



August 22, 2025

US Department of Health and Human Services
200 Independence Ave, SW
Washington DC 20201

Re: LWVUS Urges HHS to Reinstate “Public Participation in Rule Making”

Dear Secretary Kennedy and Counsel Keveney,

On behalf of the League of Women Voters of the United States (the League), I am writing to express our concerns about the Department of Health and Human Services’ (HHS’) decision to rescind its more-than-50-year-old policy “Public Participation in Rule Making,” also known as the “Richardson Waiver.”¹ **The League urges HHS to reinstate this policy promptly to enable public participation in healthcare policies that affect millions of Americans, and to ensure government transparency and accountability.**

The League is a 105-year-old nonpartisan nonprofit committed to ensuring everyone can fully participate in our democracy. We are a grassroots organization comprised of over one million members and supporters in all 50 states and the District of Columbia. With over 700 chapters nationwide, the League focuses on advocacy, education, litigation, and organizing to achieve our mission to empower voters and defend democracy. To this end, the League believes that democratic government depends upon informed and active participation at all levels of government and that governmental bodies must protect the citizen’s right to know by giving adequate notice of proposed actions and making public records accessible.

HHS’ More Than 50 Year History of Regulatory Transparency

The *Administrative Procedure Act* (APA; 1946) governs the process by which federal agencies issue rules and regulations, including requirements for publishing notices of proposed and final rulemaking, and providing an opportunity for the public to comment on proposed rulemaking.² The APA exempts “matter(s) relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” or when the agency for “good cause” finds that the notices and procedures are “impracticable, unnecessary, or contrary to the public interest.”³

In 1969, the Administrative Conference of the United States (ACUS) issued a recommendation that sometimes these types of rules “bear heavily upon nongovernmental interests” and that exempting them from procedural requirements is “unwise.”⁴ In 1971, HHS adopted the Richardson Waiver, waiving the APA’s aforementioned statutory exemption — effectively requiring HHS to use the APA’s notice and comment rulemaking procedures for the previously exempted matters — and said that the “good cause

¹ <https://public-inspection.federalregister.gov/2025-03300.pdf>;
<https://www.federalregister.gov/documents/2025/03/03/2025-03300/policy-on-adhering-to-the-text-of-the-administrative-procedure-act>

² <https://www.congress.gov/crs-product/R41546>

³ <https://www.govinfo.gov/content/pkg/USCODE-2023-title5/pdf/USCODE-2023-title5-partI-chap5-subchapII-sec553.pdf>

⁴ <https://www.acus.gov/sites/default/files/documents/69-8.pdf>

exception” should be used “sparingly.”⁵ **HHS explained that the “public benefit from such participation should outweigh any administrative inconvenience or delay which may result.”**

HHS’ Policy to Decrease Regulatory Transparency and Public Participation

In March 2025, claiming that the Richardson Waiver imposes costs on HHS, the Department rescinded the policy.⁶ HHS will only follow notice and comment rulemaking procedures when statutorily required by the APA, decreasing stakeholder and public input into, and transparency and accountability for, healthcare policies.

In fiscal year 2025, HHS has a budget of \$2.99 trillion, representing 19.8% of the federal budget.⁷ HHS is the largest grant-making agency in the United States.⁸ HHS’ largest division is the Centers for Medicare and Medicaid Services (CMS), responsible for administering Medicare, Medicaid, the Children’s Health Insurance Program (CHIP), and the *Affordable Care Act’s* (ACA’s) Health Insurance Marketplaces. Collectively, these programs provide health insurance coverage to more than 170 million Americans, including nearly 72 million people under Medicaid, the single largest source of health coverage in the country.⁹ **It is imperative that stakeholders and the public have the opportunity to provide input into HHS’ regulations, as the Department constitutes nearly one fifth of the federal budget and oversees so many Americans’ health care, under CMS and beyond.**

A Misinterpreted Application of Rulemaking Requirements

HHS cites *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92 (2015) when it explains that the Richardson Waiver imposes requirements beyond what is required by the APA, falsely implying that this is impermissible.¹⁰ In *Perez*, the US Supreme Court ruled that a *court* lacks the authority to compel an agency to take steps beyond the “maximum procedural requirements” of the APA, meaning it cannot force an agency to go through notice-and-comment for new interpretations of rules. However, the Richardson Waiver was not imposed by a court, it was a product of the Agency’s discretion in setting a procedural floor to improve rulemaking. This type of action is supported by Supreme Court precedent. In *Vermont Yankee Nuclear Power Corp. v. Nat. Resources Defense Council, Inc.*, 435 U.S. 519 (1978), it held that courts cannot add to the rulemaking procedural requirements of the APA, but it is within the agencies’ discretion to impose additional requirements.¹¹ As such, it is within HHS’ authority to adopt and implement the Richardson Waiver.

HHS Must Restore Transparency in the Regulatory Process

HHS’ policy change to rescind the Richardson Waiver came just months before the US Congress passed its budget reconciliation bill, which includes the imposition of a moratorium on your Department’s Eligibility and Enrollment final rule.¹² This final rule was designed to streamline the process for people to

⁵ <https://www.federalregister.gov/citation/36-FR-2532>

⁶ <https://public-inspection.federalregister.gov/2025-03300.pdf>;

<https://www.federalregister.gov/documents/2025/03/03/2025-03300/policy-on-adhering-to-the-text-of-the-administrative-procedure-act>

⁷ <https://www.usaspending.gov/agency/department-of-health-and-human-services?fy=2025>

⁸ <https://www.hhs.gov/grants-contracts/grants/index.html>

⁹ [https://www.kff.org/affordable-care-act/how-does-the-department-of-health-and-human-services-hhs-impact-health-and-health-](https://www.kff.org/affordable-care-act/how-does-the-department-of-health-and-human-services-hhs-impact-health-and-health-care/#:~:text=The%20largest%20division%20of%20HHS,of%20Labor%20and%20the%20Treasury;)

[care/#:~:text=The%20largest%20division%20of%20HHS,of%20Labor%20and%20the%20Treasury;](https://www.medicare.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights)

<https://www.medicare.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights>

¹⁰ <https://www.oyez.org/cases/2014/13-1041>

¹¹ <https://www.oyez.org/cases/1977/76-419>

¹² <https://www.congress.gov/bill/119th-congress/house-bill/1/text>; <https://www.cms.gov/newsroom/factsheets/streamlining-medicare-childrens-health-insurance-program-and-basic-health-program-application>



enroll and stay enrolled in Medicaid and for Medicare beneficiaries with low incomes to apply for the Medicare Savings Program for Medicare premiums and cost-sharing. While HHS cannot prevent the moratorium on the aforementioned final rule, which threatens health care access for eligible beneficiaries, it can restore its notice and comment procedure that enables public participation in HHS' regulatory process.

For 54 years, the Department of Health and Human Services has done notice and comment under the *Administrative Procedure Act* in coordination with the Richardson Waiver. This policy has been imperative in promoting stakeholder and public input into, and transparency and accountability for, healthcare grants and policies within the largest grant-making agency in the US. **The Department's recent decision to rescind the Richardson Waiver under the claim that the waiver imposes costs on HHS, without addressing its benefits, and under inapplicable case law, undermines the public's participation in, and right to know about, policies that directly impact their health and lives.**

As citizens of our democracy, the American people are entitled to be given notice of proposed rulemaking and the opportunity to submit public comment. We urge the Department of Health and Human Services to expediently reinstate the "Public Participation in Rule Making" policy. Please do not hesitate to contact Rebecca Goldman, justice reform legislative and policy manager, at rgoldman@lwv.org if you have any questions about the League's recommendation. The health of our nation's people and democracy are at stake.

Sincerely,
Jessica Jones Capparell
Director, Government Affairs
League of Women Voters of the United States