

United States Senate

WASHINGTON, DC 20510

December 18, 2018

The Honorable Ben Carson
Secretary
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, DC 20410

Dear Secretary Carson:

We are extremely alarmed about recent reports that the Department of Housing and Urban Development (HUD) has implemented an unofficial policy of denying Federal Housing Administration (FHA) insured loans to Deferred Action for Childhood Arrivals (DACA) recipients.¹ We are appalled that the Trump Administration would exploit a federal government program to deny Dreamers an opportunity of owning their own home, a cornerstone of the American dream.

As you know, Hispanics have been responsible for 59 percent of homeownership growth in the U.S. over the past five years, and are the only demographic to have consecutively increased their homeownership rates over the last three years.² Moreover, immigrants who are not citizens have a homeownership rate of 39.3 percent.³ Any policy change to disqualify the approximately 800,000 individuals approved for DACA from FHA-insured mortgage loans unfairly denies access to affordable homeownership and hinders growth in the U.S. housing market.

While federal courts have currently stopped President Trump from expelling DACA recipients from the country, this is yet another example of the Administration adopting underhanded tactics to punish DACA recipients for remaining in the United States. According to recent reporting, HUD has privately instructed mortgage lenders to reject FHA mortgage loan applications from DACA recipients. HUD reportedly instructed lenders to reject these loans based on the Department's new unofficial policy that DACA Employment Authorization Documents are no longer valid for purposes of substantiating work status.⁴ If these reports are accurate, this informal policy means that DACA recipients who would otherwise qualify for an FHA-insured mortgage loan, are now being unjustly rejected. Yet, when pressed for answers about reports

¹ Nidhi Prakash, "The Trump Administration is Quietly Denying Federal Housing Loans to DACA Recipients," *Buzzfeed*, December 14, 2018, <https://www.buzzfeednews.com/article/nidhiprakash/daca-trump-denied-federal-housing-loans>.

² Marisa Calderon, "State of Hispanic Homeownership," Report, Hispanic Wealth Project, February 2018, <http://hispanicwealthproject.org/shhr/2017-state-of-hispanic-homeownership-report.pdf>

³ *Id.*

⁴ Nidhi Prakash, "The Trump Administration is Quietly Denying Federal Housing Loans to DACA Recipients," *Buzzfeed*, December 14, 2018, <https://www.buzzfeednews.com/article/nidhiprakash/daca-trump-denied-federal-housing-loans>.

that lenders had received instruction from HUD to reject applications from DACA recipients, a HUD spokesman provided no explanation.⁵

We find it extremely problematic that HUD would implement such a policy in an unofficial and haphazard manner and with no public input. And while we find this particular change to be abhorrent, we expect that any policy change that makes certain borrowers ineligible for FHA-insured mortgage loans would only be issued after sound and unambiguous legal reasoning, an opportunity for public input, and communication to FHA-approved lenders. Anything less unfairly leaves borrowers, lenders, and real estate professionals in a state of limbo.

Finally, HUD's new policy specifically singles out a portion of the American public that the Trump Administration has continually targeted. Such ill-advised policies have ripple effects through immigrant communities, striking fear that interactions with financial institutions and government agencies may impact one's ability to remain in the country. By communicating to lenders that they are to reject mortgage loan applications from DACA recipients, the Administration is sending a clear message that the benefits of affordable homeownership should not accrue to those who were not born in the United States. If that is not the message that HUD intends to send, it should immediately clarify its policy.

As such, please provide answers to the following questions no later than December 21, 2018:

- (1) Has HUD developed a policy regarding DACA recipients' eligibility for FHA-insured mortgage loans?
 - (a) If so, on what date did HUD first implement its current policy? Has this policy changed since DACA was first announced in 2012?
 - (b) If so, please provide all relevant documents related to HUD's current policy and any prior policies. Please clarify which, if any, documents were provided to FHA-approved lenders or to HUD's Homeownership Centers as well as the date of any such transmissions.
 - (c) If HUD has not developed a policy, please promptly provide clear and written guidance to FHA-approved lenders clarifying that as long as applicants would otherwise qualify, a borrower's DACA status will not affect his or her eligibility for an FHA-insured mortgage loan. Please provide a copy of any such guidance or communication.
- (2) Please provide a detailed explanation and justification for the current policy, including any statutory or regulatory authority upon which such policy change relies.
- (3) Which staff members and offices at HUD were involved in approving any such policy?

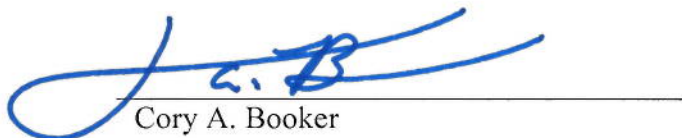
⁵ *Id.*

- (4) Did the Office of General Counsel provide input and/or approval for this or any such previous policy?
- (5) Have any HUD officials or staff communicated with any outside organizations about such a policy? If so, please identify the names of the organizations as well as the dates and participants of any meetings.
- (6) Have any HUD officials or staff discussed FHA eligibility of DACA recipients with officials from the White House, the Office of Management and Budget, the Department of Homeland Security, or any other executive branch agency? If so, please identify the agencies as well as the dates and participants of any meetings.
- (7) Did any of the agencies cited in response to question 6 provide input and/or approval for HUD's current interpretation of DACA recipient eligibility for FHA loans? If so, please provide all related documents.
- (8) Please provide information from FHA-approved lenders on how many applicants have been rejected for FHA-insured mortgage loans pursuant to any such policy change.
- (9) Please explain how this policy will affect existing FHA borrowers who are DACA recipients.
- (10) Does HUD have any other plans to disqualify applicants from FHA-insured mortgage loans based on their immigration status? If so, please provide detailed explanations, including any relevant statutory or regulatory authority.

Sincerely,


Robert Menendez


Catherine Cortez Masto


Cory A. Booker