**[LETTERHEAD]**

March 15, 2018

Heidi J. Frechette, Deputy Assistant Secretary

Office of Native American Programs

U.S. Department of Housing and Urban Development

451 Seventh Street, Room 4126

Washington, DC 20410

Re: **Tribal Consultation regarding proposed Section 184 regulations**

Dear Deputy Assistant Secretary Frechette:

On behalf of the **[FULL NAME OF ENTITY]** **[SHORT NAME]**), the **[**Tribally Designated Housing Entity**][**tribal housing program**]** for the **[NAME OF TRIBE]** (**[**Tribe**][**Pueblo**][**Nation**]**), I am writing to you to communicate [SHORT NAME]’s serious concerns about a March 5, 2018 “listening session” that the U.S. Department of Housing and Urban Development (HUD) held with tribal representatives in Washington, DC, as part of the National American Indian Housing Council Legislative Conference (NAIHC), regarding development of regulations for the Section 184 Indian Housing Loan Guarantee Program (Section 184). [SHORT NAME] understands that HUD interprets this listening session to be meaningful government-to-government consultation with Indian tribes, although HUD, in its February 2, 2018 communication with **[**Tribe**][**Pueblo**][**Nation**]** leadership about the listening session, did not refer to it as consultation. [SHORT NAME] vehemently objects to this interpretation for a number of reasons, as identified below; and formally requests that HUD engage in meaningful government-to-government consultation with the **[**Tribe**][**Pueblo**][**Nation**]** regarding the proposed Section 184 regulations pursuant to Executive Order (EO) 13175, Consultation and Coordination with Indian Tribal Governments.

A unique government-to-government relationship exists between Indian tribes and the federal government. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, federal case law, regulations, and executive orders. Consultation is a core element of this government-to-government relationship. A central tenet of EO 13175 is the need for federal agencies to engage in meaningful government-to-government consultation with Indian tribes if any of the federal agencies’ policy actions could have impacts to tribal communities. The result of meaningful government-to-government consultation should be that substantive tribal input has been considered and incorporated into any actions having tribal implications. To be meaningful, and in the spirit of EO 13175, consultation by HUD with tribes regarding the proposed Section 184 regulations should meet the following expectations:

1. Provide clear guidance on how HUD intends to assure that government-to-government consultation with tribes will result in meaningful dialogue rather than simply pro forma consultation.
2. Assign to the proposed Section 184 regulations a tribal liaison who has worked extensively with tribes on similar issues.
3. Send a formal letter to tribal chairpersons with copies provided to appropriate tribal staff (*e.g.,* tribal administrator, tribal directors and managers) that asks tribes how they would like to be consulted regarding the proposed Section 184 regulations, and a request for the names and addresses of other persons who should be notified or consulted.
4. Provide assurances to tribes that the most senior-level HUD official will be engaged in government-to-government consultation regarding the proposed Section 184 regulations since tribes will likely be represented by its highest-level officials such as tribal chairpersons and/or council members.
5. Provide assurances to tribes that communications and documents shared as part of government-to-government consultation shall remain confidential unless the parties involved agree to share any such communications or documents with outside parties.

The March 5th listening session regarding the proposed Section 184 regulations failed to meet these expectations for meaningful government-to-government consultation in the following ways:

1. HUD has failed to provide any assurances to [Tribe][Pueblo][Nation] leadership about how it will engage in meaningful government-to-government consultation with Indian tribes regarding the proposed Section 184 regulations, other than holding the March 5th listening session and the intent to hold similar listening sessions, and the opportunity for [Tribe][Pueblo][Nation] leadership to provide written comments. Further, a large number of federally recognized tribes were not in attendance at the NAIHC Legislative Conference nor the March 5th listening session, and [SHORT NAME] expects similar attendance at future listening sessions regarding the proposed Section 184 regulations.
2. Neither [SHORT NAME] nor [Tribe][Pueblo][Nation] leadership is aware of any tribal liaison having been assigned by HUD to the proposed Section 184 regulations nor has anyone held himself or herself out to this effect.
3. HUD has failed to send a formal letter to [Tribe][Pueblo][Nation] leadership or staff which inquires as to how the [Tribe][Pueblo][Nation] would like to be consulted regarding the proposed Section 184 regulations. The only letter sent to [Tribe][Pueblo][Nation] leadership informed them about two listening sessions for the proposed Section 184 regulations, and invited [Tribe][Pueblo][Nation] leadership to submit comments regarding such regulations. Neither the listening sessions nor the invitation to submit comments qualifies as meaningful government-to-government consultation.
4. While there were HUD officials leading the March 5th listening session, it would have been preferential to have you, as Deputy Assistant Secretary for the Office of Native American Programs, be part of this listening session as the ultimate decision making authority regarding the proposed Section 184 regulations. Further, it is likely that very few of the tribal representatives with whom HUD staff engaged during the March 5th listening session were authorized by their tribes to consult with HUD regarding the proposed Section 184 regulations.
5. Holding the March 5th listening session with tribal representatives from several Indian tribes prevented the ability of such representatives to keep confidential any communications and/or documents that they shared during the listening session.

We understand that HUD held a similar listening session on February 13, 2018 during the National Congress of American Indians 2018 Executive Council Winter Session, and has scheduled six additional in-person listening sessions. What we find particularly egregious is that there is a registration fee for most if not all of the in-person conferences or meetings during which these listening sessions have and will continue to occur. In essence, HUD is requiring tribal leaders to indirectly pay for consultation regarding the proposed Section 184 regulations. This must stop immediately! HUD must provide assurances to tribal leaders and representatives that, if they want to attend a listening session only, and not the conference or meeting to which the listening session is attached, there will be no requirement on their part to register for the conference or meeting. Otherwise, [SHORT NAME] will consider this further evidence that these listening sessions are not tribal consultation as purported by HUD.

[SHORT NAME] strongly implores HUD to move beyond these listening sessions and commit to meaningful one-on-one government-to-government consultation with the [Tribe][Pueblo][Nation] and other individuals tribes regarding the proposed Section 184 regulations. Such consultation is necessary for several reasons. First, meaningful one-on-one government-to-government consultation provides an opportunity for more candid conversations between the individual tribe and HUD than what would occur otherwise during a group meeting. Second, each tribe’s circumstances are unique and must be treated as such by HUD. A group meeting of tribes only gives short shrift to these circumstances. Third, most cultural resources information is protected from release under statutory exemptions to the Freedom of Information Act. Discussion of such information by an individual tribe as part of a group meeting of tribes risks its release to the general public and potentially endangers tribal cultural sites and practices. Finally, the subject matter may be so unique that one-on-one government-to-government consultation between individual tribes and HUD provides the best opportunity for a resolution to the situation versus a group meeting of tribes where any number of tribal issues could be brought up with only a limited period of time to discuss them.

On behalf of [SHORT NAME], I formally request that HUD engage in meaningful one-on-one government-to-government consultation with the [Tribe][Pueblo][Nation] regarding the proposed Section 184 regulations. I would ask that you contact me personally through email at [nadinee@lagunahousing.org](mailto:nadinee@lagunahousing.org), or phone at (505) 552-6430 to discuss the process for engaging in such consultation with the [Tribe][Pueblo][Nation]. Further, I ask that you contact me by , 2018, understanding that HUD has placed the proposed Section 184 regulations on a “fast-track” within HUD.

Cordially,

**[FULL NAME OF ENTITY]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_

**[NAME]**, **[TITLE]**