HAFA Short Sales,

US Treasury, Fannie Mae & Freddie Mac Programs

Learning Objectives

Module 1: HARP, HAMP & HAFA Overview

Upon completion of Module 1 the student will be able to:

- Explain the advantages and disadvantages of HAFA
- Discuss why REALTORS® need to be HAFA knowledgeable
- Define the terminology associated with short sales and HAFA programs
- Differentiate between the guiding documents for different HAFA programs and locate and search the important web sites relating to these programs
- Explain the eligibility criteria for HARP (Home Affordable Refinance Program)
- Recite the eligibility criteria for HAMP (Home Affordable Modification Program)

Module 2: US Treasury HAFA program

Upon completion of Module 2 the student will be able to:

- Define the eligibility criteria for a HAFA short sale
- Describe the basic features of HAFA
- Explain which servicers are participating in HAFA
- Describe the procedure for assisting a seller who wants to apply for the HAFA program
- List the sequence of steps and time frames involved in completing a HAFA short sale

Module 3: The SSA (Short Sale Agreement) - Detailed Discussion

Upon completion of Module 3 the student will be able to:

- Describe the complete SSA process
- Explain the provisions of the SSA
- Specify the required contract language for both listing agreements and sales contracts in a HAFA transaction
- Describe the deed-in-lieu of foreclosure process in a HAFA transaction
- Explain the commission policies in a US Treasury HAFA short sale

Module 4: The RASS (Request for Approval of Short Sale) & Alt. RASS – Detailed Discussion

Upon completion of Module 4 the student will be able to:

- Define the purposes of the RASS and Alt. RASS
- Describe the RASS and Alt. RASS process
- Explain the provisions of the RASS and Alt. RASS
- Complete the RASS or Alt. RASS for submission to the loan servicer
- Discuss the approval or disapproval process under HAFA
- Describe the general terms and conditions of a HAFA short sale

Module 5: Fannie Mae & Freddie Mac HAFA programs

Upon completion of Module 4 the student will be able to:

- List the eligibility criteria for Fannie Mae and Freddie Mac HAFA short sales
- Describe the similarities and differences between the US Treasury HAFA programs and the Fannie Mae and Freddie Mac programs
- List unique requirements of Fannie Mae's HAFA program
- List unique requirements of Freddie Mac's HAFA program
- Explain the workflow process for transactions in process, new listings and short sales that have not been pre-approved

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(as of 12/11/09)

1. What is HAFA?

- Initially announced on May 14, 2009, with guidance and standard forms issued on November 30, 2009, the program will help owners (referred to below as borrowers) who are unable to retain their home under the Home Affordable Modification Program (HAMP).
- A borrower (the current owner) may be able to avoid a foreclosure by completing a short sale or a deed-in-lieu of foreclosure (DIL) under HAFA.
- The guidance and forms released on November 30 do not apply to loans owned or guaranteed by Fannie Mae or Freddie Mac. Those enterprises will issue their own HAFA guidance and forms.

2. Who is eligible?

The borrower must meet the basic eligibility criteria for HAMP:

- Principal residence.
- 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 (November 30, 2009) 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).
- Prohibits the servicers from requiring a reduction in the real estate commission agreed upon in the listing agreement (up to 6 percent).
- Requires borrowers to be fully released from future liability for the first mortgage debt (no cash contribution, promissory note, or deficiency judgment is allowed).
- Uses standard processes, documents, and timeframes/deadlines.
- Provides financial incentives: $1,500 for borrower relocation assistance; $1,000 for servicers to cover administrative and processing costs; and up to $1,000 match for investors for allowing a total of up to $3,000 in short sale proceeds to be distributed to subordinate lien holders (on a one-for-three matching basis; up to 3% 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.

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- 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.
- 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.
- 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 permitted up to a total of 12 months).
- Within 3 business days of receiving an executed purchase offer, the borrower (or agent) 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.
- 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 must release its first mortgage lien within 10 business days (or earlier if required by state or local law) after receipt of sales proceed from a short sale or delivery of the deed in the case of a DIL. Investor must waive rights to seek deficiency judgment and may not require a promissory note for any deficiency.

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

- The guidance states that a servicer may not require a reduction in the real estate commission below the amount stated in the Short Sale Agreement.
- The SSA states that the servicer will pay the commission as stated in the listing agreement, up to 6%.
- If the servicer has retained a vendor to assist the listing broker, the vendor must be paid a specified amount from the commission.
- 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 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--$1,500, paid to the borrower at closing.
- Servicer Incentive--$1,000 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 $1,000 for allowing up to $3,000 in short sale proceeds to be paid to subordinate lien holders. Subordinate lien holders that receive HAFA incentive must agree not to pursue deficiency judgments.

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.

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- Same incentives 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.
- 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.
- 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 guidance, these FAQs, a summary, and much more information about short sales.