



December 12, 2023

The Honorable Julia R. Gordon
Assistant Secretary for Housing/Federal Housing Commissioner
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Via Email

Dear Commissioner Gordon,

The National Council of State Housing Agencies (NCSHA)¹ appreciates the opportunity to again comment on behalf of our state Housing Finance Agency (HFA) members on the Department of Housing and Urban Development's (HUD) DRAFT Mortgagee Letter (ML) 2023-XX, Payment Supplement (PS).

We also appreciate FHA's efforts to simplify its first Payment Supplement Draft ML. However, we again urge FHA to incorporate our recommendations described in our June 30, 2023 comment letter in its final ML to enable CFPB-defined small servicers, such as state HFAs,² to have sufficient time to implement the complex PS and to ensure that once implemented, the PS meets the objectives of the Department.

The following comments describe our proposals for strengthening the Draft ML. We have attached more granular comments in the Drafting Table comment form.

Increase the Implementation Period

FHA should provide up to 12 months to implement the PS instead of the nine months proposed in the draft ML, and begin the 12-month implementation period the latter of either (1) the date of the final ML's publication, or (2) when the final ML, the standardized note, mortgage, and rider have all been provided to FHA's mortgagees in final form. As of this writing, none of these documents have been posted for review and comment. Furthermore, because servicers

¹ NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

² See 12 CFR Part 1026, Truth in Lending (Regulation Z), Subpart C. Section 1026.41(e)(4)(ii)(B).

must review eligible borrowers for the COVID-19 Recovery Options through October 30, 2024, it is conceivable that the implementation timeline of a subsequent new loss mit waterfall will be contemporaneous with the implementation of the PS, creating the potential for confusion and significant implementation difficulties.

Encourage the Use of Housing Counseling When the PS Is Utilized

We recommend FHA do more to encourage the use of housing counseling by homeowners to whom a PS is offered, as well at other critical junctures of the PS's operation, such as prior to when the step-up payment takes effect, or if a homeowner re-defaults after signing a PS agreement. Counseling is not mentioned in the draft ML. To this end, FHA should announce to the industry its plans to ensure that housing counseling agencies are fully trained to accurately explain to homeowners who seek their counsel which options are best for any given financial situation. If FHA believed that two trainings for the significantly simpler HAF programs was warranted, it should organize a more intensive training regime for housing counseling agencies for the PS. It also should consider implementing a certification for counselors who have demonstrated a proficiency in being able to explain the PS and its financial ramifications to homeowners, including how the homeowner's equity could be eroded by continued use of partial claims.

Forty-three state HFAs were designated by their state to administer federal Homeowner Assistance Funds (HAF), which NCSHA estimates have helped more than 425,000 homeowners retain their homes through September, 2023. As part of their HAF programs, most HAF agencies incorporated a housing counseling component to their program, recognizing that helping homeowners understand their loss mitigation and HAF program options would support homeownership sustainability of those financially impacted by Covid-19.

Housing counseling agencies, which serve a vital role in helping delinquent borrowers understand their options, will need training on the PS, including on how to help homeowners offered a PS understand what the interest rate would have to be for them to obtain a loan modification (or refinance) at a rate they could sustainably afford, and develop a budget so they can afford their payments after the PS expires.

Increase the Incentive

The \$1,000 incentive is inadequate to account for the three-year length of time that servicers will be required to administer a PS. The PS is a novel approach that will include providing extraordinary, repeated disclosures to homeowners and will likely result in a higher number of customer calls. While FHA simplified the PS by removing the monthly accounting and claims filing processes it originally proposed, there still will be an extraordinary amount of borrower-account-level monitoring and reconciliations that servicers will need to perform. FHA should compensate servicers for each year of administering the PS by increasing the proposed incentive fee of \$1,000 by an additional \$1,500 (\$500 for each of 3 years of the PS), as well as permit

servicers to claim the additional costs they will incur to record the PS subordinate lien. There is precedent for doing so with the COVID-19 Advance Loan Modification and the COVID-19 Recovery Modification.

We also believe that should a borrower be provided with another loss mitigation option during the three-year period of the PS, the servicer should not be precluded from receiving the incentive for that additional loss mitigation option, as the processes tied to it are separate from those of the PS. The ML is not clear on this point, and an affirmative statement to this effect would provide clarity.

Limit the Payment Supplement to a One-Time Only Option

To reduce the complexity of the PS, including to homeowners, the PS should be a one-time-only loss mitigation option if a borrower fails to perform during the PS period (and is not able to cure their delinquency themselves). In this case, the PS should terminate and the homeowner be offered another loss mitigation option. If a borrower is not able to make timely payments under their PS, they will most likely not be successful once the temporary buy-down expires unless interest rates go sufficiently below their original mortgage loan interest rate to make the principal and interest payments more affordable. Even then, it is conceivable that other factors – the on-going expense of real estate taxes and insurance, and household operating costs – may be beyond what the homeowner expected and make payments for their home unaffordable to them. Hence, the PS agreement should terminate, and the homeowner be strongly encouraged to seek housing counseling to help them identify what will be a sustainable housing solution for them.

Clarify that FHA Loans under an Active PS May Not Be Recast

FHA should require the termination of a PS in cases where a borrower chooses to make a significant curtailment payment and have their mortgage loan recast (should the loan not be in a Ginnie Mae pool). Doing so would ensure the already-agreed upon PS payment, which can only go to principal, is never larger than the principal-only portion that is owed. This may be addressed in the forthcoming mortgage note, but if not, then we urge FHA to clarify this point in the ML.

Augment the Borrower Disclosures

We urge the Department to change the format of the payment reporting table in both the Annual and Final Borrower Disclosures. A “Sources” and “Uses” format which shows the starting balance of the PS and then the monthly payout of the PS and end-of-month balances would provide more clarity to the homeowner of how their PS funds were applied than the format that FHA provided.

Additionally, we suggest that both documents reference key provisions in the borrower's original note (e.g., late payment penalties) to help set the expectation that once the PS is completed, then the original terms of their mortgage loan note will apply.

Additional Recommendations

Clarify that Borrowers Can Re-Access Partial Claim Amounts Previously Repaid

We suggest FHA clarify in writing whether a borrower may indeed "re-use" partial claim cap previously repaid. This remains an "open" question that can easily be clarified one way or the other in the final ML. Funds returned to FHA should enable homeowners to use a partial claim up to the statutory cap.

Tier Rating System Should be Adjusted

We urge HUD to update its Tier Rating System (TRS) to take into account that almost all of the servicer's discretion and judgement has been removed from the COVID-19 Recovery Home Retention Option processes, and that servicers should not be penalized within the TRS for borrower re-defaults or accessing multiple partial claims. Indeed, a servicer is precluded from collecting any income verification documentation whatsoever, as FHA is requiring servicers to simply accept the homeowner's statement that they can make the payment that results from a loss mit option. The policies have served the objective of streamlining process to facilitate home retention, but the Department should not penalize servicers if a homeowner redefaults as they were not able to bring to bear any judgement or choice into the process.

Thank you for this opportunity to provide comments on the PS. NCSHA welcomes the opportunity to discuss our comments further and answer any questions.

Sincerely,



Garth Rieman

Director of Housing Advocacy and Strategic Initiatives

Single Family Draft Mortgagee Letter - Payment Supplement

Instructions

1. Provide only one set of comments per company.
2. Complete identifying information below.
3. If you have a general comment, state "Other" on the page number and provide as much specificity as possible.

FHA ID Number:	
FHA Relationship:	Association representing state housing finance agencies, 16 of which service FHA mortgage loans
Other Relationship:	
Contact Name:	Rosemarie Sabatino
Company Name:	National Council of State Housing Agencies
Contact Phone Number:	Office: 202-624-7730
Contact Email address:	rsabatino@ncsha.org

Feedback Number	Page Number	Line Number	Feedback
1	1	17	FHA should make the effective date 12 months (vs. 9 months) not from the date of publication, but from the latter of (1) the date of ML publication and (2) when FHA has finalized each of the documents necessary for the implementation of the Payment Supplement. To date, FHA has not made public the Note, Subordinate Mortgage, or the PS Agreement rider.
2	2	32-34	FHA has not provided a copy of the zero-interest Note, Subordinate Mortgage, or Payment Supplement Agreement rider for review along with this draft ML. FHA has not provided any timeline for when these documents will be available.
3	4	36	FHA should add "by the Mortgagor" at the end of the word "Option". FHA has not made "execution date" a defined term, and this suggestion would clarify when the timeline begins.
4	5	14	FHA has not properly calibrated the incentive for the Payment Supplement, which involves significantly more work and documentation than does the COVID-19 PFS, which also is set at \$1,000. The PS involves more documentation (a Note, a subordinate mortgage, a Payment Supplement Agreement rider, as well as 3 annual disclosures and 1 final disclosure to the borrower). FHA should increase the incentive to a total of \$2,500 (the \$1,000 originally proposed + \$500 for each of the three years that the PS will be in place), as well as compensate servicers for an additional "up to \$250 for reimbursement of title search, endorsement to the title policy, and /or recording fees actually incurred", just as it does for the COVID-19 AML and the COVID-19 Recovery Modification.
5	7	18-20	This comment applies to multiple provisions in the draft ML: Does FHA intend that the minimum MoPR be a 5% and \$20 P&I reduction for 36 months, meaning the 5% and \$20 are added together, or do they intend, as seems to be the case from the worksheet, that as long as a \$20 reduction is achieved, that the borrower qualifies? If so, will \$20 make a meaningful difference as to whether the borrower can afford the home?
6	12	31-34	Has FHA verified that servicers can legally seek court approval for reaffirmation of the debt between FHA and the borrower?
7	The worksheet		There appears to be a technical error on the Payment Supplement Calculation worksheet. 6C should not be subtracting the result from 5B but is simply the result of 5B with no calculation. 5B is the amount that the payment is reduced, and we believe FHA intends the requirement to be that you reduce by at least \$20. Instead, it seems 6C should go away and 6D should read - "Is the result in Step 5B greater than \$20?"
8	Annual Disclosure	Chart	The title of the chart should be made more broad to take into account that it is providing a total accounting to date, not just of funds applied. We also think this chart should include a monthly breakdown of the payments applied, to help the borrower more clearly see the incremental reduction in the PS account.

9	Final Disclosure	Chart	Ditto
10	Final Disclosure	2nd Paragraph, 2nd sentence	The mortgage payment isn't "new" -- it is the full mortgage payment that the borrower agreed to at loan closing. Perhaps another adjective that more clearly indicates this would be helpful.
11	Final Disclosure	2nd Paragraph, 2nd sentence	FHA should consider adding a reference to the borrower's original note, and the fact that all of the original terms will apply once the PS Period ends. For example, the resumption of late fees should the borrower not make their monthly payment on a timely basis.
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