December 12, 2023

Commissioner Julia Gordon
Federal Housing Administration (FHA)
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Payment Supplement Recommendation

Dear Commissioner Gordon:

The Housing Policy Council[1] and our member companies appreciate your leadership in pursuing a loss mitigation program that will allow for payment reduction for borrowers whose note rates are lower than the prevailing market rate. We also recognize the clear need for a tool like the proposed Payment Supplement to be a permanent alternative in the FHA suite of loss mitigation tools.

Additionally, we are grateful to you and your team for addressing a significant number of concerns that we wrote you about in June of this year.[2] It is clear that your team methodically and conscientiously worked through the 40 complications, ambiguities, questions, and concerns that we raised. We strongly agree with your decisions to simplify the program by moving to a one-time Payment Supplement Request, standardizing the Payment Supplement Term, and abandoning the step-up in payment that was in the previous proposal. From a process standpoint, we commend your decision to post to the Drafting Table a revised version of the policy, reflecting changes made in consideration of the comments submitted; this iterative approach and partnership with industry participants is truly a best practice that contributes to more efficient and effective policy making.

As positive as the policy making process has been, there are a still several implementation issues that we view as critical to address in the final guidance. The remainder of this letter sets forth the seven most significant policy concerns we have identified with the Draft Mortgagee Letter (ML). Additionally, we have provided comprehensive feedback through the attached Draft ML Feedback Response Worksheet that highlights over 33 comments that we believe need to be addressed in a final program design.

Payment Supplement Significant Recommendations

- **Implementation Date:** Due to the significant operational and technological challenges of implementing the Payment Supplement, we recommend that the implementation period needs

[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org.

[2] See HPC Letter to FHA re: Payment Supplement Partial Claim Recommendation on June 30, 2023.

to be extended and mandatory effective date adjusted – to allow for at least 12 months from the program publication date. Also, we think that it is important for FHA to signal in advance that there will be an extension of the COVID-19 Recovery Loss Mitigation Options beyond the implementation date of the Payment Supplement Program or that the Payment Supplement Program will survive termination of the COVID-19 waterfall. Otherwise, servicers will be responsible for standing up this novel Payment Supplement Program, while at the same time, making whatever changes are required for the standard loss mitigation waterfall. This operational challenge is both foreseeable and avoidable by publicly clarifying that FHA will coordinate the implementation timelines for both sets of policy.

- **Need for New Documentation / Borrower Agreement Developed by FHA:** We request that FHA promptly publish model language for the Payment Supplement Agreement (Rider), Subordinate Mortgage, and Note. All of these documents are necessary to properly execute the program. Individual servicer development of distinct legal agreements, security instruments, and informational materials for borrowers poses significant risk. Further, these legal documents establish the relative rights and obligations of the borrower *and FHA*, so we expect that FHA would want these to be established uniformly. Lack of standardization could result in varying interpretations of borrower rights and responsibilities, confusing borrowers and potentially jeopardizing the sustainability of the loss mitigation solution. This risk is amplified for borrowers whose loans are transferred during the Payment Supplement period, where servicers may have different documents/templates/disclosures if the Department does not provide such forms or sample language.

- **Legal Enforceability:** We are concerned with the language requiring that servicers "must ensure the Partial Claim Agreement is legally enforceable and complies with all state and local requirements," which exacerbates the risk highlighted in the above comment about the need for standardized documentation. If FHA implements the Payment Supplement Program, it will be doing so with full understanding that it is a novel program with untested legal instruments, policies, and borrower communications. Servicers cannot bear responsibility for the enforceability of FHA's program under these circumstances, certainly not without reviewing and having the opportunity to provide input on the legal documents or model legal text that will be required.

- **Servicer Incentive Pay:** Servicer incentive pay needs to account for the long-term nature of the work servicers will have to do (required additional staffing and regulatory risk associated with this plan's 3-year term). Even though the draft policy has removed the multiple claims submissions, executing the Payment Supplement will require substantial monthly operations, including reporting, auditing, and compliance as well as unique annual disclosures for customers. Thus, a one-time payment of just $1000 is inadequate relative to the costs of the work and compliance. As a reference point, servicers currently receive $1250 plus expense reimbursement for a modification/partial claim combination, which is less burdensome to administer than the Payment Supplement. To account for the ongoing complexities associated with the program we recommend an incentive amount of $3500.

- **Lack of clarity about how the program will work with several other mortgage policies/programs:** The Draft ML does not address how the Payment Supplement will interact with certain other policies/programs including: adjustable-rate mortgages, borrowers who are entitled to receive a Servicemember Civil Relief Act Subsidy, or borrowers who have previously benefited from a lender interest rate buydown. The open questions for each program type are slightly different, which will inevitably lead to disparate outcomes for borrowers based on servicer practice/interpretation. The escrow account provisions are also new and complex. Our recommended approach for each of these situations, where applicable, is detailed in the Draft ML Feedback Response Worksheet.

- **Redefault Policy:** The process for dealing with redefaults remains overly complex. For example, if a borrower with a payment supplement redefaults, it is not clear how servicers are supposed to calculate the availability of partial claim funds for a future loan modification. Even where a servicer might be able to figure this out manually, the process lacks clarity, and it doesn't seem possible to turn this into consistent business rules that would allow for automation.

- **Late Charges and Penalties:** The draft ML still proposes a late charge and penalty waiver back to March 1, 2020. We recognize that this is consistent with the existing COVID waterfall. However, as we approach *four* years since this policy was first implemented, we question the nexus to COVID and retention of this policy for an ongoing program. It is our view that the vast majority of borrowers who will benefit from the payment supplement will no longer be negatively impacted by a COVID hardship at the time of PSA implementation (most of the loans were originated well after March 1, 2020, or were already modified to a lower rate after the impacts from COVID were resolved) and thus, there is limited rationale for the waiver.

Conclusion

We thank you in advance for consideration of our recommendations and respectfully request that the FHA leadership team continue to engage with the industry and other stakeholders as you develop and implement any new loss mitigation programs. We recognize the need for a solution to address the challenging market conditions that are likely to persist for the foreseeable future, with market rates exceeding note rates on many mortgages in Ginnie Mae pools. Yet, we also know that executing a new programmatic solution is complicated and ask that FHA continue to communicate with the industry and other stakeholders throughout the process, to assess the impact of various features and options on servicer operations and customer experience.

Should you have any immediate questions regarding this set of recommendations, please do not hesitate to contact us.

Yours truly,

Edward J. DeMarco

Edward J. DeMarco
President
Housing Policy Council