

HUD Agrees to Delay Implementation of New Rule Announced in Mortgagee Letter That Would Destroy Home-Purchasing Program of Utah-Based American Indian Band

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WASHINGTON – The U.S. Department of Housing and Urban Development (HUD) on Wednesday agreed to a stay of the effective date of Mortgagee Letter 19-06 for 90 days, in response to a federal court suit brought by the Cedar Band of Paiutes, the Cedar Band Corporation, and the CBC Mortgage Agency (CBCMA). The announcement of the stay came two days after the initiation of the lawsuit.

CBCMA provides down payment assistance to borrowers who need help obtaining a home mortgage insured by the Federal Housing Administration (FHA). Through its downpayment program, CBCMA has helped thousands of borrowers achieve the dream of homeownership.

Released last week, the Mortgagee Letter was characterized by HUD as an informal guidance document that merely clarified existing law governing the provision of down payment assistance. In fact, it announced a new rule that upended longstanding HUD policy, effectively outlawed CBCMA's business, and created chaos for hundreds of borrowers suddenly threatened with the loss of the down payment help they need to close on their home purchase.

"The harm that HUD inflicted on CBCMA and the members of the Cedar Band with this administrative action is staggering," said lead counsel Helgi C. Walker of Gibson Dunn & Crutcher LLP. "We are pleased that the government understood the need to hit the pause button and return to the status quo for a period of time. We remain confident that we will prevail in permanently rectifying this unlawful agency action."

Co-counsel Michelle L. Rogers of Buckley LLP added: "Staying the effectiveness of the Mortgagee Letter will help the borrowers harmed by this action, the other government entities placed in limbo through its publication, and the industry as a whole by providing greater certainty while this matter is litigated."

The lawsuit, filed in U.S. District Court in Utah, sought an order immediately halting enforcement of the Mortgagee Letter on the grounds that it was adopted pursuant to an improper process and otherwise violates federal law. Among other things, the letter was issued without prior notice and an opportunity to comment, and without legally-required consultation with affected American Indian tribes and bands.

"We understand that HUD officials must balance protection of the Mutual Mortgage Insurance Fund (MMIF) with its mission of helping low- to moderate-income families

fulfill their dream of homeownership,” said Bobby Rowser, a member of the Cedar Band of Paiutes who serves on the board of Cedar Band Corporation, the parent of CBCMA. “However, limiting the Band to the reservation does nothing to lower defaults on FHA mortgages. We urge HUD to seek for and evaluate public commentary and data, prior to implementing policy changes.”