

Home Affordable Foreclosure Alternatives Program (HAFA)

April 28, 2010



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

In early 2009, the National Association of REALTORS® (NAR) urged the U.S. Treasury Department, the Federal Housing Finance Agency, Fannie Mae and Freddie Mac to improve the short sales process.

NAR's concerns were first addressed on May 14, 2009, when the Obama Administration announced the outline of a program to provide incentives and uniform procedures for short sales and deeds-in-lieu of foreclosure (DIL) under the Making Home Affordable Program.

The Obama Administration released guidelines and uniform forms for its **Home Affordable Foreclosure Alternatives Program (HAFA)** on November 30, 2009 and released an updated version on March 26, 2010. April 5, 2010 was the effective date for the program.

Modified HAFA rules for loans owned or guaranteed by Fannie Mae or Freddie Mac were still being developed as of April 28, 2010 (check www.realtor.org/shortsales for updates). HAFA does not apply to FHA or VA loans.

About HAFA

HAFA is a program primarily designed for homeowners who are unable to stay in their home even with a loan modification under the Home Affordable Modification Program (HAMP). Under HAFA, homeowners may be able to avoid a foreclosure by selling the home as a "short sale" (where the value of the home is less than the remaining amount of the mortgage) or by transferring title to the lender through a process called a "deed-in-lieu of foreclosure."

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 under HAMP.
- Allows borrowers to receive pre-approved short sales terms before listing the property (including the minimum acceptable net proceeds and acceptable closing costs).
- Requires borrowers to be fully released from future liability for the first mortgage debt and, if the subordinate lien holders receive an incentive under HAFA, those debts as well (no cash contribution, promissory note, or deficiency judgment is allowed).
- Uses a standard process, uniform documents, and deadlines.
- Provides financial incentives: \$3,000 for borrower relocation assistance; \$1,500 for mortgage servicers to cover administrative and processing costs; and up to a \$2,000 match for mortgage investors for allowing a total of up to \$6,000 in short sale proceeds to be distributed to subordinate lien holders (up to 6 percent of the remaining balance of each junior lien).
- Requires all servicers participating in HAMP to implement HAFA in accordance with their own written policy, consistent with investor guidelines. The policy may include factors such as the severity of the potential loss, local markets, timing of pending foreclosure actions, and borrower motivation and cooperation.
- The program sunsets on December 31, 2012.



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TIMELINE

Determination of Eligibility and Notification

Servicers must consider HAMP-eligible borrowers for HAFA **within 30 calendar 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 the servicer determines a borrower is eligible based on its written policy and 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 days** 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 borrower asks for consideration but a short sale or DIL is not available, the servicer must inform the borrower with an explanation and provide a toll-free number.

Short Sale Agreement

If the borrower is interested in a short sale, the servicer fills out the Short Sale Agreement (SSA) and sends it to the borrower. The borrower has **14 calendar days** from the date of the SSA to sign and return it to the servicer. The real estate broker also must sign the SSA. The SSA must give the borrower an initial **period of 120 calendar days** to sell the house (servicers may extend up to a total of 12 months, if agreed to by the borrower).

Sale Contract

Within 3 business days of receiving an executed sale contract, the borrower (or real estate agent) must submit a completed Request for Approval of Short Sale (RASS) to the servicer, including

- a copy of the sale contract and all addenda
- buyer documentation of funds or pre-approval/commitment letter from a lender
- all information on the status of subordinate liens and/or negotiations with subordinate lien holders.

Servicer Approval

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 a statement of the reasons in the case of disapproval).

Closing and Lien Release

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

The servicer must follow local or state laws to time the release of its first mortgage lien. If local or state law does not govern, the servicer must release its first mortgage lien **within 30 business days**. Investors must waive rights to seek deficiency judgments and may not require

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a promissory note for any deficiency. These rules also apply to junior lien holders receiving incentives.

NAR FAQs

HAFA is a complex program with nearly 50 pages of guidelines and forms. To help you better understand the process, NAR has prepared some frequently asked questions that address the basics. For more information on HAFA and more detailed NAR FAQs, please visit

www.realtor.org/shortsales

Who is eligible for HAFA?

The borrower must meet the basic eligibility criteria for HAMP:

- Principal residence (including certain vacant properties for borrowers who recently moved at least 100 miles for employment and meet program requirements)
- First lien originated before 2009
- Mortgage delinquent or default is reasonably foreseeable
- Unpaid principal balance no more than \$729,750 (higher limits for two- to four-unit dwellings)
- Borrower's total monthly payment exceeds 31% of gross income

How is the program being implemented?

Supplemental Directive 09-09 (revised March 26, 2010) gives servicers guidance for carrying out the program. Check www.realtor.org/shortsales for future updates.

A short sale agreement (SSA) will be sent by the servicer to the borrower after determining the borrower is interested in, and eligible for, a short sale and the property qualifies. It informs the borrower how the program works and the conditions that apply.

After the borrower contracts to sell the property, the borrower submits a "Request for Approval of Short Sale" (RASS) to the servicer within 3 business days for approval. 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.

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

1. Borrower solicitation and response
2. Assess expected recovery through foreclosure and disposition compared to a HAFA short sale or deed in lieu of foreclosure (DIL)
3. Use of borrower financial information from HAMP
4. Property valuation
5. Review of title
6. Borrower notice if short sale or DIL not available (to borrowers that have expressed interest in HAFA).

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What are the HAFA rules regarding real estate commissions?

- The servicer specifies the amount of commission in the Short Sale Agreement (SSA) as a “reasonable and customary” closing cost. The borrower and the prospective real estate broker may negotiate with the servicer on the terms of the SSA, including the commission.
- 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 with an Alternative Request for Approval of Short Sale. The amount of the commission in that case is the amount negotiated in the listing agreement, not to exceed 6 percent.
- Neither buyers nor 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.

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.
- The amount of debt forgiven might be treated as income for tax purposes. Under a law expiring at the end of 2012, however, forgiven debt will not be taxed if the amount does not exceed the debt that was used for acquisition, construction, or rehabilitation of a principal residence. Check with a tax advisor or the IRS.
- The servicer will report to the credit reporting agencies that the mortgage was settled for less than full payment, which may hurt credit scores.
- Buyers may not reconvey the property for 90 days (no “flipping”).