

# United States Senate

WASHINGTON, DC 20510

June 21, 2019

The Honorable Ben Carson  
Secretary  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW  
Washington, DC 20410

Dear Secretary Carson:

We were deeply disturbed to learn of the Department of Housing and Urban Development's (HUD) abrupt change in guidance on the eligibility of Deferred Access for Childhood Arrivals (DACA) recipients' eligibility for Federal Housing Administration- insured (FHA) loans.

This Administration's hostility toward DACA recipients, including an effort to rescind DACA, has thrown the lives of thousands of young people into turmoil.<sup>1</sup> It has also raised questions for lenders about their standing practice of making FHA-insured loans to DACA recipients. For nearly a year, FHA lenders<sup>2</sup>, media outlets<sup>3</sup>, and members of both the House<sup>4</sup> and Senate<sup>5</sup> have asked HUD to clarify whether DACA recipients are eligible for FHA-insured loans. These requests began more than six years after the start of the DACA program. They also followed numerous reports from lenders that senior HUD officials and employees at HUD's Homeownership Centers were verbally informing lenders that HUD would not insure single-family mortgage loans made to DACA recipients.<sup>6</sup>

To our knowledge, HUD has never responded in writing to lenders' many inquiries about DACA recipients' eligibility. However, in written responses to Congress HUD affirmed that it had not made any

---

<sup>1</sup> "Trump Moves to End DACA and Calls on Congress to Act," Michael D. Shear and Julie Hirschfeld Davis, The New York Times, September 5, 2017, available at <https://www.nytimes.com/2017/09/05/us/politics/trump-daca-dreamers-immigration.html>.

<sup>2</sup> See letter from the Mortgage Bankers Association to the Department of Housing and Urban Development, Federal Housing Commissioner, Request for Additional Clarity and Guidance Related to the FHA Single Family Housing Policy Handbook, July 19, 2018, available at <https://www.mba.org/mba-newslinks/2018/july/mba-newslink-friday-7-20-18/mba-asks-fha-for-additional-clarity-guidance-on-fha-handbook>.

<sup>3</sup> "The Trump Administration is Quietly Denying Federal Housing Loans To DACA Recipients," Nidhi Prakash, BuzzFeed, December 14, 2018, available at <https://www.buzzfeednews.com/article/nidhiprakash/daca-trump-denied-federal-housing-loans>.

<sup>4</sup> See letter from 16 members of the House Financial Services Committee to the Department of Housing and Urban Development, Federal Housing Commissioner, December 21, 2018, available at the Department of Housing and Urban Development, Federal Housing Commissioner, [https://financialservices.house.gov/uploadedfiles/cmwltr\\_to\\_hud\\_re\\_daca\\_12.21.2018.pdf](https://financialservices.house.gov/uploadedfiles/cmwltr_to_hud_re_daca_12.21.2018.pdf).

<sup>5</sup> See letter from Senators Menendez, Cortez Masto, and Booker to the Department of Housing and Urban Development, Federal Housing Commissioner, December 18, 2018, available at <https://www.menendez.senate.gov/imo/media/doc/Letter%20to%20HUD%20re%20FHA%20DACA%20policy%20signed.pdf>.

<sup>6</sup> "Ask the Underwriter: Why is HUD privately discouraging lenders from making FHA loans to DACA borrowers?" Dani Hernandez, HousingWire, September 20, 2018, available at <https://www.housingwire.com/blogs/1-rewired/post/46885-ask-the-underwriter-why-is-hud-privately-discouraging-lenders-from-making-fha-loans-to-daca-borrowers>.

policy changes “during the current Administration, either formal or informal, with respect to FHA eligibility requirements for Deferred Action for Childhood Arrivals (DACA) recipients.”<sup>7</sup>

In your April 3, 2019, testimony before the House Appropriations Subcommittee, you provided additional clarity when you stated that “no one was aware of any changes that have been made” to HUD’s policy regarding the eligibility of DACA recipients for FHA loans, and that you were “sure we have plenty of DACA recipients who have FHA mortgages.” You said you would be surprised if lenders were hearing different guidance from HUD officials; that anyone who gave conflicting guidance was not “authorized by us;” and that you have “instructed everyone to follow the laws of the United States with regard to DACA, with regard to anyone who is an immigrant or potential immigrant to this country and as long as you continue to follow the laws it will have my approval.” Just weeks later, when you were asked about those statements in the House Financial Services Committee, you reiterated that HUD had not made any changes to the policy on FHA eligibility.

Based on HUD’s assurances, lenders’ years of experience making FHA-insured loans to DACA recipients, and your own acknowledgment that there were many DACA recipients with FHA-insured loans, it is difficult to imagine how any reasonable observer could have concluded that HUD would assert that it had always denied access to FHA-insured mortgage credit to nearly 800,000 young people who live and work in this country. But last week in a single-page letter written by the Assistant Secretary for Congressional and Intergovernmental Relations, HUD did just that. The stark difference between HUD’s written responses to the same question from Congress in December 2018 and June 2019 indicate that, in fact, HUD changed its policy and that this requires a new explanation.

HUD’s decision to reverse years of practice with a private letter to a member of Congress is the height of obfuscation. Not only has HUD misled Congress in its prior written responses and your oral testimony, it has also changed the rules on lenders and thousands of young people with no notice or explanation. Clear guidance provided through agency practice and testimony gives future homebuyers and businesses the tools they need to plan for the future. Capricious changes to HUD’s established practice is both cruel to individuals and harms the lenders who depend on HUD to be a reliable counterparty.

HUD’s decision to deny access to FHA-insured loans to DACA recipients is unacceptable, harsh, and shortsighted. DACA recipients are, by definition, young. Many are entering the years of homeownership. To deny thousands of young people who live, pursued their education, served in the military, and work in this country an opportunity for homeownership puts these young adults at a financial disadvantage that will have long-term consequences for them, their families, and their communities.

At your nomination hearing, you stated that you intend to fight for those who are still trying to reach their full potential. There can be no better example than the thousands of young people who are working, pursuing their education, and trying to build their financial futures through homeownership. We request that you immediately clarify in writing that DACA recipients remain eligible for FHA-insured loans, as has been the longstanding practice.

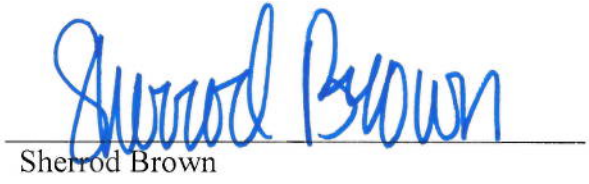
Thank you for your prompt attention to this important matter.

---

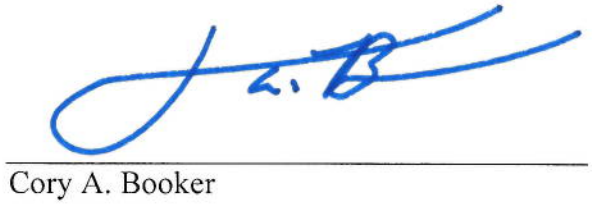
<sup>7</sup> See letter from Len Wolfson, Assistant Secretary for Congressional and Intergovernmental Relations, Department of Housing and Urban Development to Senator Menendez, December 21, 2018.

Sincerely,

  
Robert Menendez

  
Sherrod Brown

  
Catherine Cortez Masto

  
Cory A. Booker