December 12, 2023

Julia R. Gordon
Assistant Secretary for Housing - FHA Commissioner
Department of Housing and Urban Development
Office of Housing
451 Seventh Street SW
Washington, DC 20410

RE: Comments on Draft Mortgagee Letter: Payment Supplement Partial Claim

Dear Commissioner Gordon:

The National Consumer Law Center, on behalf of its low-income clients, and the Center for Responsible Lending appreciate the opportunity to comment on the revised Payment Supplement Partial Claim (PSPC) proposal posted on the Office of Single Family Drafting Table on November 16, 2023. We applaud FHA for developing the PSPC in response to the current elevated interest rate environment. The PSPC will provide needed payment relief to borrowers who have no other options for receiving a sustainable mortgage payment, and as a result, the program will help borrowers avoid unnecessary foreclosures.

We also greatly appreciate FHA's decision to post the draft PSPC mortgagee letter, disclosures, and calculation worksheet prior to their release so that stakeholders can identify and propose policy adjustments that will help the program best serve borrowers. We have attached FHA's spreadsheet with line-by-line suggestions along with redline versions of the draft disclosures. We want to highlight a few issues from our spreadsheet comments.

1. We strongly support the removal of bankruptcy-related provisions in order to prevent unnecessary exclusion of borrowers from the program.

In our June 30, 2023 comments, we urged FHA to remove proposed amendments to the general Partial Claim eligibility rules for borrowers who have received a chapter 7 discharge. The proposed language was unnecessary, did not comport with standard bankruptcy practice, and would have excluded a significant number of borrowers.

The harmful language is not present in the revised draft PSPC mortgagee letter, and it's our understanding that the exclusion was intentional and the amendments are no longer being considered. We strongly support this decision to remove the harmful bankruptcy language.

We continue to believe that FHA should affirmatively add language to Partial Claim documents stating that borrowers who have received a bankruptcy discharge do not have personal liability for the partial claim. This would further clarify the eligibility of borrowers who have received a discharge in bankruptcy. We discussed this proposal extensively in our June 30, 2023 comments and we still believe FHA should address the problem in the form Partial Claim Promissory Note.[1] However, FHA's decision to return to the status quo regarding bankruptcy eligibility will help avoid many borrowers losing access to critical loss mitigation options.

2. We applaud FHA for posting model borrower communications and urge HUD to revise them to make them more easily understandable.

We greatly appreciate FHA's decision to post draft PSPC communications on the drafting table. As we stated in our June 30, 2023 comments, the PSPC is a novel loss mitigation option and the success of the program will depend on borrowers understanding how it works. By posting draft communications, FHA will receive critical feedback on the effectiveness of the models.

We have attached redlined versions of the model communications that provide extensive edits. As demonstrated through our edits, FHA communications should focus on the most important information and be easy to read and understand. By including too many details, critical information about when payments are due and how long the PSPC will last are overshadowed. Moreover, the communications should involve simpler language that borrowers can understand. As we discussed in our previous letter, we believe FHA should also consider working with the CFPB to test the forms via consumer focus groups. We also suggest that FHA add an FAQ, both to emphasize the key facts and also to provide more detail in areas where FHA believes such information is useful.

3. FHA should specifically incorporate forbearance for borrowers who default on PSPC payments.

The draft policy provides guidance on how servicers should handle borrowers who default on their payments while in the payment supplement program. FHA's policy correctly provides borrowers with a path to restart the payment supplement if their financial hardship that caused default has resolved.

However, FHA's draft policy does not specify how long servicers should give a borrower to recover financially. We believe that forbearance plans between the borrower and servicer would provide the borrower with an understanding of what their time frame for recovery would be in their particular case, and therefore, FHA should specifically mention forbearance as an option in the PSPC program as we indicated in our spreadsheet comments.

Moreover, we believe FHA should consider aligning its forbearance policy with the policies of Fannie Mae and Freddie Mac in order to streamline access to forbearance. We plan to discuss this issue with FHA in the future.

[1] NCLC-CRL Comments to Payment Supplement Partial Claim (June 30, 2023), https://www.nclc.org/wp-content/uploads/2023/07/NCLC-CRL-Feedback-063023-Steve-Sharpe.pdf.

4. FHA should clarify that borrowers may accept the Standalone Partial Claim throughout the loss mitigation evaluation process.

As discussed in our June 30, 2023 comments, at any time during the discussion about options with the servicer, the borrower should have the ability to accept the Standalone Partial Claim as long as the borrower indicates that the option is affordable. Borrowers may want to return to the Standalone Partial Claim, for example, if the loan modification option would double the borrower's interest rate while only providing a small payment reduction. This situation is likely in the current rate environment for borrowers who have already made use of a portion of their Partial Claim. Allowing the borrower to accept what was previously offered does not add significant complication to the system - it simply allows the borrower to return to an offer previously made while encouraging consideration of all options.

The Standalone Partial Claim gives borrowers who have recovered from hardship and can resume making their originally scheduled monthly payments a simple means of reinstating their mortgage without changing the loan term and interest rate. Borrowers should have the ability to accept this option, if they are eligible for it, throughout the loss mitigation evaluation process.

5. We have included several specific recommendations to improve clarity in calculating relief under the PSPC.

In our spreadsheet, we identified several places in which the language used for determining the proper relief was unclear. The Payment Supplement is a novel program, and it is imperative that mortgage servicers clearly understand and implement the program as FHA intends it to work. Clarifying the calculations and process steps will ensure that servicers implement the Payment Supplement correctly and borrower assistance is appropriately administered.

6. We commend FHA for adjusting the PSPC to utilize a pre-funded account.

In our June 30 comments, we suggested that FHA consider simplifying the PSPC process by having servicers submit a single claim at inception for arrearages plus the full amount needed to fund the PSPC for the full term. By making this adjustment, FHA has eliminated the need for servicers to build the operational capability to file multiple Partial Claims over the life of the PSPC. As a result, servicers will likely be able to offer the PSPC to borrowers in financial hardship sooner, in turn helping these borrowers regain their financial footing sooner and keep their homes. Moreover, reducing the operational burden on servicers should lead to fewer errors that cause borrower harm.

We appreciate the opportunity to comment and again applaud FHA for developing a program to provide payment relief in this current interest rate environment. If you have any questions about this letter or would like to discuss it in more detail, please contact Steve Sharpe, Senior Attorney at National Consumer Law Center, at ssharpe@nclc.org or Kanav Bhagat, consultant to the Center for Responsible Lending, at kanavbhagat@gmail.com.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
Center for Responsible Lending