United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

May 14, 2020

The Honorable Steven T. Mnuchin
Secretary
United States Department of Treasury
Washington, DC

Dear Secretary Mnuchin:

I write regarding the treatment of loans modified under the Department of Treasury’s Home Affordable Modification Program (HAMP).

In the weeks since the COVID-19 national emergency began, more than 36 million Americans filed for unemployment benefits, and unemployment has reached the highest level since the Great Depression. Those staggering numbers mean that millions of homeowners will struggle to make their mortgage payments in the weeks ahead. Section 4022 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided homeowners with federally-backed mortgage loans the ability to request mortgage payment forbearance for up to 180 days, which may be extended for an additional 180 days, provided the homeowner affirms that they are experiencing a financial hardship due, directly or indirectly, to COVID-19. Lenders and investors for loans that are not federally backed have also offered forbearance in many cases. This temporary relief will be critical for families who have seen income decline or disappear as a result of this pandemic.

All of the federal agencies involved have taken steps to implement this provision, and an estimated 3.8 million homeowners have requested mortgage forbearance.[1] But I am concerned that without additional guidance from the Department of Treasury these programs and the efforts of private lenders and investors may hurt, rather than help, homeowners who have finally gotten a sustainable loan modification under HAMP. As you know, HAMP provided incentive payments to mortgage servicers and investors to provide sustainable loan modifications to struggling borrowers who had loans that were fully private or backed by Fannie Mae, Freddie Mac, the Federal Housing Administration, or the Department of Agriculture. Treasury also created a system of “pay for performance” incentives that reduce the loan principal for borrowers who make timely payments on their modification throughout each of the first six years of the modification. These principal reductions have the added benefit of making the modifications more affordable for borrowers in the succeeding years.

[1] https://www.mba.org/2020-press-releases/may/share-of-mortgage-loans-in-forbearance-increases-to-754

Absent clear guidance from Treasury, the need for forbearance due to COVID-19 could threaten these borrowers' incentive payments. Some servicers may consider forbearance a delinquency, and delinquency could cause a borrower to lose incentive payments or their modification altogether. HAMP stopped taking applications in 2016, yet thousands of Americans remain in active HAMP modifications. These borrowers could see years of commitment and sacrifice vanish if the Department of Treasury does not appropriately interpret loans granted forbearance during this national emergency as "in good standing" and instruct servicers to offer post-forbearance options to keep borrowers in their modifications with incentive payments and in their homes.

There is precedent for this determination. Following Hurricanes Harvey, Irma, and Maria, Treasury clarified that HAMP loans in a federally-declared disaster area that were granted forbearance should be able to resume their "in good standing" status at the end of the forbearance period if the borrower was able to return to making their regular payments, and missed payments could be forgiven, added to the end of the loan, or made up through a repayment plan. Treasury should once again clarify that borrowers who were in good standing in their HAMP modification prior to the COVID-19 national emergency can access forbearance without the threat of losing their modification if they are able to resume making timely payments at the end of the forbearance period. Given the unique nature of the COVID-19 emergency, borrowers should also be considered in good standing throughout any forbearance period. Borrowers should not lose out on any incentive payments if they access forbearance and resume making regularly-scheduled payments once the forbearance ends. Treasury must clarify this point, and encourage all servicers, regardless of the loan type, to help borrowers remain in good standing after forbearance by forgiving payments or adding payments to the end of the loan term, as was done following the 2017 disasters.

As our nation works on an effective response to the COVID-19 national emergency, it must continue to do so with a focus on the significant challenges facing homeowners across America. I urge you to immediately issue guidance clarifying the treatment of loans in HAMP modifications to ensure these borrowers will have an opportunity to recover in the months and years ahead. No homeowner should lose their home as a result of this pandemic.

Thank you for your prompt attention to this matter.

Sincerely,

/s/ Sherrod Brown
Sherrod Brown
United States Senator