



# NATIONAL CONGRESS OF AMERICAN INDIANS

## Resolutions Committee Recommendation

Resolution #: REN-19-030

Title: Request Consultation with Administration of Federal Housing Programs to Discuss Mortgagee Declination Letter 2019-06

### Comments:

This resolution is similar to REN-19-009. NCAI has been meeting with the Chenoa Fund, which is provided through CBC Mortgage Agency. CBC Mortgage Agency is a Section 17 corporation under the Indian Reorganization Act of 1934 owned by the Cedar Band of Paiutes. On April 22, 2019, the Cedar Band of Paiutes, Cedar Band Corporation, and CBC Mortgage Agency filed suit against HUD in response to Mortgagee Letter 19-06.

This resolution seeks to condemn HUD's actions with respect to Mortgagee Letter 19-06, to advocate for the withdrawal of the mortgagee letter, to request that HUD refrain from any future agency action that attempts to define or limit tribal nations' ability to operate in their governmental capacity, to request that HUD engage in tribal consultation as set forth in its consultation policy, and to request that the Assistant Secretary for Indian Affairs and Congress advocate for the same action at HUD regarding this issue.

### Recommendations:

Technical changes were made for clarification and style, as well as to combine elements of REN-19-009. Please also see Mortgagee Letter 19-06 attached. This resolution should be forwarded to the NCAI Economic, Finance & Community Development Committee and the Housing Subcommittee for further deliberation and consideration.

Sponsor a member in good standing (yes/no)?: Yes



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #REN-19-030

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*Chickasaw Nation*

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**CHIEF EXECUTIVE OFFICER**  
**KEVIN ALLIS**  
*FOREST COUNTY POTAWATOMI  
COMMUNITY*

**NCAI HEADQUARTERS**  
1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
www.ncai.org

### **TITLE: Request Consultation with Administration of Federal Housing Programs to Discuss Mortgagee Declination Letter 2019-06**

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, 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**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the Department of Housing and Urban Development (HUD) has historically attempted to dictate the geographic scope and manner in which Indian tribal governments and their designated Native American housing authorities provide services to populations typically underserved by housing programs; and

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

**WHEREAS**, on April 18, 2019, HUD issued Mortgagee Declination Letter 2019-06 limiting an Indian tribal government's use of a federal mortgage access program to only those sites located within the boundaries of its reservation, or those to be owned by enrolled members, despite several years of successful service by some participating tribal governments to a broader national underserved community of eligible borrowers; and

**WHEREAS**, HUD issued the Mortgagee Declination Letter with an immediate effective date, without consulting or coordinating with the Indian tribes directly impacted by the letter, thereby ignoring both Executive Order 13175 and HUD's own internal tribal consultation policy dated April 4, 2016; and

**WHEREAS**, the Mortgagee Declination Letter is discriminatory because it expressly prohibits all Indian tribal governments and their instrumentalities, including Section 17 corporations, from servicing off-reservation and non-member borrowers who are otherwise eligible to participate in HUD administered programs involving down payment assistance, under the guise that such tribal entities are not operating in a governmental capacity; and

**WHEREAS**, HUD's exclusion of Indian tribes and their instrumentalities from servicing otherwise eligible HUD program participants using down payment assistance, because such activity generates income to the tribes, is both discriminatory on its face and 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) respectfully requests that HUD immediately withdraw the Mortgagee Declination Letter and refrain from any future agency action that attempts to discriminate against Indian tribes, or has a disparate impact on Indian tribes, in their direct or indirect participation in federal housing programs administered by the agency or attempts to define for Indian tribes what it means for them to act in a governmental capacity; and

**BE IT FURTHER RESOLVED**, that HUD engage in government-to-government consultation with tribal leadership regarding this arbitrary decision; and

**BE IT FURTHER RESOLVED**, that NCAI, in its own name or by joining with other American Indian groups and organizations, hereby condemns the attempt by HUD to administer Federal housing programs in a manner that discriminates against Indian tribes, and calls upon HUD to engage in meaningful consultation with Indian tribes on policy and programmatic changes that may adversely impact Indian country, specifically including programs in which Indian tribes are already active participants; and

**BE IT FINALLY 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 Mid-Year Session of the National Congress of American Indians, held at the Nugget Casino Resort, June 24-27, 2019, with a quorum present.

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Jefferson Keel, President

**ATTEST:**

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Juana Majel Dixon, Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution # REN-19-030

TITLE: Request Consultation with Administration of Federal Housing Programs to Discuss Mortgagee Declination-Letter 2019-06

EXECUTIVE COMMITTEE

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FIRST VICE-PRESIDENT Aaron Payment Sault Ste. Marie Tribe of Chippewa Indians of Michigan
RECORDING SECRETARY Juana Majel-Dixon Pauma Band Mission Indians
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EASTERN OKLAHOMA Joe Byrd Cherokee Nation
GREAT PLAINS Larry Wright, Jr. Ponca Tribe of Nebraska
MIDWEST Shannon Holsey Stockbridge Munsee Band of Mohicans
NORTHEAST Lance Gumbs Shinnecock Indian Nation
NORTHWEST Leonard Forsman Suquamish Tribe
PACIFIC Brian Poncho Bishop Paiute Tribe
ROCKY MOUNTAIN VACANT
SOUTHEAST Nancy Camley Ma-Chis Lower Creek Indians
SOUTHERN PLAINS Zach Pahmahmie Prairie Band of Potawatomi Nation
SOUTHWEST Joe Garcia Ohkay Owingeh Pueblo
WESTERN Quintin C. Lopez Tohono O'odham Nation

CHIEF EXECUTIVE OFFICER KEVIN ALLS FOREST COUNTY POTAWATOMI COMMUNITY

NCAI HEADQUARTERS 1516 P Street, N.W. Washington, DC 20005 202.466.7767 202.466.7797 fax www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, 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, the National Congress of American Indians (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 defines "Policies 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 Department of Housing and Urban Development (HUD) has historically attempted to dictate the geographic scope and manner in which Indian tribal governments and their designated Native American housing authorities provide services to populations typically underserved by housing programs; and

WHEREAS, the Indian Reorganization Act of 1934 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 ~~Indian tribal governments~~ tribal nations have used the authority and flexibility afforded ~~Indian tribes~~ under Section 17 of the Indian Reorganization Act (IRA) to both provide housing mortgage assistance to their communities and to generate supplemental income to support tribal government programs through engaging in economic development both on and off tribal lands; and

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**WHEREAS**, HUD issued Mortgagee Letter 19-06, dated April 18, 2019, that limits Federal Housing Administration (FHA)-Insured mortgages that receive down payment assistance from a tribal nation to down payment assistance received from a "federally recognized Indian Tribe operating on tribal land in which the property is located or to enrolled members of the tribe[;]" and

**WHEREAS**, HUD issued Mortgagee Letter 19-06 with an immediate effective date; and

**WHEREAS**, Mortgagee Letter 19-06 severely limits the ability of tribal nations to provide down payment assistance for FHA-insured housing loans in a governmental capacity that is national in scope; and

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**WHEREAS**, Mortgagee Letter 19-06 dramatically affects the ability of all tribal nations and instrumentalities of tribal nations, including those organized under Section 17 of the Indian Reorganization Act of 1934, to engage in activities off of tribal lands in a governmental capacity; and

~~**WHEREAS**, on April 18, 2019, HUD issued Mortgagee Declination Letter 2019-06 limiting an Indian tribal government's use of a federal mortgage access program to only those sites located within the boundaries of its reservation, or those to be owned by enrolled members, despite several years of successful service by some participating tribal governments to a broader national underserved community of eligible borrowers; and~~

**WHEREAS**, through Mortgagee Letter 19-06, HUD has taken actions that have substantial direct effects on one or more tribal nations without tribal consultation; and

~~**WHEREAS**, HUD issued the Mortgagee Declination Letter with an immediate effective date, without consulting or coordinating with the Indian tribes directly impacted by the letter, thereby ignoring both Executive Order 13175 and HUD's own internal tribal consultation policy dated April 4, 2016; and~~

~~**WHEREAS**, the Mortgagee Declination Letter is discriminatory because it expressly prohibits all Indian tribal governments and their instrumentalities, including Section 17 corporations, from servicing off-reservation and non-member borrowers who are otherwise eligible to participate in HUD administered programs involving down payment assistance, under the guise that such tribal entities are not operating in a governmental capacity; and~~

**WHEREAS**, HUD's exclusion of ~~Indian tribes~~ tribal nations and their instrumentalities from servicing otherwise eligible HUD program participants using down payment assistance, ~~because such activity generates income to the tribes~~, is ~~both discriminatory on its face and~~ 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) respectfully requests that HUD immediately withdraw ~~the~~ Mortgagee **Declination** Letter 19-06 and refrain from any future agency action that attempts to discriminate against ~~Indian tribes~~ tribal nations, ~~or~~ has a disparate impact on ~~Indian tribes~~ tribal nations; in their direct or indirect participation in federal housing programs administered by the agency, or attempts to define for ~~Indian tribes~~ tribal nations what it means for them to act in a governmental capacity; and

**BE IT FURTHER RESOLVED**, that NCAI hereby condemns HUD's actions in Mortgagee Letter 19-06 and calls upon HUD to engage in government-to-government consultation with tribal leadership regarding this is arbitrary decision and any other action that has a substantial effect on one or more tribal nations, specifically those programs in which tribal nations are already active participants; and

**BE IT FURTHER RESOLVED**, that NCAI respectfully request that the Assistant Secretary for Indian Affairs and members of Congress request that HUD withdraw Mortgagee Letter 19-06, refrain from any future agency action that attempts to define or limit the ability of a tribal nation to operate in its governmental capacity, and engage in effective consultation as set forth in HUD's Consultation Policy before taking any action that has a substantial effect on one or more tribal nations; and

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**BE IT FINALLY RESOLVED**, ~~that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution, that NCAI, in its own name or by joining with other American Indian groups and organizations, hereby condemns the attempt by HUD to administer Federal housing programs in a manner that discriminates against Indian tribes, and calls upon HUD to engage in meaningful consultation with Indian tribes on policy and programmatic changes that may adversely impact Indian country, specifically including programs in which Indian tribes are already active participants.~~

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2019 Mid-Year Session of the National Congress of American Indians, held at the Nugget Casino Resort, June 24-27, 2019, with a quorum present.

\_\_\_\_\_  
Jefferson Keel, President

**ATTEST:**

\_\_\_\_\_  
Juana Majel Dixon, Recording Secretary



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

**Date: April 18, 2019**

To: All FHA-Approved Mortgagees  
All Direct Endorsement Underwriters  
All FHA Roster Appraisers  
All FHA-Approved 203(k) Consultants  
All HUD-Approved Housing Counselors  
All HUD-Approved Nonprofit Organizations  
All Governmental Entity Participants  
All Real Estate Brokers  
All Closing Agents

**Mortgagee Letter 19-06**

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<b>Subject</b>	Downpayment Assistance and Operating in a Governmental Capacity
<b>Purpose</b>	The purpose of this Mortgagee Letter is to clarify documentation requirements that FHA-approved Mortgagees must satisfy when originating a mortgage for a Borrower using funds from another person or entity to satisfy a portion or all of the Minimum Required Investment (MRI), including specific documentation that adequately demonstrates the existing requirement that Governmental Entities are operating in their governmental capacity when providing downpayment assistance pursuant to the December 5, 2012 Interpretive Rule.
<b>Effective Date</b>	This guidance is effective for case numbers assigned on or after April 18, 2019, and will be incorporated into a forthcoming update of the HUD Single Family Housing Policy Handbook 4000.1 (Handbook 4000.1).
<b>Public Feedback</b>	We welcome feedback from all interested parties. To provide feedback on this policy document, please send comments to the FHA Resource Center at <a href="mailto:answers@hud.gov">answers@hud.gov</a> .

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# Mortgagee Letter 19-06,

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**Affected Programs**

This guidance applies to transactions where a person or entity is providing any portion of a Borrower's MRI.

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**Background**

HUD has long sought to strike the appropriate balance between making FHA-insured mortgages available to qualified borrowers and reducing programmatic risk. In addition, the National Housing Act has included specific provisions designed to mitigate risk by requiring the borrower to provide a minimum cash investment to purchase a property with FHA-insured financing and, since 2008, by prohibiting certain sources from providing funds to the borrower to satisfy this Minimum Required Investment (MRI). On December 5, 2012 at 77 F.R.72219, HUD published an Interpretive Rule "Prohibited Sources of Minimum Cash Investment Under the National Housing Act" (Interpretive Rule) to explain how HUD interprets these MRI requirements when funds are being provided by Governmental Entities, namely Federal, State, local governments and their agencies or instrumentalities. As explained in the Interpretive Rule, Housing Finance Agencies provide various services to assist citizens within their jurisdictions in attaining affordable housing options. This ML clarifies documentation requirements regarding the provision of downpayment assistance within the jurisdictions of governmental entities by providing clarification of documentation requirements to demonstrate compliance.

FHA's current handbook requires Mortgagees to confirm that a Governmental Entity is operating in its governmental capacity but, except for requiring a source of funds letter, does not specify the necessary documentation that demonstrates support for such a conclusion. It has come to FHA's attention that certain Governmental Entities may be acting beyond the scope of any inherent or granted governmental authority in providing funds towards the Borrower's MRI in circumstances that would violate Handbook 4000.1, the National Housing Act, and is contrary to established law. In reviewing its current documentation requirements for Mortgagees, FHA has determined that those requirements should be clarified to provide Mortgagees with specific guidance regarding documentation that will give greater assurances that the standards for providing the MRI have been satisfied by the Governmental Entity.

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*Continued on next page*



# Mortgagee Letter 19-06,

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## Summary of Changes

This Mortgagee Letter clarifies the documentation requirements for Mortgagees to confirm that Governmental Entities providing gifts or secondary financing, or both, towards the Borrower's MRI are doing so consistent with FHA requirements, section 203(b)(9) of the NHA, and established law.

This Mortgagee Letter will update Handbook 4000.1 sections II.A.4.d.ii, Source Requirements for the Borrower's Minimum Required Investment (TOTAL), and section II.A.5.c.ii, Source Requirements for the Borrower's Minimum Required Investment (Manual).

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## 4000.1 Single Family Housing Policy Handbook

**Source Requirements for the Borrower's Minimum Required Investment**  
II.A.4.d.ii (TOTAL) and II.A.5.c.ii (Manual).

### (A) Definitions

Minimum Required Investment (MRI) refers to the Borrower's contribution in cash or its equivalent required by Section 203(b)(9)(A) of the National Housing Act, which represents at least 3.5 percent of the Adjusted Value of the Property.

### (B) Standard

The Mortgagee must ensure that the Borrower's MRI is from a permissible source and meets the following requirements.

The Mortgagee must ensure that the source of funds for the Borrower's MRI to be provided fully complies with the Source Requirements for the Borrower's Minimum Required Investment.

The Mortgagee must ensure that no portion of the Borrower's MRI is provided by:

- (1) the seller of the Property;
- (2) any other person or Entity who financially benefits from the transaction (directly or indirectly); or
- (3) anyone who is or will be reimbursed, directly or indirectly, by any party included in (1) or (2) above.

While additional funds to close may be provided by one of these sources if permitted under the relevant Sources of Funds (II.A.4.d.iii (TOTAL) and II.A.5.c.iii (Manual)) requirements, none of the Borrower's MRI may come from these sources.

### (1) Special Requirements for Family Members

A Family Member may provide the Borrower's MRI in accordance with Section 203(b)(9)(B) of the National Housing Act.

# Mortgagee Letter 19-06,

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4000.1 Single  
Family  
Housing  
Policy  
Handbook,  
Continued

## **(2) Special Requirements for Government Entities**

In accordance with the Prohibited Sources of Minimum Cash Investment Under the National Housing Act – Interpretive Rule, HUD does not interpret Section 203(b)(9)(C) of the National Housing Act to prohibit Governmental Entities, when acting in their governmental capacity, from providing the Borrower’s MRI where the Mortgage is being originated as part of a Governmental Entity homeownership program.

### **(C) Required Documentation**

Where any portion of the Borrower’s MRI is provided by a person or entity other than the Borrower, the Mortgagee must also obtain documentation to support the permissible nature of the source of those funds.

The Mortgagee must document that all portions of the Borrower’s MRI come from an acceptable Source of Funds (II.A.4.d.iii (TOTAL) and II.A.5.c.iii (Manual)) in accordance with both the source requirements for the specific type of funds used, and the specific documentation requirements under the additional Source Requirements for the Borrower’s MRI set forth in this section.

### **Governmental Entity Funds**

The Mortgagee must document that the Borrower’s MRI was provided by the Governmental Entity, as either a gift or through Secondary Financing, in a manner consistent with the National Housing Act and the additional provisions of this section. The Mortgagee must document that the Governmental Entity incurred prior to or at closing an enforceable legal liability or obligation to fund the Borrower’s MRI in its governmental capacity. It is not sufficient to document that the Governmental Entity has agreed to reimburse the Mortgagee for the use of funds legally belonging to the Mortgagee to fund the Borrower’s MRI.

# Mortgagee Letter 19-06,

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**4000.1 Single  
Family  
Housing  
Policy  
Handbook,  
Continued**

The Mortgagee must obtain:

- for federal, state or local government agencies, a copy of documentation from a jurisdiction in which the Property is located, which granted governmental authority to the entity;
- a legal opinion signed and dated within two years of closing of the transaction by attorneys for the Governmental Entity stating:
  - the attorney has reviewed the Governmental Entity's downpayment assistance program; and
  - either
    - the Governmental Entity is considered within the jurisdiction in which the Property is located to be either a federal, state (as defined in Section 201(d) of the National Housing Act (12 U.S.C. §1707(d)), or local government or agency or instrumentality thereof, as provided in Section 528 of the National Housing Act (12 U.S.C §1735f-6), and 24 CFR 203.32(b) and further clarified in the *SF Handbook*.;
    - the Governmental Entity is a federally recognized Indian Tribe operating on tribal land in which the Property is located or to enrolled members of the tribe; or
    - the Governmental Entity is a Federal Home Loan Bank;
- evidence that the downpayment assistance is being provided by the Governmental Entity by collecting either:
  - a letter from the Governmental Entity, signed by an authorized government official, establishing that the funds provided towards the Borrower's MRI were provided in the Governmental Entity's governmental capacity in the jurisdiction in which the Property is located consistent with its downpayment assistance program and that the provision of such funds is not contingent upon any future transfer of the insured Mortgage to a specific entity, and a canceled check, evidence of wire transfer or other draw request showing that prior to or at the time of closing the Governmental Entity had authorized a draw of the funds provided towards the Borrower's MRI from the Governmental Entity's account; or
  - a letter from the Governmental Entity, signed by an authorized official, establishing that the funds provided towards the Borrower's MRI were funds legally belonging to the Governmental Entity and were provided in the Governmental Entity's governmental capacity in the jurisdiction in which the Property is located or for the federally recognized Indian Tribe's enrolled member, consistent with its downpayment assistance program, at or before closing. The letter must make

## Mortgagee Letter 19-06,

4000.1 Single  
Family  
Housing  
Policy  
Handbook,  
Continued

clear that the provision of the downpayment assistance is not contingent upon any future transfer of the insured Mortgage.

Where such a letter from the Governmental Entity is submitted, the precise language of the letter may vary, but must demonstrate that the funds provided for the Borrower's MRI legally belonged to the Governmental Entity at or before closing, by stating:

- the Governmental Entity has, at or before closing, incurred a legally enforceable liability as a result of its agreement to provide the funds towards the Borrower's MRI;
- the Governmental Entity has, at or before closing, incurred a legally enforceable obligation to provide the funds towards the Borrower's MRI; or
- the Governmental Entity has, at or before closing, authorized a draw on its account to provide the funds towards the Borrower's MRI.

The Mortgagee must either document the actual transfer of funds in satisfaction of the obligation or liability by the Governmental Entity prior to the submission of the Mortgage for insurance or obtain documentation of the satisfaction of the obligation or liability by the Governmental Entity after submission and maintain such documentation in the Mortgagee's files.

The failure of the Mortgagee to demonstrate the downpayment assistance provider has transferred the funds, the failure of the Governmental Entity to satisfy the obligation or liability, or any demand for reimbursement or indemnification for such funds by the Governmental Entity may call into question whether FHA requirements have been met and result in a determination that the funds were, in fact, provided by a prohibited source.

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## Mortgagee Letter 19-06,

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**Paperwork  
Reduction Act**

The information collection requirements contained in this document are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0059. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a currently valid OMB control number.

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**Questions**

For additional information on this ML, please visit [www.hud.gov/answers](http://www.hud.gov/answers) or call the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may reach this number via TTY by calling the Federal Relay Service at 1-800-877-8339.

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**Signature**

Brian D. Montgomery  
Assistant Secretary for Housing  
-Federal Housing Commissioner

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