



AMERICAN  
BANKRUPTCY  
INSTITUTE

# Consumer Practice Extravaganza

## Mortgage Updates

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FHA'S PARTIAL CLAIM +  
PAYMENT SUPPLEMENT LOSS  
MITIGATION PROGRAM'S  
IMPACT IN BANKRUPTCY  
CASES

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## FHA Partial Claim + Payment Supplement Mechanics



- Borrowers will be eligible for an amount up to 30% of the outstanding balance of the loan for a combination of a partial claim to bring the account current with the remaining available balance divided over 36 months to act as reduction to the monthly payment amount up to 25% of the payment.
- The remaining balance after the partial claim piece is given to the creditor to bring the account current is to be held by the servicer as a separate custodial account that cannot be comingled with any other funds.
- The creditor is permitted to take funds out of the custodial payment supplement account and apply them to the account when the debtor pays the creditor the reduced monthly payment amount.

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## FHA Payment Supplement Overview

- The Payment Supplement will bring a borrower's mortgage current, as well as provide a temporary reduction in the borrower's monthly principal mortgage payment for a term of three years.
- Temporarily reduces borrower's monthly mortgage payment (Monthly Principal Reduction (MOPR) payment) for a period of three years without altering the original mortgage terms.
- Upon expiration of this program, the borrower will be responsible for resuming payment of the full monthly payment amount.

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## FHA Payment Supplement Effective Dates

- Mortgage servicers are required to implement this program by January 1, 2025.
- The first day after the expiration of the 36th month, the program terminates and any remaining payment supplement funds are refunded to HUD. For example, if the 36<sup>th</sup> month is October, all payments must be received in October.
- Program Termination: Debtor may voluntarily terminate the payment supplement program, The program also terminates upon a subsequent loan modification, or if the Debtor sells or refinances the property.

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# Proof of Claim Considerations if the FHA Payment Supplement Originated Pre-Filing.

- Payments Listed Contractually with Payment Supplement Credit
- Disclaimers included listing Program Termination Date. If Program terminated, payments revert to contractual payment amount.

Mortgage Proof of Claim Attachment					1/2/15	
If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.						
Part 1: Mortgage and Case Information		Part 2: Total Debt Calculation		Part 3: Amortization as of Date of the Petition		Part 4: Monthly Mortgage Payment
Case number	Case name?	Principal balance	Principal due	Principal due	Principal & interest	\$900.00
Debtor 1	Joe Debtor		Interest due	Interest due	Monthly escrow	\$175.00
				Prepaid fees due		
Debtor 2		Interest due		Escrow deficiency for funds advanced	Private mortgage insurance	\$0.00
Lend 4 digits to identify	Fees, costs due	Escrow deficiency for funds advanced	Prepaid interest charges		Monthly Prepaid Reduction	\$250.00
Creditor	AFC Mortgage	Escrow deficiency for funds advanced	Loss funds on hand		Total Monthly Payment	\$275.00**
Service	AFC Mortgage	Loss funds on hand	Total Monthly Principal Reduction		Effective Date	01/2014
Fixed/adjustable/step/interest/other	Fixed	Total debt	Total prepetition mortgage			
		\$305,000.00	\$550.00			

\* Under the FHA's Payment Supplement Loss Mitigation Program, Debtor is provided a FHA Payment Supplement Credit to reduce principal payments due.

\*\* Pursuant to FHA's Payment Supplement Loss Mitigation Program, this is the reduced payment that Debtor is responsible for during the applicable reduced payment period, this period is subject to expiration upon which the Debtor will be responsible to pay the full contractual payment. Debtor will be responsible for the full contractual payment if Debtor sells, refinances, or voluntarily terminates during the pendency of this program. This FHA Payment Supplement Program expires on \_\_\_\_\_.

Post-bankruptcy entrance into the FHA Partial Claim + Payment Supplement Program would necessitate an amended proof of claim.

## Bankruptcy Impacts



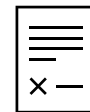
### Court Approval

As the partial claim must be recorded and creates a subordinate lien on debtor's property, court approval should be sought.



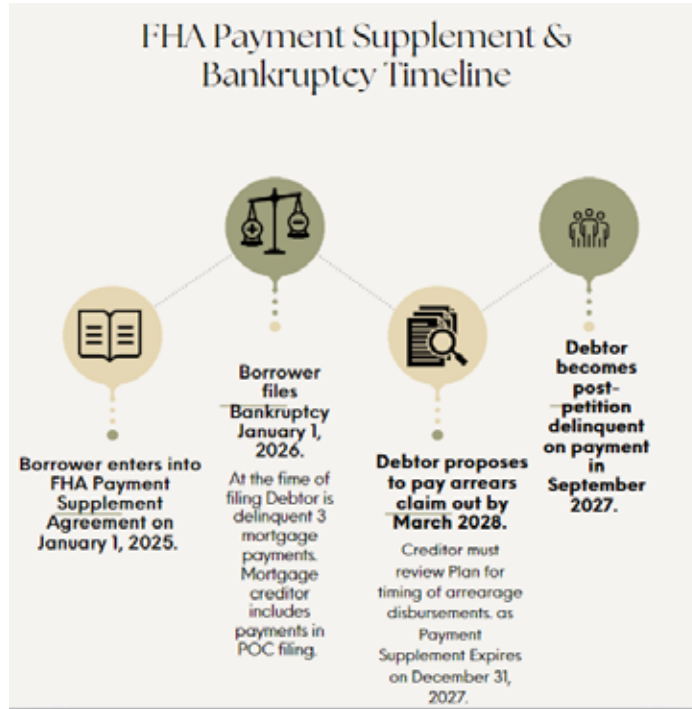
### Timing of Mortgage Creditor Treatment in Debtor's Plan

Funds must be refunded to the FHA if the payment supplement funds are not applied during the 36 month program termination. Mortgage creditors must closely review payment of creditor's claim in Debtor's Plan.



### Payoff

Where there is a request for a payoff on the senior lien, servicer is required to issue payoff for the partial claim/payment supplement as well.



## Additional Partial Claim/Payment Supplement Considerations

<h3 style="text-align: center;">Partial Claim is a subordinate lien</h3> <p>Loan must be paid back:</p> <ul style="list-style-type: none"> <li>• First lien paid in full             <ul style="list-style-type: none"> <li>• Deed in Lieu</li> </ul> </li> <li>• Primary Mortgage Matures             <ul style="list-style-type: none"> <li>• Foreclosure</li> </ul> </li> <li>• Partial Claim Notes Matures</li> <li>• Remember that, when due, the Partial Claim note is payable in a lump sum</li> </ul>	<h3 style="text-align: center;">Recourse Loan</h3> <p>If the Debtor fails to repay the payment supplement amount when it is due, HUD can take action to collect the debt, including, but not limited to (1) interest and penalty charges for the period of time the payment is not made, (2) assessment of charges to cover administrative costs incurred by the government, (3) offsetting the amount owed to the borrower under other federal programs, (4) foreclosing and obtaining a judgment for any deficiency, (5) if your client is a current or retired federal employee, offsetting his/her/their salary or civil retirement benefits, (8) offsetting a tax refund, and/or (9) reporting any written off debt to the IRS as taxable income.</p>	<h3 style="text-align: center;">Payment Supplement Period will not extend beyond 36 months</h3> <p>To obtain the full benefits of the Payment Supplement Program, it is imperative for the debtor to remain current on (1) the ongoing payments if the debtor is disbursing the ongoing mortgage payment and/or (2) the Chapter 13 plan payments if the ongoing monthly mortgage payment or any arrearage is being disbursed by the Trustee.</p>
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## Proposed Plan Language



Debtor has entered into a FHA Payment Supplement Loss Mitigation Program ("Program") which terminates on \_\_\_\_\_, unless terminated earlier pursuant to the provisions of the program. Debtor's contractual ongoing mortgage payments to the mortgage servicer are reduced during the term of the program by the amount supplemented by HUD. However, if the Debtor fails to pay any portion of the payment that is Debtor's responsibility during the term of the program or if the program is terminated for any reason, Debtor will be responsible for the full contractual payment due to the mortgage servicer.

The portion of the ongoing payment that the Debtor is required to make as of the date of the filing of the Plan is \_\_\_\_\_ as set out in Paragraph \_\_\_\_ of the Plan. The amount payment may be amended from time to time following appropriate notification. The amount supplement by HUD during the term of the program is \_\_\_\_\_ to be paid only after the Debtor has paid his/her/their portion of the ongoing mortgage payment. Once the terms of the program has terminated, the Debtor will be responsible for his/her/their full ongoing mortgage payment plus any part of the ongoing mortgage payments not supplemented by HUD during the term of the program.

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## Best Practice Tips for Debtor's Counsel

- Debtor attorneys should be aware if their debtor client is in one of these programs and to draft the debtor's plan accordingly so as not to inadvertently terminate the program.
- Review timing of the repayment of everything that must be paid within the 36 month period including all pre- and post-petition arrears (including gap payments) and ongoing payments to ensure everything will be repaid prior to the Payment Supplement period expiration.

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# Faculty

**Pam Bassel** is the standing chapter 13 trustee for the Northern District of Texas in Fort Worth. She began her career in bankruptcy in 1981 as a law clerk to Hon. John Flowers of the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division, from 1981-82, then joined Law, Snarkard & Gambill, P.C. in Fort Worth and was the senior partner of its bankruptcy section from 1987-2005, after which she was the senior partner of Bassel & Wilcox, P.L.L.C. from 2005-13. She was appointed as a standing chapter 13 trustee for the Northern District of Texas on Oct. 1, 2013. Ms. Bassel is a frequent speaker on bankruptcy topics, including recent presentations at the NACTT 2023 Mortgage Seminar, the DFW Regional Seminar in 2022, the 17th Annual Conference on Consumer Bankruptcy Practice (UT Law, 2022), the 2022 Northern District of Texas Bankruptcy Bench Bar, the NACTT Mid-winter conference in 2021, the 40th Annual Jay L. Westbrook Bankruptcy Conference, and the University of Texas School of Law Consumer Bankruptcy Webcast in 2020. She received her B.S.F.A. *summa cum laude* from Texas Christian University in 1976 and her J.D. with top honors from the University of Texas School of Law in 1981.

**Maria Tsagaris Starks** is Chief Diversity Officer and a Bankruptcy partner with McCalla Raymer Leibert Pierce, LLC in Roswell, Ga., and manages the firm's national proof-of-claim portfolio. She routinely advises real estate and mortgage banking professionals regarding laws affecting creditor rights in the areas of bankruptcy, loss mitigation and other areas of the default servicing industry. Ms. Tsagaris Starks works with top servicers and lenders to provide on-site training courses on bankruptcy laws affecting the mortgage industry. She received her undergraduate degree in 2002 from Vanderbilt University and her J.D. in 2005 from Mercer University Law School.

**Alice L. Whitten** is managing counsel and senior vice president in the Wells Fargo Legal Department in its Irving, Texas, office. She leads a team that provides guidance and support for consumer bankruptcy operations across the Wells Fargo enterprise, including mortgage, automobile, credit cards and student lending, and supports FCRA, SCRA & MLA across the consumer lending enterprise. She has been with Wells Fargo since 2014. Prior to joining Wells Fargo, Ms. Whitten served as a standing chapter 13 trustee in the Northern District of Texas for four years and was senior vice president – associate general counsel with AmeriCredit Financial Services Inc. (now known as GM Financial), where she provided legal support for bankruptcy and default services operations. Ms. Whitten is admitted to practice in Texas and co-chairs the NACTT Automobile Committee, and she is a board member for the NACTT Academy. She was a council member of the Bankruptcy Law Section Counsel of the State Bar of Texas from 2013-15, and a committee member of the Committee on Case Administration and the Estate for the ABI Commission on Consumer Bankruptcy (2018-19). Ms. Whitten received her J.D. *cum laude* from St. Mary's University School of Law in San Antonio and a degree from the University of Minnesota – Carlson School of Management.