



July 16, 2019

The Honorable Dr. Benjamin S. Carson, Sr., M.D., Secretary
United States Department of Housing and Urban Development
451 7th St SW
Washington, DC 20410

Dear Secretary Carson:

The U.S. Department of Housing and Urban Development (HUD), through the Office of the Assistant Secretary for Housing – Federal Housing Commissioner, recently issued Mortgagee Letter 19-06, *Downpayment Assistance and Operating in a Government Entity* (April 19, 2019), which is allegedly designed to provide guidance on current agency regulations associated with a Downpayment Assistance Program (DPA) performed by a governmental entity. The new approach, and definitions, contained in the letter will significantly harm Indian tribes.

Given the longstanding government-to-government relationship between the United States and Indian tribes, any administrative action that impacts Indian tribes must be thoroughly discussed with Indian Country. Under Executive Order 13175 (E.O. 13175), prior to a federal agency making changes to regulations, policies, or guidance that impact an Indian tribe or Indian tribes, that agency must conduct tribal consultation. This is consistent with HUD's own internal tribal consultation policy dated April 4, 2016¹. Despite E.O. 13175 and the HUD tribal consultation policy, HUD in this instance has failed to consult with affected tribal nations prior to the Mortgagee Letter being published and deemed effective.

As HUD is aware, E.O. 13175 specifically covers all "policies that have tribal implications," and refers to regulations, legislative comments, proposed legislation, and other policy statements or actions that have "substantial direct effects on one or more Indian tribes." Here, the Mortgagee Letter has a substantial direct effect on at least one tribal nation, as evidenced by that tribal nation filing litigation to protect its operations.

¹ United States Department of Housing and Urban Development, *Government-To-Government Tribal Consultation Policy*, April 4, 2016, accessed July 16, 2019.

https://www.hud.gov/program_offices/public_indian_housing/ih/regs/govtogoiv_tcp

The National American Indian Housing Council (NAIHC) and the National Congress of American Indians (NCAI) believe HUD should withdraw the Mortgagee Letter entirely until tribal consultation is held, and the results of consultation are incorporated into HUD's decision-making process. If the Mortgagee Letter is not withdrawn, HUD should, at a minimum, suspend any attempts to enforce the terms of the Mortgagee Letter upon tribal entities until tribal consultation is completed. NAIHC and NCAI stand ready to assist HUD in fulfilling its tribal consultation obligations and have experience doing so, as they each have partnered with the HUD Office of Native American Programs to facilitate consultation sessions on various topics impacting tribal housing programs.

Thank you,

Handwritten signature of Anthony Walters in black ink.

Anthony Walters
Executive Director
National American Indian Housing Council

Handwritten signature of Kevin J. Allis in black ink.

Kevin J. Allis
Chief Executive Officer
National Congress of American Indians