

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

June 23, 2020

The Honorable Rae Oliver Davis
Inspector General
U.S. Department of Housing and Urban Development
451 7th Street Southwest
Washington, DC 20410

Dear Inspector General Davis:

We write to request your office investigate the Department of Housing and Urban Development's (HUD) decision to exclude Deferred Action for Childhood Arrivals (DACA) recipients from the Federal Housing Administration (FHA) mortgage insurance program. The Financial Services Committee (Committee) reviewed internal HUD and FHA communications that raise serious concerns that HUD may have violated the Administrative Procedure Act (APA) by failing to provide adequate notice of this policy change and a meaningful opportunity to comment.¹ Furthermore, the Committee is concerned that HUD officials may have made repeated false and misleading statements to Members of Congress throughout 2018 and 2019 regarding DACA recipients' eligibility for FHA loans. The APA was intended to preserve individual rights against the abuse of administrative power.² By prohibiting DACA recipients from receiving FHA loans without public input, HUD has disenfranchised a vulnerable population residing in the United States legally.

According to the APA, a rule is "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."³ Documents obtained by the Democracy Forward Foundation in a 2019 Freedom of Information Act request suggests that from the creation of the DACA program in 2012 until 2018, FHA regularly provided mortgage insurance for mortgages made to DACA recipients.⁴ Shortly after the White House attempted to rescind DACA in late 2017, questions arose within HUD and among mortgage lenders about whether DACA recipients remained eligible for FHA loans.⁵ By summer and fall of 2018, HUD determined that lenders should review loan applicants' work permits for a code associated with DACA and deny FHA loans to applicants with a DACA-related code.⁶ Even after formal guidance on this new policy began circulating within HUD, the public remained unaware of the change and many lenders continued to offer FHA loans to DACA recipients through the summer

¹ 5 U.S.C. § 553.

² Fordham Environmental Law Review. [The Legislative History of the Administrative Procedure Act](#). 2015.

³ 5 U.S.C. § 551(4).

⁴ Democracy Forward Foundation. [Letter from Democracy Forward to HUD IG Rae Oliver Davis \(DFF IG Letter\)](#). Jun. 5, 2020.

⁵ *DFF IG Letter, Att. 1*; New York Times. [Trump Moves to End DACA and Calls on Congress to Act](#). Sep. 5, 2017.

⁶ *DFF IG Letter, Att. 8*; *DFF IG Letter, Att. 9*; *DFF IG Letter, Att. 10*.

and fall of 2018.⁷ HUD apparently continued to insure the loans in the meantime, though the agency subsequently made representations to lenders indicating their liability for defaulted FHA loans made to DACA recipients. HUD finally publicly stated its prohibition against issuing FHA loans to DACA recipients in June 2019.⁸

Despite this policy shift and the ensuing confusion throughout the mortgage lending industry, HUD Secretary Ben Carson, FHA Administrator Brian Montgomery, and HUD Assistant Secretary Len Wolfson repeatedly asserted that the agency had not altered its DACA policy. On December 21, 2019, Assistant Secretary Wolfson wrote to the Committee stating “[HUD] wants to make it very clear that it has not implemented any policy changes during the current Administration, either formal or informal, with respect to FHA eligibility requirements for [DACA] recipients. HUD has longstanding policy regarding eligibility for non-U.S. citizens without lawful residency. Those policies have not changed.”⁹

On May 21, 2019, Rep. Juan Vargas explicitly asked Secretary Carson whether “DACA recipients were being denied [FHA] loans by HUD instructions” to which Secretary Carson replied, “No, the same policy has been in place since 2003, which was reaffirmed in 2015 by the previous administration and we have not made any changes to that whatsoever.”¹⁰ Likewise, on February 12, 2019, Administrator Montgomery testified that the agency’s DACA “policy has been unchanged for many years...we haven’t changed that policy dating back 15 years or so.”¹¹

It appears that HUD may have violated the APA in initiating a policy or practice requirements change that carries the force of law without notice and public input. The new policy prohibiting DACA recipients from receiving FHA loans limits opportunities for homeownership in communities throughout the United States and disenfranchises individuals who are residing in the United States legally. This runs counter not only to the APA, but to the mission of HUD. This Committee cannot exercise its oversight authority over HUD if its senior officials make repeated misrepresentations to Congress regarding agency actions, policy changes, and practice requirements. We request that the Office of the Inspector General investigate these troubling developments. Addressing the prospect of an Inspector General investigation into this matter in a June 9, 2020 Senate hearing, Secretary Carson professed a commitment to cooperate.¹² While we hope Secretary Carson will be true to his word, we ask that you promptly report to the Committee the circumstances of any delay in your office's investigation.

⁷ *DFF IG Letter, Att. 6; DFF IG Letter, Att. 12.*

⁸ Letter from Len Wolfson, HUD Assistant Secretary for Congressional and Intergovernmental Relations to Rep. Pete Aguilar (Jun. 11, 2019).

⁹ Letter from Len Wolfson, HUD Assistant Secretary for Congressional and Intergovernmental Relations to Rep. Maxine Waters, Chairwoman of the Financial Services Committee (Dec. 21, 2019).

¹⁰ Statement of Ben Carson, HUD Secretary, before House Financial Services Committee. *Housing in America: Oversight of the U.S. Department of Housing and Urban Development* (May 21, 2019).

¹¹ Statement of Brian Montgomery, FHA Commissioner, before House Committee on Appropriations. *Oversight Hearing: The Department of Housing and Urban Developments Management of Housing Contracts During the Shutdown* (Feb. 12, 2019).

¹² Statement of Ben Carson, HUD Secretary, before Senate Banking, Housing, and Urban Affairs Committee. *Hearing on Oversight of Housing Regulators*. (Jun. 9, 2020).

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Please contact John Heinemann or Bruce Johnson of the Committee staff at (202) 225-4247 if you have any questions regarding this request. Thank you for your prompt attention to this matter.

Sincerely,



MAXINE WATERS
CHAIRWOMAN



AL GREEN
CHAIRMAN
Subcommittee on Oversight and Investigation

cc: The Honorable Patrick McHenry, Ranking Member