# NAR's Frequently Asked Questions - HAFA

(May 5, 2011)

## Treasury Department Amends HAFA Program to Increase Homeowner Eligibility

The Treasury Department has recently released several updates to the Home Affordable Foreclosure Alternatives Program (HAFA). The changes will increase the number of eligible homeowners who may participate in the program and should expedite approvals:

- HAFA requires the property to be the principal residence of the homeowner, with limited exceptions. A homeowner's reason for relocation no longer needs to be connected to employment nor be of a certain distance from the property. Homeowners may have moved up to 12 months before the date of the Short Sale Agreement (SSA), Alternative Request for Approval of Short Sale (ARASS) or Request for Deed-in-Lieu (DIL) Agreement with documentation that the property was the homeowner's principal residence prior to relocation and homeowner has not purchased a 1-4 unit property during the 12-month period prior.

- Servicers are no longer required to determine if the homeowner's total monthly mortgage payment exceeds 31% of monthly gross income. Homeowners will still be required to show a hardship. Servicers may still include a requirement in their HAFA Policies that homeowners provide updated financial information to evaluate homeowners.

- A servicer must complete and send an SSA to the homeowner no later than 45 calendar days from the date the homeowner responds to the servicer's HAFA solicitation.

- Where a homeowner submits a short sale sales contract to the servicer before receipt of a SSA, the servicer is now required to communicate approval, disapproval, or a counter offer no later than 45 calendar days after receiving an (i) executed sales contract, (ii) ARASS, and (iii) a signed Hardship Affidavit.

- If the servicer is unable to respond within 45 calendar days, the servicer must send a written status notice to the borrower on or before the 45th calendar day, with written updates every 15 calendar days thereafter, until the servicer is able to provide an SSA, written notification that the homeowner will not be offered a short sale or a written response to the ARASS.

- Within 10 business days following receipt of a request for a short sale, ARASS or DIL, the servicer must send written confirmation to the homeowner acknowledging the request.

- HAFA will no longer impose a 6% cap on payments to each subordinate mortgage/lien holder. The $6,000 aggregate limit is still in effect. Each servicer must include in its HAFA Policy how subordinate mortgage/lien holders will be paid.

- Servicers have the discretion to approve sales to non-profit organization with the stated purpose that the property will be rented or resold to the homeowner, so long as all other HAFA program requirements are met.

- The Treasury Department requires servicers to include a statement in the SSA (or ARASS form in ARASS transactions) that clarifies vendors of the servicer retained to assist the listing broker with the transaction may not be paid from the real estate commission or charged to the homeowner.

Fannie Mae and Freddie Mac are still considering whether to make these changes to their HAFA programs.

**1. What is HAFA?**

- The Home Affordable Foreclosure Alternatives Program, known as HAFA, is designed to help homeowners 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 December 28, 2010, and March 30, 2011, do not apply to loans owned or guaranteed by Fannie Mae or Freddie Mac (the housing government sponsored enterprises, or GSEs). Those enterprises have issued their own HAFA guidance and forms and are still considering whether to adopt the changes. FHA and VA are not participating in HAFA, because they have their own short sales programs.

**2. How will HAFA improve the short sales process?**

HAFA:

- Complements HAMP by providing a viable alternative for homeowners who are HAMP eligible but nevertheless unable to keep their home.

- Can use homeowner financial and hardship information already collected in connection with consideration of a loan modification under HAMP.

- Allows homeowners to receive pre-approved short sale terms before listing the property (including the minimum acceptable net proceeds and approvable closing costs).

- Requires homeowners to be fully released from future liability for all mortgage debt (no cash contribution, promissory note, or deficiency judgment is allowed). Lenders may not require contributions from either the real estate agent or homeowner as a condition for releasing its lien and releasing the homeowner from personal liability.

- Uses standard processes, documents, and timeframes/deadlines.

- Provides financial incentives: $3,000 for homeowner relocation assistance; $1,500 for servicers to cover administrative and processing costs (GSEs pay $2,200); and up to $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 (on a one-for-three matching basis).

**3. Who is eligible?**

Treasury

[Note: Servicers are no longer required to verify a homeowner's mortgage payment exceeds 31% of monthly gross income.]

The homeowner must meet the basic eligibility criteria for HAMP, other than the 31% of gross income test:

- Principal residence. The property may be vacant up to 12 months before the date of the SSA, ARASS, or DIL Agreement but only if the homeowner documents that it was their principal residence and they have not purchased another 1-4 unit property in the prior 12 month period.
- First lien must be short (more than value of the property) and have been originated before January 1, 2009.
- Mortgage must be delinquent or default must be reasonably foreseeable.
- Unpaid principal balance must be no more than $729,750 (higher limits for 2 to 4 unit dwellings).

Fannie
Same as Treasury, except:

- Homeowners are ineligible if they have:
  - The ability to make mortgage payments, but choose not to do so (strategic default).
  - Substantial unencumbered assets or significant cash reserves equal to or exceeding 3 times homeowner's total monthly mortgage payment or $5,000, whichever is greater.
  - High surplus income.
- Homeowner cannot be within 60 days of foreclosure sale date without Fannie approval.

Freddie
Same as Treasury, except:

- Homeowner must be more than 60 days delinquent. [NAR continues to urge Freddie Mac to drop this requirement.]
- Homeowner's cash reserves must be less than the greater of $5,000 or 3 times the current monthly payment.

**4. What is the effect of foreclosure on HAFA eligibility? (See, also, Question #15)**

Treasury

- Foreclosure may be initiated while a homeowner is considered for HAFA eligibility. A servicer must use its written policy that complies with investor guidelines to determine if a homeowner will be considered for the HAFA program. Some investor guidelines may dictate that if a foreclosure sale date has already been set, the homeowner will not be considered for a short sale.

Fannie

- Servicers must not consider a homeowner who requests the HAFA program, or solicit a homeowner who is unable to retain their home with the help of a HAMP loan modification, without prior written consent by Fannie if:

- Foreclosure sale is scheduled to be held within 60 days.
- Foreclosure could be initiated and reasonably expected to result in a foreclosure sale being held within 60 days.
- The mortgage loan is secured by a property in Florida on which foreclosure proceedings are pending, judgment has been obtained, or a hearing on summary judgment or trial is scheduled within 60 days.

Freddie

- An eligible, qualified homeowner must be considered for HAFA before the mortgage is referred to foreclosure.

**5. How is the program being implemented?**

Treasury

- Chapter 4 of the Making Home Affordable Handbook 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 homeowner motivation and cooperation.

GSEs

- HAFA must be implemented by all servicers for all conventional mortgage loans that are held or guaranteed by Fannie and Freddie with some exceptions. Servicers must develop written procedures that are consistent with the GSEs policies.
- For links to the Making Home Affordable Handbook and the GSE guidelines, go to realtor.org/shortsales.

**6. What forms are used to participate in the program?**

Treasury and Fannie

- Short Sale Agreement (SSA). The servicer will send this to the homeowner after determining the homeowner is interested in a short sale and the property qualifies. It informs the homeowner how the program works and the conditions that apply.
- Request for Approval of Short Sale (RASS). After the homeowner contracts to sell the property, the homeowner submits a RASS to the servicer within 3 business days for approval.
- Alternative RASS (ARASS). If the homeowner 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 homeowner for a loan modification.

Freddie

- Same as Treasury and Fannie except there is no Alternative RASS form. If a homeowner already has an executed sales contract, the rules for a Freddie Classic Short Sale apply instead of HAFA.
- RASS: Restructured by breaking out the approval and disapproval pages as separate forms.

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

- Homeowner solicitation and response.
- Assess expected recovery through foreclosure and disposition compared to a HAFA short sale or DIL.
- Use of homeowner financial and hardship information from HAMP if homeowner had been previously evaluated. Each servicer may include a requirement in its HAFA Policy that homeowners provide updated financial information to evaluate the homeowner, but this is not required.
- Property valuation.
- Review of title.
- Homeowner notice if short sale or DIL not available (to homeowners that have expressed interest in HAFA).

**8. What are the solicitation and eligibility timelines for HAFA?**

- Based on a servicer's written policy, the servicer must consider every potentially eligible homeowner for HAFA.
- Servicers must consider HAMP-eligible homeowners for HAFA within 30 calendar days after the homeowner does at least one of the following [Note: Fannie Mae has the same trigger events without a deadline.]
  - Does not qualify for a HAMP trial period plan.
  - Does not successfully complete a HAMP trial period plan.
  - Misses at least two consecutive payments if the loan was modified under HAMP.
  - Requests a short sale or DIL.
- If a servicer has not already discussed a short sale or DIL with the homeowner, it must notify the homeowner in writing of these options and give the homeowner 14 calendar days to respond, orally or in writing. If the homeowner does not respond, this lack of action ends the servicer's duty to give a HAFA offer. Additionally, if the servicer determines that a homeowner who was not previously evaluated for HAMP meets the HAMP eligibility requirements, the servicer may notify the homeowner of the availability of HAMP in conjunction with the servicer's consideration of the homeowner for HAFA.

<u>Treasury</u>

- If the servicer determines the homeowner appears to qualify for HAFA, it must complete and send the homeowner a Short Sale Agreement no later than 45 calendar days from the date the homeowner requests a short sale or DIL or responds to the servicer's notification. The homeowner has 14 calendar days from the date of the SSA to sign and return it to the servicer.

- Where a homeowner submits a short sale sales contract to the servicer before receipt of a SSA, the servicer is now required to communicate approval, disapproval, or a counter offer no later than 45 calendar days after receiving an (i) executed sales contract, (ii) ARASS, and (iii) a signed Hardship Affidavit.

- If the servicer is unable to respond within 45 calendar days, the servicer must send a written status notice to the borrower on or before the 45th calendar day, with written updates every 15 calendar days thereafter, until the servicer is able to provide an SSA, written notification that the homeowner will not be offered a short sale or a written response to the ARASS.

- Within 10 business days following receipt of a request for a short sale, ARASS or DIL, the servicer must send written confirmation to the homeowner acknowledging the request.

**9. What are the transaction timelines?**

Treasury

- The SSA must give the homeowner 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 homeowner.
- Within 3 business days of receiving an executed purchase offer, the homeowner (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 homeowner with reasons for denial.

GSE

- Same as Treasury except extension requests sent to Freddie Mac must be submitted no later than 15 days prior to the expiration of the initial SSA term. Fannie Mae will consider extensions but it must not otherwise delay a foreclosure sale.

**10. What are the deadlines for closings and releasing the mortgage lien?**

Treasury

- 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 homeowner agrees.

Fannie

- Same as Treasury, except closing must be no later than 60 days after the contract execution or approval, whichever occurs later. Extension must be approved by Fannie.

Freddie

- Same as Fannie, except closing must not be later than 60 calendar days from date of contract without the consent of Freddie.

Treasury and GSEs

- 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.

**11. What are the HAFA rules on real estate commissions?**

- Under the Treasury Department's HAFA guidelines for non-Fannie Mae/Freddie Mac loans, commission policy is dependent on when the sales contract is executed.
    - If a sales contract has not been executed, the servicer specifies the amount of commission in the Short Sale Agreement (SSA) as a "reasonable and customary" closing cost not to exceed 6 percent of the contract sales price. The servicer transmits the SSA to the homeowner for consideration of its terms. The SSA requires the homeowner to list the home with a real estate broker. The homeowner and the prospective real estate broker may negotiate with the servicer on the terms of the SSA. If the homeowner and the listing broker decide to participate, both must sign the SSA, agreeing to its terms.
    - There is a different commission policy for non-GSE loans if the homeowner 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 ARASS. 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 an executed sales contract, so it is not appropriate for the servicer to reduce the commission below the already negotiated amount after the work is done.

- The GSEs' HAFA and proprietary programs provide that servicers will pay a commission as contracted in the listing agreement, up to 6 percent of the final sale price.

- At the urging of NAR, in March 2010, 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 by the servicer to assist the listing broker. The December 28, 2010, update directs servicers to include a statement, within the SSA or ARASS forms, that any associated vendor fees will not be charged to the homeowner or deducted from the real estate commission.

- Neither buyers nor homeowners 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. A broker or agent may only earn a commission, on either the buy or sell side, if the represented party is unrelated and unaffiliated.

- Under HAFA, an agent is not permitted to rebate any funds or commission to either the homeowner or the buyer from the sale of the property.

**12. What are the representation rules on HAFA transactions?**

- The sale of the property must be an "arm's length" transaction between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise.
- The seller may not list the property with anyone with whom they are related or have a close personal or business relationship, nor may the buyer be represented by such a person. A real estate professional may not list or purchase the property using his or her brokerage.

**13. What are the required clauses for the listing agreement?**

- Cancellation clause—homeowner 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.

**14. May junior lien holders seek additional contributions from the real estate agent or the homeowner as a condition for releasing the lien and the homeowner from personal liability?**

- No. The $6,000 limit to pay off subordinate lien holders is a hard cap. The Treasury Department and GSE guidelines state that junior lien holders may not receive additional contributions. Any payments to junior lien holders must be shown on the HUD-1, as required by RESPA.

**15. Do servicers have to treat similarly situated homeowners the same?**

- Yes, but not all homeowners 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 homeowner motivation and cooperation.

<u>GSEs</u>

- Servicers must evaluate all homeowners with loans that are held or guaranteed by the GSEs with some exceptions.

**16. Can the servicer <u>complete</u> a foreclosure during the HAFA process? (See, also, Question #4.)**

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

- While determining homeowner'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 homeowner seeks to sell).
- Pending the transfer of ownership based on an approved sales contract.
- Pending transfer of ownership via a DIL by the date specified in the SSA or DIL Agreement.

**17. 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 homeowner.
- The homeowner 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.

**18. What else should I know?**

- Servicers have the discretion to approve sales to non-profit organization with the stated purpose that the property will be rented or resold to the homeowner, so long as all other HAFA program requirements are met.
- 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 (no "flipping").

**19. When does the program end?**

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

**20. Where can I find the guidance and forms?**

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

The Making Home Affordable (MHA) Handbook is a consolidated reference guide outlining the requirements and guidelines for the MHA Program for non-GSE mortgages. The handbook can be accessed at [https://www.hmpadmin.com/portal/programs/guidance.jsp](https://www.hmpadmin.com/portal/programs/guidance.jsp)