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United States Senate

WASHINGTON, DC 20510

June 1, 2010

The Honorable Timothy Geithner
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Geithner,

On March 29, 2010, the Treasury Department announced a program under the Housing Finance Agency's Hardest Hit Fund ("HHF") to provide federal funds to five states with high concentrations of people living in economically distressed areas: North Carolina, Ohio, Oregon, Rhode Island and South Carolina. On behalf of the residents of Ohio, we sincerely appreciate this financial assistance to combat the growing foreclosure crisis in our home state.

Unfortunately, I write to you today to express my concern with the Treasury Department's interpretation of HHF's requirements – specifically, its limitation on using funds for counseling and its prohibition against funding for legal aid services – and I ask you to reconsider your determination concerning permissible uses of program funds. Legal aid services are immensely useful to homeowners who fall behind on their mortgage payments, sometimes because they are unable to access benefits like unemployment insurance. Foreclosure counseling is a similarly vital service, as I expressed in my letter to you dated February 9, 2010.

The Ohio Department of Commerce, the agency responsible for creating Ohio's HHF proposal, has told my office that they had intended to include funding for legal services and greater funding for counseling. However, they excluded these services from their proposal after receiving a legal opinion from your outside counsel stating that funding may only be used for counseling services that are "necessary and incidental" to the implementation of any program, and that "[p]rograms that involve direct or indirect payments of TARP funds for lawyers, legal expenses, legal aid or mediation assistance are not permissible."

This interpretation is difficult to understand. Section 2 of the Emergency Economic Stabilization Act of 2008 ("EESA") states that the purposes of that law are restoring liquidity and stability to the financial system and using TARP funds in a manner that, among other things, protects home values, preserves homeownership, and promotes jobs and economic growth. Both legal services and homeowner counseling would seem to fit squarely within these purposes.

The operative language in EESA, Section 109(a), allows the Secretary to use his authority to "encourage the servicers of the underlying mortgages, considering net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program under section 257 of the National Housing Act or other available programs to minimize foreclosures." This provides the Secretary with great flexibility, and indeed, the HHF program is intended to provide the states with their own flexibility. However, the legal opinion is rigid, largely preventing money from being spent in any manner besides making payments to mortgage servicers.

Section 109(a) says that TARP funds can be used for programs to minimize foreclosures, and legal services are such a program. While this section does not mention legal services specifically, it is also silent about foreclosure counseling, and your counsel has interpreted the provision to permit counseling services that are "necessary and incidental" to the implementation of any program. It seems arbitrary to draw a distinction between the two services, particularly when there is nothing in the language of the statute which implies that they should be treated differently.

To the extent that EESA and the TARP program are aimed at preserving the value of certain "troubled assets," namely mortgage-backed securities, legal services and foreclosure counseling are fully consistent with this goal. These services are preventative measures that help homeowners avoid foreclosure. The value of the homes upon which the troubled assets are based will decline if the underlying properties enter foreclosure. By preventing foreclosure, counseling and legal services help maintain the value of the underlying assets.

Again, I urge you to reconsider your determination. At the very least, I request that you make available as soon as possible more information about the basis for your decision. Without knowing the rationale behind your counsel's opinion, it is difficult to understand their reasoning. Ohio homeowners and their hardworking counselors and legal aid lawyers deserve a sufficient explanation as to why they are being denied funding for vital housing services.

I look forward to your response.

Sincerely,



Sherrod Brown
United States Senator