NAR's Frequently Asked Questions - HAFA

April 5, 2009

GOVERNMENT AFFAIRS

National Association of REALTORS® Government Affairs Division
500 New Jersey Avenue, NW, Washington DC, 20001

1. What is HAFA?

- The Home Affordable Foreclosure Alternatives Program, known as HAFA, is designed to help owners (referred to below as borrowers) who are unable to retain their home under the Home Affordable Modification Program (HAMP). While the first priority is to keep families in their homes, where this is not possible with a loan modification, they may be able to avoid foreclosure by completing a short sale or a deed-in-lieu of foreclosure (DIL) under HAFA.

- The Treasury Department guidelines and forms, updated on March 26, 2010, do not apply to loans owned or guaranteed by Fannie Mae or Freddie Mac. Those enterprises will issue their own HAFA guidance and forms. FHA and VA are not participating in HAFA, because they have their own short sales programs.

- The deadline for implementation by servicers was April 5, 2010.

2. Who is eligible?

The borrower must meet the basic eligibility criteria for HAMP:

- Principal residence. The property may be vacant up to 90 days before the date of the Short Sale Agreement (SAA), Alternative Request for Approval of Short Sale, or DIL but only if the borrower documents they were required to relocate at least 100 miles from their home for purposes of employment and they have not purchased another property in the 90 day period.

- First lien originated before 2009.

- Mortgage delinquent or default is reasonably foreseeable.

- Unpaid principal balance no more than $729,750 (higher limits for 2 to 4 unit dwellings).

- Borrower's total monthly payment exceeds 31% of gross income.

3. How is the program being implemented?

- Supplemental Directive 09-09 (updated March 26, 2010) gives servicers guidance for carrying out the program. All servicers participating in HAMP must also implement HAFA in accordance with their own written policy, consistent with investor guidelines. The policy may include such factors as the severity of the loss involved, local market conditions, the timing of pending foreclosure actions, and borrower motivation and cooperation.

- Short Sale Agreement (SSA). The servicer will send this to the borrower after determining the borrower is interested in a short sale and the property qualifies. It informs the borrower how the program works and the conditions that apply.

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- Request for Approval of Short Sale (RASS). After the borrower contracts to sell the property, the borrower submits a RASS to the servicer within 3 business days for approval.
- Alternative RASS. If the borrower already has an executed sales contract and asks the servicer to approve it before an SSA is executed, the Alternative RASS is used instead. The Servicer must still consider the borrower for a loan modification.

4. How will HAFA improve the short sales process?

HAFA:

- Complements HAMP by providing a viable alternative for borrowers (the current homeowners) who are HAMP eligible but nevertheless unable to keep their home.
- Uses borrower financial and hardship information already collected in connection with consideration of a loan modification under HAMP.
- Allows borrowers to receive pre-approved short sales terms before listing the property (including the minimum acceptable net proceeds and approvable closing costs).
- Requires borrowers to be fully released from future liability for the first mortgage debt (no cash contribution, promissory note, or deficiency judgment is allowed). Junior lien holders accepting a HAFA incentive must also release borrowers from future liability. They may not require contributions from either the real estate agent or borrower/seller as a condition for releasing its lien and releasing the borrower from personal liability.
- Uses standard processes, documents, and timeframes/deadlines.
- Provides financial incentives: $3,000 for borrower relocation assistance; $1,500 for servicers to cover administrative and processing costs; and up to $2,000 match for investors for allowing a total of up to $6,000 in short sale proceeds to be distributed to subordinate lien holders (on a one-for-three matching basis; up to 6% of the unpaid principal balance of each subordinate loan).

5. What are the timelines for HAFA?

- Based on a servicer's written policy, the servicer must consider every potentially eligible borrower for HAFA.
- Servicers must consider HAMP-eligible borrowers for HAFA within 30 days after the borrower does at least one of the following:
  - Does not qualify for a HAMP trial period plan.
  - Does not successfully complete a HAMP trial period plan.
  - Is delinquent on a HAMP modification (misses at least 2 consecutive payments).

  - Requests a short sale or DIL.

- If a servicer has not already discussed a short sale or DIL with the borrower, it must notify the borrower in writing of these options and give the borrower 14 calendar day to respond, orally or in writing. If the borrower does not respond, that ends the servicer's duty to give a HAFA offer.

- If the servicer determines the borrower appears to qualify for HAFA, it sends the borrower a Short Sale Agreement. The borrower has 14 calendar days from the date of the Short Sale Agreement to sign and return it to the servicer.

- The Short Sale Agreement must give the borrower an initial period of 120 days to sell the house (extensions by servicer permitted up to a total of 12 months, if agreed to by the borrower/seller).

- Within 3 business days of receiving an executed purchase offer, the borrower (or listing broker) must submit a completed RASS to the servicer, including (i) a copy of the sale contract and all addenda; (ii) buyer documentation of funds or pre-approval/commitment letter from a lender; and (iii) all information on the status of subordinate liens and/or negotiations with subordinate lien holders.

- Within 10 business days after the servicer receives the RASS and all required attachments, the servicer must approve or deny the request and advise the borrower with reasons for denial.

- The servicer may require the closing to take place within a reasonable period after it approves the RASS, but not sooner than 45 days from the date of the sales contract unless the borrower agrees.

- The servicer should follow local or state law to time the release of its first mortgage lien after receipt of sale proceeds. If local or state law does not include a deadline, the servicer must release its first mortgage lien within 30 business days. The investor must waive rights to seek deficiency judgment and may not require a promissory note for any deficiency.

6. What are the HAFA rules on real estate commissions?

- The servicer specifies the amount of commission in the Short Sale Agreement (SSA) as a "reasonable and customary" closing cost. The servicer transmits the SSA to the borrower for consideration of its terms. The SSA requires the borrower to list the home with a real estate broker. The borrower and the prospective real estate broker may negotiate with the servicer on the terms of the SSA. If the borrower and the listing broker decide to participate, both must sign the SSA, agreeing to its terms. NAR invites member comments on any issues related to HAFA commissions.

- There is a different rule if the borrower submits an executed sales contract to the servicer for approval before a SSA is executed. In that case, the sales contract is submitted to the servicer along with an Alternative Request for Approval of Short Sale. The amount of the commission in such a case is the amount negotiated in the listing agreement, not to exceed 6 percent. This policy recognizes that the real estate professional has already done the work of marketing the property and obtaining

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an executed sales contract, so it is not appropriate for the servicer to reduce the commission below the already negotiated amount.

- At the urging of NAR, the Treasury Department rescinded the November 30, 2009 HAFA policy authorizing the servicer to reduce the real estate commission by a specified amount to pay a vendor/negotiator hired to assist the listing broker. This is a major improvement.
- Neither buyers not sellers may earn a commission in connection with the short sale, even if they are licensed real estate brokers or agents. They may not have any side deals to receive a commission indirectly.

7. What are the required clauses for the listing agreement?

- Cancellation clause—seller may cancel without notice and without paying commission if property is conveyed to mortgage insurer or mortgage holder.
- Contingency clause—sale is subject to written agreement of all sales terms by the mortgage holder and, if applicable, mortgage insurer.

8. How much are the incentive payments?

- Borrower Relocation Incentive--$3,000, paid to the borrower at closing.
- Servicer Incentive--$1,500 for administrative and processing costs for a short sale or DIL completed under HAFA. Investors may provide additional incentives.
- Investor Reimbursement for Subordinate Lien Releases—up to $2,000 for allowing up to $6,000 in short sale proceeds to be paid to subordinate lien holders (up to 6 percent for any single lien). Subordinate lien holders that receive HAFA incentives must agree not to pursue deficiency judgments.

8A. May junior lien holders seek additional contributions from the real estate agent or the borrower as a condition for releasing the lien and the borrower from personal liability?

- No. The Treasury Department guidelines and forms updated on March 26, 2010 (based on changes announced March 12), clarify that junior lien holders may not require such contributions. Any payments to junior lien holders must be shown on the HUD-1.

9. Do servicers have to treat similarly situated borrowers the same?

- Yes, but not all borrowers will qualify for a short sale or DIL.
- Participating servicers must have a written policy, consistent with investor guidelines, that describes the basis for deciding whether to go ahead with a short sale in individual cases.

- The policy may include such factors as the severity of the loss involved, local market conditions, the timing of pending foreclosure actions, and borrower motivation and cooperation.

10. What are the steps for evaluating a loan to see if it is a candidate for HAFA?

- Borrower solicitation and response.
- Assess expected recovery through foreclosure and disposition compared to a HAFA short sale or DIF.
- Use of borrower financial information from HAMP. (May require updates or documentation.)
- Property valuation.
- Review of title.
- Borrower notice if short sale or DIL not available (to borrowers that have expressed interest in HAFA).

11. Can the servicer complete a foreclosure during the HAFA process?

No. A servicer may initiate foreclosure, but may not complete a foreclosure sale:

- While determining borrower's eligibility and qualification for HAMP or HAFA.
- While awaiting the return of the Short Sale Agreement by the 14 day deadline.
- During the term of a fully executed Short Sale Agreement (while the borrower seeks to sell).
- Pending the transfer of ownership based on an approved sales contract per the RASS or Alternative RASS.
- Pending transfer of ownership via a DIL by the date specified in the SSA or DIL Agreement.

12. What about DIL?

- Subject to investor requirements, servicers may accept a deed-in-lieu of foreclosure under HAFA, which requires a full release from debt and waiver of all claims against the borrower.
- The borrower must vacate the property by a specified date, leave the property in broom clean condition, and deliver clear, marketable title.
- The same monetary incentives are available.

13. What else should I know?

- The deal must be "arms length." Borrowers can't list the property or sell it to a relative or anyone else with whom they have a close personal or business relationship.

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- The amount of debt forgiven might be treated as income for tax purposes. Under a law expiring at the end of 2012, however, the tax may not apply. Forgiven debt will not be taxed if the amount of forgiven debt does not exceed the debt that was used to acquire, construct, or rehabilitate a principal residence. Check with a tax advisor or the Internal Revenue Service.

- The servicer will report to the credit reporting agencies that the mortgage was settled for less than full payment. There will be a negative effect on credit scores.

- Buyers may not reconvey the property within 90 days after closing.

14. When does the program end?

- Short Sale Agreements must be executed and returned to the servicer no later than 12/31/2012.

15. Where can I find the guidance and forms?

- Go to www.Realtor.Org/shortsales for links to the Treasury Department's HAFA guidance and forms, these FAQs, and much more information about short sales.