



June 30, 2023

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 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 regarding the Payment Supplement Partial Claim (PSPC).

We commend FHA's efforts to create a loss mitigation solution for Covid-impacted homeowners who cannot resume making their regular mortgage payments in this higher interest rate environment. Additional foreclosure prevention and loss mitigation tools are necessary to protect many homeowners that existing programs and tools will not help adequately.

To make the PSPC even stronger and to facilitate its implementation, we urge FHA to incorporate in its final Mortgagee Letter the recommendations described below.

Federal Housing Administration (FHA)-guaranteed loans play an important role in helping state HFAs serve first-time and other lower income homebuyers. In 2021, FHA backed more HFA loans than did any other federal agency, guaranteeing 61 percent of state HFA program loans. In turn, state HFA-financed loans strongly support FHA's mission to help lower income Americans become homeowners. In 2021, the average HFA-financed mortgage amount was \$182,083. This amount is almost 50 percent below FHA's floor of \$356,362 for that calendar year.

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.

State HFAs are not only focused on expanding homeownership, but also on helping homeowners retain their homes. Forty-three state HFAs were designated by their state to provide federal Homeowner Assistance Funds (HAF), which NCSHA estimates have helped more than 300,000 homeowners retain their homes through March, 2023.

The PSPC is complex and will be difficult for homebuyers to understand, as well as mortgage loan servicers to implement, but it can be strengthened in several ways.

Increase the Implementation Period

FHA should provide up to 12 months to implement the PSPC instead of the 180 days proposed in the draft ML. FHA has greatly underestimated the length of time the mortgage ecosystem requires to implement such a complicated new option. Servicers will need to update their systems, new processes and procedures and borrower communications will need to be developed and operationalized, loss mitigation and customer service teams trained, and scripts written for clearly explaining the PSPC to borrowers. Housing counseling agencies, who serve a vital role in helping delinquent borrowers understand their options, will need to be trained on the PSPC, including on how to help homeowners offered a PSPC understand what the interest rate would have to be for them to obtain a loan modification (or refinance) at a rate they could afford, and develop a budget so they can afford their payments after the PSPC expires. Finally, FHA and its contract servicer need to update their systems to ensure they can handle the volume of monthly claims servicers will file to be reimbursed for their monthly PSPC payments.

Furthermore, we request HUD 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 rider (see below), and the worksheet have all been provided to FHA's mortgagees. For example, FHA has not yet provided the Payment Supplement Agreement, which the ML implies will contain the required homeowner certifications that will be integral to customer service department trainings and scripts. Without having all three of these documents, a servicer will not be able to properly implement the PSPC.

Create a Standard Payment Supplement Agreement ("Rider")

To facilitate FHA's processing of PSPC riders, FHA should create a standard universal document that all servicers will be required to use (with the usual exception for state-specific legal requirements). This will facilitate timely processing by FHA (or its subcontractor), as well as eliminate the potential need for FHA attorney review of non-standard documents to facilitate timely recordation. This document should be available to servicers at least 12 months before the date of mandatory implementation.

Encourage the Use of Housing Counseling When the PSPC Is Utilized

FHA should do more to encourage the use of housing counseling by homeowners to whom a PSPC is offered, as well at other critical junctures of the PSPC's operation, such as prior to when the step-up payment takes effect, or if a homeowner re-defaults after signing a PSPC agreement. Additionally, to support this expanded use of housing counseling, FHA should do what it can to ensure the housing counseling industry is able to provide support to homeowners for this new, very complex option.

Augment the Incentive with Payments for Performance

The \$1,000 incentive is inadequate to account for the three- to five-year length of time that servicers will be required to administer a PSPC. The PSPC is a novel approach that will include providing extraordinary, repeated disclosures to homeowners and new monthly accounting and claims filing processes. FHA should compensate servicers for each additional year of administering the PSPC by providing an additional \$500 per borrower incentive to the servicer.

Limit the Payment Supplement Partial Claim to a One-Time Only Option

To reduce the complexity of the PSPC, including to homeowners, the PSPC should be a one-time only loss mitigation option. If a borrower fails to perform during the PSPC period (and is not able to cure their delinquency themselves), the PSPC should terminate and the homeowner be offered another loss mitigation option versus being offered another PSPC. Given its complexity, and where it falls in the loss mitigation waterfall, the PSPC is a last-resort option prior to pre-foreclosure sale options.

Furthermore, under the draft ML, FHA is breaking with precedent set by its trial loan modification policy that requires borrowers to demonstrate they can make their payments via trial loan modifications before mortgage loans can be permanently modified. Because the PSPC is only a temporary buy-down to the homeowner's (already below-market) interest rate, if a borrower is not able to make timely payments under the PSPC, they will most likely not be successful once the temporary buy-down expires. Hence, the PSPC agreement should terminate and the homeowner receive mandatory housing counseling to help them identify what will be a sustainable housing solution for them.

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

FHA should require the termination of a PSPC 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 PSPC payment, which can only go to principal, is never larger than the principal-only portion that is owed.

Clarify Fee Policies

FHA should clarify what fees a servicer is permitted to charge during the PSPC period. For example, if the homeowner does not make their payment of principal on time or by the 15th of the month, is a servicer allowed to charge a standard late fee? Typically, a servicer is not able to charge a late fee to a homeowner under an active loss mitigation option, but none of FHA's current loss mitigation options are on-going for such a long length of time. Clarifying that a servicer may charge a late fee to borrowers under a PSPC agreement will incent borrowers to pay on-time and develop better repayment habits during the PSPC period. Additionally, FHA should provide examples of fees that would not be permitted.

Additional Recommendations

Additionally, we recommend FHA adopt the following enhancements and clarifications to its partial claims policy to ensure the PSPC serves the purpose for which it is intended, as the PSPC is in part built on the foundation of FHA's existing partial claim policy.

Redefine How "Net Sale Proceeds" is Calculated for a Pre-Foreclosure Sale (PFS)

FHA should permit servicers to exclude the UPB of any partial claims from inclusion as a settlement cost for purposes of determining whether net sale proceeds are projected to meet the minimum Tiered Net Sale Proceeds for approving a PFS when the only obstacle to a PFS is repayment of a partial claim. Currently, HUD Handbook 4000.1 requires servicers to include settlement of outstanding partial claims as a "settlement cost." However, given the size of partial claims likely to have resulted from the 18-month forbearances permitted by the COVID-19 Home Retention Options, servicers will be hindered from approving a PFS even if it is likely to result in reduced loss severity for FHA and provide a homeowner with a non-foreclosure loss mitigation option that is in everyone's best interest to complete.

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.

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

Sincerely,



Garth Rieman

Director of Housing Advocacy and Strategic Initiatives