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HAFA

# Guide to Understanding HAFA

While there are loan modification and other programs to help families, these don't always succeed. Many who are at risk of losing their homes through foreclosure may be able to receive help through the Home Affordable Foreclosure Alternatives Program or HAFA, established by the Treasury Department.

HAFA is primarily designed for borrowers (no longer just owner occupants) with a documented hardship who do not qualify for a loan modification under the Home Affordable Modification Program (HAMP) or other program.

Under HAFA, borrowers 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 first mortgage) or by transferring title to the current owner of the mortgage through a "deed-in-lieu of foreclosure"(DIL). The program uses uniform processes, documents, and timelines/deadlines. Fannie Mae and Freddie Mac (the housing government sponsored enterprises, or GSEs) have issued similar guidelines for their own versions of the program.

The FHA, VA, and Rural Housing Service have their own short sale procedures and are not participating in HAFA.

## Terms to know

**Servicer:** A servicer represents the mortgage investor that owns the borrower's mortgage. Ordinarily borrowers send their monthly payments to the servicer and the servicer collects their payments and maintains financial records related to the loans. If the borrower is late, the servicer works with the borrower to resolve the problem, if possible.
**Mortgage Investor:** The current owner of the mortgage (also referred to as the lender).
**Short Sale:** In a short sale, the servicer (on behalf of the investor/owner of the mortgage) allows the borrower to list and sell the property even if the net proceeds from the sale turn out to be less than the remaining balance due on the loan.
**Deed-in-Lieu of Foreclosure (DIL):** Generally, if the homeowner makes a good faith effort to sell the property but is not successful, a servicer may consider a deed-in-lieu of foreclosure on behalf of the investor/owner of the mortgage. With a deed-in-lieu, the homeowner voluntarily transfers ownership of the property, if the title is free and clear of other mortgages, liens, and encumbrances. Under HAFA, homeowners will have no further responsibility to the owner of the mortgage.

## Key facts about HAFA

- Provides financial incentives:
  - $3,000 for borrower or tenant relocation assistance.
  - $1,500 (GSEs pay $2,200) for mortgage servicers to cover administrative and processing costs.
  - up to a $2,000 match for the owner of the first mortgage for allowing a total of up to $8,500 in short sale proceeds to be distributed to subordinate lien holders in order of priority (on a one-for-three matching basis).
- Requires each servicer participating in HAMP to implement HAFA in accordance with its own written policy, consistent with mortgage investor requirements. The policy may include factors such as the severity of the potential loss, local markets, timing of pending foreclosure actions, borrower motivation and cooperation, customary transaction costs, and the amount needed to release any subordinate liens.

## Typical HAFA Process Timeline

### CONSIDERATION WITHOUT BORROWER REQUEST

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| **SERVICER RESPONSIBILITIES** | The servicer must consider a borrower for HAFA within **30 calendar days after** the borrower:<br><br>1. Does not qualify for a trial period under HAMP.<br><br>2. Does not successfully complete the HAMP trial period.<br><br>3. Misses at least two consecutive payments if the loan was modified under HAMP. |

## Who is eligible for HAFA?

To qualify for HAFA, a borrower (HAFA is no longer limited to principal residences) must meet these basic eligibility requirements:
• The first lien (the first loan on the home) must have been originated before Jan. 1, 2009. The remaining balance must be more than the value of the property.
• The mortgage must be delinquent or default must be reasonably foreseeable.
• The mortgage loan must be secured by a 1- to 4-unit property that has not been condemned.
• The current unpaid principal balance may not be more than $729,750 (higher limits for 2- to 4-unit dwellings).
• The borrower must document a financial hardship.
• The borrower must be a “natural person” (not a corporation, partnership, or other business entity).

Even if a homeowner meets these threshold requirements, the servicer must consider the particular circumstances and mortgage investor policies. Not everyone will qualify.

## What else should you know?

• 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. However, in certain circumstances, a nonprofit may purchase the property to rent or resell it to the seller.

• 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.

• Neither the seller nor the buyer may receive any funds or commissions from the sale of the property. They may not have any agreements to receive a portion of the commission or the sales price after closing.

• Homeowners must be fully released by the lender(s) and any mortgage insurer(s) from future liability for all mortgage debt. No cash contribution, promissory note, or deficiency judgment is allowed. A lien holder may not require the real estate agent to agree to a lower commission as a condition for releasing its lien or releasing the borrower from personal liability.

• The amount of debt forgiven might be treated as income for tax purposes. Under a law now scheduled to expire 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 on the status of the loan every month. There will be a negative effect on credit scores for delinquent borrowers and short sales.

• A buyer may not reconvey the property for 90 days (no “flipping”).

• HAFA allows for a broker commission of up to 6 percent to be paid out of sale proceeds as a “reasonable and customary” closing cost as specified by the servicer in the Short Sale Agreement (SSA). HAFA also prohibits the payment of a servicer’s vendors by the borrower or from the real estate commission. The GSEs’ HAFA and proprietary short sale programs provide that servicers will pay a commission as contracted in the listing agreement, but not more than 6 percent of the final sale price.

• The program sunsets on Dec. 31, 2013. Closing must occur before Oct. 1, 2014.

## Additional resources

NAR encourages homeowners to call their servicers to tell them they are interested in this program and find out if they qualify. They may also get free advice from HUD- approved housing counselors. The toll-free number is 888-995-HOPE. Counselors can answer homeowners’ questions about HAMP, HAFA, and other programs. You can find additional NAR resources in our short sales section as well.

HouseLogic (NAR’s consumer web site)

Making Home Affordable

Fannie Mae

Freddie Mac

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