



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution # ABQ-19-025

**TITLE: HUD Consultation before Proceeding with Rule Making Relating to Tribal Down Payment Assistance Programs**

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States (NCAI), invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, NCAI was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the federal government has a trust and treaty responsibility to consult with tribal governments on decisions which significantly impact them; and

**WHEREAS**, Executive Order 13175 sets forth a policy mandating executive agency consultation with tribal nations for any policies that have tribal implications; and

**WHEREAS**, Executive Order 13175 defines “[p]olicies that have tribal implications” as “regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes;” and

**WHEREAS**, the Indian Reorganization Act of 1934 (IRA) facilitates the ability of tribal nations to operate in their own governmental capacity on or off of tribal lands to engage in certain activities, including economic development activities; and

**WHEREAS**, certain tribal nations have used the authority and flexibility afforded under Section 17 of the IRA to provide housing mortgage assistance to their communities and to generate supplemental income to support tribal government programs engaging in economic development both on and off tribal lands; and

**WHEREAS**, the U.S. Department of Housing and Urban Development (HUD) issued Mortgagee Letter 19-06, dated April 18, 2019, that affected the ability of tribal nations and their instrumentalities, including those organized under Section 17 of the IRA, to engage in activities off of tribal lands in a governmental capacity; and

**WHEREAS**, the Mortgagee Letter was withdrawn by HUD due to a lawsuit brought by the Cedar Band of Paiutes, and as a result, the lawsuit was dismissed; and

**WHEREAS**, HUD indicated in court filings in connection with the dismissal of the lawsuit that it intended to proceed to rulemaking, in which rulemaking HUD may again seek to adopt the provisions of the Mortgagee Letter and limit the ability of a tribal nation to operate in a governmental capacity when providing down payment assistance to only include working within the boundaries of its reservation or with enrolled members and, therefore, dramatically affect the ability of all tribal nations and instrumentalities of tribal nations, including those organized under Section 17 of the IRA to engage in activities off of the reservation in a governmental capacity; and

**WHEREAS**, through Mortgagee Letter 19-06, HUD took actions that have substantial direct effects on one or more tribal nations without tribal consultation in violation of HUD's own policies on consultation with tribal nations as set forth in HUD's Tribal Government-to-Government Consultation Policy found at 81 Federal Register 40893 (June 23, 2016) (HUD's Consultation Policy); and

**WHEREAS**, HUD's exclusion of tribal nations and their instrumentalities from servicing otherwise eligible HUD program participants using down payment assistance is antithetical to the federal government's longstanding policy of promoting tribal sovereignty, self-government and self-sufficiency.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) calls upon the U.S. Department of Housing and Urban Development (HUD) to engage in meaningful government-to-government consultation as part of any rulemaking or other action that has a substantial effect, directly or indirectly, upon one or more tribal nations and to refrain from any future agency action that discriminates against tribal nations, has a disparate impact, or attempts to define what it means for tribal nations to act in a governmental capacity without meaningful consultation; and

**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2019 Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, October 20-25, 2019, with a quorum present.



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Fawn Sharp, President

**ATTEST:**



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Juana Majel Dixon, Recording Secretary