MORTGAGE BANKERS ASSOCIATION

NMSA
NATIONAL MORTGAGE SERVICING ASSOCIATION

December 12, 2023

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

RE: Draft Mortgagee Letter, Payment Supplement

Dear Commissioner Gordon,

The Mortgage Bankers Association (MBA)[1] and National Mortgage Servicing Association[2] (the Associations) appreciate the opportunity to comment on the Federal Housing Administration's (FHA) Draft Mortgagee Letter (Draft ML), the *Payment Supplement*.[3] Ensuring struggling borrowers have options to avoid foreclosure in high-interest rate environments remains a top priority for mortgage servicers. The Associations agree that an innovative loss mitigation alternative to a traditional loan modification that provides temporary payment relief to FHA's seriously delinquent borrowers is imperative. [4] Given the complexity of the new Payment Supplement account, we appreciate the opportunity for a second round of stakeholder comments via the drafting table.

We urge FHA to reconsider several recommendations submitted in response to FHA's original proposal, the *Payment Supplement Partial Claim (PSPC).*[5] The resources

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 300,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] The National Mortgage Servicing Association (NMSA) is a nonpartisan organization with member participation representing the nation's leading mortgage servicing organizations. NMSA was formed for the purpose of effecting progress and change while addressing key challenges and opportunities before the mortgage servicing industry. By bringing together decision makers and thought leadership, from across the nation, the NMSA drives the conversation on shaping the American housing industry for the benefit of homeowners.

[3] Federal Housing Administration, FHA Seeks Further Feedback on New Loss Mitigation Option Payment Supplement, FHA #2023-94 (Nov. 16, 2023); Federal Housing Administration, FHA Seeks Feedback on Draft Payment Supplement Borrower Disclosures, FHA #2023-98 (Nov. 29, 2023).

[4] Since FHA's original proposal in June, the market rate for 30-year Fixed Rate Mortgage increased further from 6.71% to 7.03%, according to Fredde Mac's most recent Primary Mortgage Market Survey. A great majority of loans within Ginnie Mae's pools also remain well below prevailing market rates.

[5] Mortgage Bankers Association, Joint Trade Letter to FHA's Proposal to Assist Borrowers in High-Interest Rate Environment (June 30, 2023), available at https://www.mba.org/industry-

required to implement and maintain the Payment Supplement, including a servicer's ongoing obligation to borrowers and HUD throughout the Payment Supplement Period, require additional amendments to the Draft ML. We are very encouraged by FHA's thoughtful process to date and request certain changes to allow for the successful implementation of Payment Supplement by reducing the operational, compliance, liquidity, and reputational risks of its proposal.

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I. FHA's Commitment to Transparency Improved the Policy Outcome for Borrowers

The Associations commend FHA's commitment to a transparent public policy development process through the continued use of the Single-Family Drafting Table. The improvements in FHA's latest proposal are a testament to the serious consideration of comments submitted by stakeholders including the Associations, in response to the PSPC. FHA's proposed guidance also reflects the exceptional efforts of the FHA team to engage directly with the industry to understand the operational challenges of implementing a new loss mitigation option into FHA's suite of solutions. Reposting proposed guidance for additional input demonstrates the importance of collaborating with stakeholders on the policy development process to improve positive outcomes for borrowers. The results show.

The Associations welcome FHA's decision to simplify the Payment Supplement. As proposed, FHA's new guidance reduces operational complexity, improves the borrower experience, and prioritizes permanent payment relief over temporary relief. These improvements ensure mortgage servicers can deliver FHA's new program to borrowers.

These changes are welcome, and we offer the following additional changes to the Draft ML to ensure the program meets our shared goals of efficiently and effectively keeping borrowers in their homes if possible.

II. Implement a Sustainable Program

Sustainable loss mitigation policy is necessary to preserve affordable homeownership. FHA guidance must continue to reduce the program's complexity as the Draft ML touches on all aspects of a servicer's operations and loan lifecycle. A servicer's engagement with borrowers is heavily impacted through multiple required communication touch points. The escrow provisions – Payment Supplement Account - are also a new and significant development. As proposed, the *Payment Supplement* remains administratively burdensome and costly to temporarily implement and maintain as a solution under the COVID-19 Recovery Loss Mitigation waterfall.

FHA must address these gaps to improve the borrower experience, reduce the risk of inadvertent noncompliance for servicers and establish a permanent program. To that end, FHA should:

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resources/resource/joint-trade-letter-to-fha-s-proposal-to-assist-borrowers-in-high-interest-rate-environment.

1. Increase the Incentive Payment from $1,000 to $3,500

FHA should increase the incentive payments from $1,000 to $3,500. This is merited by the cost of implementing the Payment Supplement and the ongoing obligations placed upon a servicer throughout the Payment Supplement Period. The current incentive does not come close to covering this cost. For context, a servicer could recover an incentive of up to $1,250 on an FHA-HAMP Modification with Partial Claim. Additionally, the average annual cost of non-performing loans has averaged about $1,900 over the past ten years through different market cycles.[6]

A nonperforming loan in the Payment Supplement program will be there for *three years*, and the costs of servicing a loan in the program each year will significantly exceed the proposed one-time incentive fee of $1,000. At a minimum, FHA should pay the $1,000 fee each year the loan is in the program. That way, the amount of the fee would better match the cost and duration of maintaining the loan in the program over time.

2. Provide the Model Note and Payment Supplement Agreement; Remove Enforceability

FHA must publish the model Note and Payment Supplement Agreement rider for stakeholder review and comment prior to the final ML's mandatory compliance deadline. The Payment Supplement currently places the responsibility for enforcement of the Note and rider with servicers but does not provide servicers with a model for what must be included in those documents. This will be a novel legal agreement and should be published for review and commentary by stakeholders prior to finalization.

FHA must also eliminate the statement that servicers are responsible for the enforceability of the Payment Supplement Documents. Unfairly passing the enforceability risks of an untested legal agreement on to servicers could significantly impact willingness to participate in FHA programs. Finally, although multiple servicers will be preparing these documents, they should be uniformly enforced by HUD, similarly to how the current subordinate liens placed after partial claim are enforced by HUD.

3. Terminate the PSA if a Borrower Redefaults during the Supplement Period

The Payment Supplement should automatically terminate if a borrower becomes 60 days delinquent during the supplemental period. Currently, the monthly supplement continues unless the borrower is 30 days delinquent, at which point the servicer must evaluate the borrower for other loss mitigation options and a standalone partial claim among other options. Instead, the program should allow a borrower to be delinquent for up to 60 days and make missed payments. However, if a borrower fails to become current after 60 days, they should only be evaluated for Pre-Foreclosure Sale, Deed-in-Lieu, Foreclosure Sale, or Claim Without Conveyance of Title options.

To qualify for the Payment Supplement, borrowers must represent that they can afford to cover their monthly payments. To subsequently allow a borrower to make use of other loss mitigations options and the Payment Supplement is contrary to the intent of the program. The Payment Supplement is uniquely tailored to address the challenges with offering payment reduction options in a high-interest rate environment.

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[6] Mortgage Bankers Association, MBA's Servicing Operations Study and Forum for Servicers, available at www.mba.org/sosf.

4. Provide Sufficient Time for Implementation

The Associations appreciate FHA's decision to extend the implementation timeline. However, FHA should provide twelve months to implement this novel and complex program. Nine months is insufficient time to handle all the anticipated changes and develop the proper infrastructure. The Payment Supplement requires significant adjustments to technology and standard loan administration processes that must be built and tested, such as changes to payment processing and default reporting. Additional time is necessary to ensure the industry can consistently execute the Payment Supplement for borrowers.

To further support servicers implementation efforts, FHA should also consider extending the sunset date of the COVID-19 Recovery Loss Mitigation Waterfall. An additional six months beyond the final ML's mandatory compliance deadline is appropriate. FHA is also still in the process of determining the future of loss mitigation in a post-COVID-19 waterfall world after October 30, 2024. We support FHA's effort to take the lessons learned from the COVID-19 pandemic and create loss mitigation options for struggling borrowers. When completed, this effort will take a great measure of resources from servicers to implement. Under the current timeline, servicers will be working on either implementing new loss mitigation options or winding down their program and, at the same time, standing up the Payment Supplement. Extending the COVID-19 Recovery Loss Mitigation waterfall will ensure the industry can place their focus on building the Payment Supplement program.

Finally, all efforts are to establish the Payment Supplement as a permanent solution in FHA's suite of available loss mitigation options. FHA should clearly state the Payment Supplement will survive an extension of the COVID-19 Recovery Loss Mitigation Waterfall.

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Servicers remain committed to providing effective payment relief to distressed borrowers and appreciate FHA's partnership to date. Please accept detailed recommendations collected from our members in response to the Draft ML in the attached Feedback Response Worksheet. Thank you for your consideration of these comments. Should you have any questions or wish to discuss further, please contact Brendan Kelleher at Bkelleher@mba.org.

Sincerely,

Mortgage Bankers Association
National Mortgage Servicing Association