EPA, 595 F.2d 207, 214 (5th Cir. 1979); California v. Azar, 911 F.3d 558, 575 (9th Cir. 2018); United States v. Dean, 604 F.3d 1275, 1279 (11th Cir. 2010); Mid Continent Nail Corp. v. United States, 846 F.3d 1364, 1380 (Fed. Cir. 2017).
[19] United States v. Brewer, 766 F.3d 884, 890 (8th Cir. 2014) (quoting Reynolds, 710 F.3d at 513).
[20] 91 FR 3813, 3814

evidence, SBA provides reasons like addressing alleged delays in rebuilding after the 2025 Los Angeles wildfires, the need for regulatory clarity, and avoiding potential delays from future disasters.[21] However, the "emergency" of addressing the California wildfires is misleading as the Interim Final Rule applies nationally. The Interim Final Rule is retroactive to January 1, 2025, which shows the specific problem has existed for more than a year. SBA provides no real explanation for why normal notice and comment rulemaking would harm the public interest given the alleged issue has existed for more than a year. In contrast, SBA's denial of the opportunity for meaningful public engagement in agency decision-making concerning the preemption of the historic police powers of the state is harmful to the public interest. Further, SBA provides no evidence that delay would exacerbate housing and business instability, economic harm, and public safety and health risks. SBA only offers conclusory statements that fail to show a particular harm will be caused by following ordinary rulemaking procedures. Lastly, SBA argues the Interim Final Rule would provide regulatory clarity, but the rule is not clarifying anything, but instead fundamentally shifting the role of the federal government in relation to state and local government's power to regulate land use and development, a shift that demands the opportunity for meaningful public engagement. Given SBA's rule has national reach and was issued more than year after the referenced emergency, SBA has failed to properly invoke the good cause exception. SBA's Interim Final Rule violates the APA's procedural requirements.

III. SBA's Interim Final Rule will have a chilling effect on substantive state and local building requirements, which will undermine rebuilding safer and more resilient in the face of worsening extreme-weather disasters.

The Interim Final Rule undermines state and local government's ability to rebuild safer and more resilient post-disaster. SBA's distinction between "procedural" and "substantive"" state law is illusory. Permits, approvals, and CEQA processes are the mechanisms through which substantive safety and environmental standards are enforced. SBA argues substantive standards are not comprised because builders must "certify that they have, and will, otherwise comply with all such substantive local and state standards and requirements."[22] However, if construction can proceed without approvals, and state or local governments cannot employ stop work orders or penalties,[23] then the practical ability to enforce those substantive standards is severely compromised. Further, SBA appears to provide no penalty to discourage builders from dishonesty in the certification process. Thus, homes could be rebuilt to substandard conditions due to a lack of repercussions, which threatens resilience to future disasters.

IV. SBA must withdraw the Interim Final Rule

Smart policy and the law both mandate that SBA must repeal the Interim Final Rule. The Interim Final Rule violates states' rights, is procedurally inadequate under the APA, and undermines state and local governments' ability to ensure homes are rebuilt safer post-disaster. If SBA is sincere about improving disaster recovery under the Disaster Loan Program, then SBA must provide an adequate opportunity for the public to engage.

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[21] *Id.*
[22] *Id.*
[23] *Id.* at 3818.

Sincerely,



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