**Announcement SVC-2010-07** **June 1, 2010**
**(*With corrections on Pages 17 and 21)**

# Introduction of Fannie Mae's Home Affordable Foreclosure Alternatives Program

## Introduction

In Announcement 09-05R, *Reissuance of the Introduction of the Home Affordable Modification Program, HomeSaver Forbearance™, and New Workout Hierarchy,* Announcement 09-31, *Updates and Clarifications to the Home Affordable Modification Program*, and in Announcement SVC-2010-03, *Home Affordable Modification Program – Program Update and Resolution of Active Trial Modifications*, Fannie Mae announced the eligibility, underwriting and servicing requirements for the Home Affordable Modification Program (HAMP). Under HAMP, servicers use a uniform loan modification process to provide eligible borrowers with sustainable monthly payments for first lien mortgage loans.

On November 30, 2009, the Treasury Department (Treasury) released policy guidance related to the Home Affordable Foreclosure Alternatives (HAFA) Program to mitigate the impact of foreclosure on borrowers eligible for but unsuccessful under HAMP. This policy guidance was supplemented by the reissuance of the Treasury's Supplemental Directive 09-09 on March 26, 2010. HAFA is part of HAMP and provides financial incentives to servicers and borrowers who utilize a short sale (referred to in the *Servicing Guide* as a "preforeclosure sale") or a deed-in-lieu of foreclosure (DIL) to avoid a foreclosure on an eligible loan under HAMP. Both of these foreclosure alternatives reduce the need for potentially lengthy and expensive foreclosure proceedings. The options help preserve the condition and value of the property by minimizing the time a property is vacant and subject to vandalism and deterioration. In addition, these options generally provide a substantially better outcome than a foreclosure sale for borrowers, investors, and communities.

The Fannie Mae HAFA program simplifies and streamlines the use of short sales and DIL options by incorporating the following unique features:

- Complements HAMP by providing viable alternatives for borrowers who are HAMP eligible (including borrowers facing imminent default);
- Utilizes borrower financial and hardship information collected in conjunction with HAMP, eliminating the need for additional eligibility analysis;
- Allows the borrower to receive pre-approved short sale terms prior to the property listing;
- Prohibits the servicer from requiring, as a condition of approving the short sale, a reduction in the real estate commission agreed upon in the listing agreement;
- Requires that borrowers be fully released from future liability for the debt;
- Uses standard processes, documents, and timeframes;
- Provides financial incentives to borrowers and servicers.

The Fannie Mae HAFA program described in this Announcement will be added as a new section to Part VII of the *Servicing Guide.*
This Announcement provides guidance to Fannie Mae servicers for adoption and implementation of HAFA for Fannie Mae loans and covers the following topics:

- Effective Dates
- Foreclosure Prevention Alternatives
- Eligibility
- Standard Documents
- Borrower Solicitation and Response
- Determining the Estimated Sales Price of the Property
- Review of Title
- Short Sale Process
- DIL Offer
- Use of Electronic Records
- Temporary Suspension of Foreclosure
- Payments Pending Sale or DIL
- Release of First Mortgage Lien
- Mortgage Insurance
- Reporting Requirements
- Fees and Incentive Compensation
- Record Retention

## Effective Dates

All servicers must implement Fannie Mae's HAFA for all conventional mortgage loans that are held in Fannie Mae's portfolio, that are part of an MBS pool that has the special servicing option, or that are part of a shared-risk MBS pool for which Fannie Mae markets the acquired property.

Servicers are encouraged to offer HAFA for eligible mortgage loans that are part of a regular servicing option MBS pool or part of a shared-risk special servicing option MBS pool for which the servicer's shared risk liability has not expired. If a servicer decides to use HAFA for such mortgage loans, the servicer must follow the Treasury's HAFA Program, obtain any necessary third-party approvals, and comply with the reporting requirements of this Announcement. Fannie Mae is not responsible for any losses or expenses the servicer incurs and will not pay borrower or servicer incentive fees for those mortgage loans which are not considered Fannie Mae HAFA mortgage loans.

Servicers are encouraged to adapt their processes to implement these Fannie Mae HAFA policies and procedures immediately; however, servicers are required to implement these policies and procedures no later than August 1, 2010, for borrowers who become eligible for HAFA on or after that date. A borrower may be accepted into Fannie Mae's HAFA program if a *HAFA Short Sale Agreement* (Form 184) or *HAFA DIL Agreement* (Form 186) is fully executed by the borrower and received by the servicer on or before December 31, 2012.

Servicers must develop written procedures that are consistent with the policies described in this Announcement.

New incentives identified in this Announcement are applicable only for Fannie Mae HAFA short sales and DILs and are effective with cases closed in HomeSaver Solutions® Network (HSSN) after the date of this Announcement. (Refer to the Fees and Incentive Compensation section below for further details)

## Foreclosure Prevention Alternatives

In a short sale, the servicer releases its lien on the mortgaged property upon receipt of the net proceeds of the sale even though the sale proceeds are less than the total amount due on the related mortgage loan. A short sale involving a Fannie Mae loan must be an arm's-length transaction with all proceeds (net of allowable transaction costs as described below) applied to the mortgage loan payoff in full satisfaction of the entire first lien mortgage debt.

If the borrower actively markets the property, but is unable to sell it within the agreed-upon marketing period or the *HAFA Short Sale Agreement* is terminated prior to its expiration as provided below, a servicer must then immediately consider a DIL. With a DIL, the borrower voluntarily transfers the property to Fannie Mae in full satisfaction of the entire first lien mortgage debt, provided that the borrower can deliver clear and marketable title.

Borrowers who are eligible for a DIL and who indicate interest in remaining in the property as a tenant must also be considered for the Deed-for-Lease™ Program (D4L), which allows the borrower the opportunity to lease the property after a DIL is completed.

## Eligibility

### HAFA Eligibility Considerations

Servicers may not consider a borrower for HAFA until the borrower has been evaluated for a HAMP modification (including, but not limited to, providing all required income documentation) in accordance with the eligibility criteria for HAMP as outlined in the *Servicing Guide*, Part VII, Section 610.01: HAMP Eligibility, and any supplemental HAMP policy guidance. Once a borrower has met all of the eligibility criteria for HAMP, the borrower must be considered for a HAFA short sale or DIL (after all home retention options have been considered) if the borrower:

- was not offered a trial modification due to inability to meet the HAMP qualifications (for example, did not pass the net present value (NPV) evaluation or meet the target monthly mortgage payment ratio based on verified income);
- failed to complete the trial period successfully;
- became two consecutive payments (31 or more days) delinquent on the modified mortgage loan; or
- requests a short sale or DIL.

Without Fannie Mae's prior written consent, a servicer must not consider or solicit a borrower for a Fannie Mae HAFA short sale or DIL with respect to a mortgage loan if:

- a foreclosure sale is scheduled to be held within 60 days of the borrower's request for a Fannie Mae HAFA short sale or DIL, or a determination that a borrower is ineligible for HAMP; or

- a foreclosure proceeding could be initiated and reasonably be expected to result in a foreclosure sale being held within 60 days of the borrower's request for a Fannie Mae HAFA short sale or DIL, or a determination that a borrower is ineligible for HAMP; or
- 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.

A borrower whose request for a HAMP modification was not previously evaluated or not completely evaluated due to incomplete or unverified information may not be considered for a Fannie Mae HAFA short sale or DIL until HAMP consideration is completed, eligibility verified, and a determination has been made as to whether the borrower qualifies for HAMP.

The servicer must notify the borrower verbally or in writing of the availability of a HAMP modification and allow the borrower 14 calendar days from the date of the notification to contact the servicer by verbal or written communication and request consideration for a HAMP modification. If the borrower does not wish to be considered for a modification, the servicer may consider a Fannie Mae HAFA short sale or DIL in accordance with this Announcement. A borrower may not participate simultaneously in both a trial period plan under HAMP and a Fannie Mae HAFA short sale or DIL

If a borrower was evaluated for HAMP based on verbal financial information, the servicer may send the applicable *HAFA Short Sale Agreement* or *HAFA DIL Agreement* to the borrower and require that the borrower return the required HAMP financial documentation along with the signed Hardship Affidavit (or equivalent) and applicable Agreement.

**Note:** An exception to the HAMP eligibility criteria regarding property occupancy allows a borrower to be eligible for a Fannie Mae HAFA if the borrower provides evidence that he or she was required to relocate at least 100 miles from the mortgaged property to accept new employment or was transferred by an existing employer and has not purchased a one- to four-unit property within 90 days prior to the date of the *HAFA Short Sale Agreement* or *HAFA DIL Agreement.*

Whether a borrower is eligible for a Fannie Mae HAFA short sale or DIL also depends upon the evaluation of the borrower's financial condition described below. Cash contributions or promissory notes are not permitted under HAFA; therefore, if a servicer or mortgage insurer determines that a borrower has an ability to contribute meaningfully to reducing the potential loss on the mortgage loan, the borrower is not eligible for HAFA and may only obtain a short sale or DIL under the requirements of other Fannie Mae short sale or DIL alternatives (detailed in the *Servicing Guide*, Part VII, Chapter 6: Foreclosure Prevention Alternatives, and subsequent announcements).

## Evaluation of the Borrower's Financial Condition

The servicer must evaluate the borrower's financial condition for the Fannie Mae HAFA program using the guidelines noted below, to determine whether the borrower has an ability to contribute meaningfully to reducing the potential loss on the mortgage loan. The servicer must determine if the borrower has:

- the ability to continue making the mortgage payments but chooses not to do so; or

- substantial unencumbered assets or significant cash reserves equal to or exceeding three times the borrower's total monthly mortgage payment (including tax and insurance payments) or $5,000, whichever is greater; or
- high surplus income.

When a Fannie Mae HAFA short sale or DIL is not available to a borrower who requested consideration of the foreclosure alternative, the servicer must communicate this decision in writing to the borrower. The notice must explain the reason why a short sale or DIL under the Fannie Mae HAFA program cannot be offered, provide a toll-free telephone number that the borrower may call to discuss the decision, and otherwise comply with the notice requirements of the *Servicing Guide*, Part VII, Section 610.04.02: Borrower Notices.

### DIL Eligibility Considerations

Generally, for a borrower to be eligible for a Fannie Mae HAFA DIL, the mortgaged property must have been listed for sale at market value for 120 days or more. A servicer may waive the requirement that the property securing the mortgage loan previously be listed for sale in cases involving:

- a serious illness or disability,
- a deceased borrower or co-borrower,
- a borrower or co-borrower who has been relocated or who has been deployed by the military,
- a determination that local market conditions would impede a sale of the property,
- a borrower who demonstrates an unwillingness or inability to maintain or market the property during the listing period, or
- a borrower who has expressed an interest in D4L.

The servicer must obtain documentation to support these exceptions.

For a borrower to be eligible for a DIL under the Fannie Mae HAFA program, the following criteria must be met:

- Acceptance of the DIL will enable Fannie Mae to acquire the property earlier than through a foreclosure action.
- The borrower must execute the DIL no less than 30 days prior to a scheduled foreclosure sale; otherwise, prior written Fannie Mae approval is required.
- The borrower must be willing and able to vacate the property within the time specified in the *HAFA DIL Agreement* and leave the property in good and habitable condition (unless the property and borrower are approved for D4L and the borrower plans to become a tenant occupant).

## Standard Documents

For Fannie Mae HAFA short sale and DIL transactions, servicers must use the following documents available on eFannieMae.com:

- *HAFA Initial Solicitation Letter* (Form 183), which notifies a borrower of the availability of the short sale and DIL options.

- *HAFA Short Sale Agreement* (Form 184), which defines the terms and conditions of a short sale, including the following:
  - listing agreement, maximum real estate commissions and marketing terms;
  - servicer and borrower obligations and duties;
  - acknowledgement of risks, conditions, and contingencies; and
  - terms for early termination.
- *HAFA Request for Approval of Short Sale* ("RASS") (Form 184A), which defines the terms and conditions of a short sale transaction acceptable to the servicer and, together with the sales contract, provides settlement instructions to the borrower's settlement agent. The servicer will attach the RASS as an exhibit to the *HAFA Short Sale Agreement* pre-populated with the servicer contact information, property address and the servicer's loan number.
- *HAFA Request for Approval of Short Sale Without Short Sale Agreement* (the "Alternative RASS", Form 185), which must be used when a borrower submits an executed sales contract for approval before the servicer and borrower have entered into a *HAFA Short Sale Agreement.*
- *HAFA DIL Agreement* (Form 186), which defines the terms and conditions for a DIL.

Servicers must revise the documents as necessary to comply with applicable laws and may revise the documents to comply with local real estate practice. Servicers may also customize the forms with servicer specific logos.

All parties who signed the original note or security instrument must provide verified financial information and all parties who signed the original note or security instrument or their duly authorized representative(s) must execute the short sale or DIL documents, with the following exceptions:

- A borrower or co-borrower is deceased.
- A borrower and co-borrower are divorced and the property has been awarded to one borrower in the divorce decree. (The non-occupying borrower who has relinquished or transferred property rights is not required to provide income documentation or execute the short sale or DIL documents.)
- A borrower and co-borrower are unmarried and one has relinquished or transferred all rights to the mortgaged property through a recorded deed or other valid transfer document. (The non-occupying borrower who has relinquished or transferred property rights is not required to provide income documentation or execute the short sale or DIL documents.)

## Borrower Solicitation and Response

Borrowers who are determined to be eligible for the Fannie Mae HAFA program (as defined in the "Eligibility" section above) must be notified in writing of the availability of the short sale and DIL options within 14 calendar days after the eligibility determination using the *HAFA Initial Solicitation Letter.*

If the borrower fails to contact the servicer within 14 calendar days from the date of the notification or at any time indicates that he or she is not interested in the options, the servicer has no further obligation to extend a Fannie Mae HAFA short sale or DIL offer, and the servicer must continue foreclosure action, where appropriate.

For borrowers who respond and express interest in a Fannie Mae HAFA short sale or DIL, the servicer must conduct the financial analysis required above and evaluate the borrower for a Fannie Mae HAFA short sale or DIL offer, based on the results of the financial analysis.

### Borrowers in Active Bankruptcy Cases

A borrower in an active Chapter 7 or Chapter 13 bankruptcy case must be considered for a Fannie Mae HAFA short sale or DIL if the borrower, borrower's counsel, or bankruptcy trustee submits a request to the servicer. However, the servicer is not required to solicit borrowers in active bankruptcy cases for shorts sales or DILs. With the borrower's permission, a bankruptcy trustee may contact the servicer to request a short sale or DIL. The servicer and its counsel must work with the borrower or borrower's counsel to obtain any court and/or trustee approvals required in accordance with local court rules and procedures. The servicer must extend the required time frames outlined in this Announcement as necessary to accommodate delays in obtaining bankruptcy court approvals or receiving any periodic payment when made to a bankruptcy trustee.

## Determining the Estimated Sales Price of the Property

### *Servicing Guide,* Part VII, Section 604.03: Determining Market Value of Property, and Section 606: Deeds-in-Lieu of Foreclosure

As soon as a borrower is determined to be eligible for a Fannie Mae HAFA short sale or DIL and has demonstrated a willingness to participate, the servicer must take the necessary steps to determine the market value of the mortgaged property. Effective on the date of the servicer's implementation of the Fannie Mae HAFA program on or before August 1, 2010, Fannie Mae will require a broker price opinion (BPO) based on an interior and exterior inspection of the property or, if licensing requirements in the state dictate use of an appraisal for these purposes, an appraisal (performed in accordance with the Uniform Standards of Professional Appraisal Practice or USPAP).

The BPO (or appraisal, if required) must be dated within 90 calendar days of the date the relevant HAFA Agreement is executed by the servicer. If the servicer obtains a value within 90 days of signing the *HAFA Short Sale Agreement*, the servicer need not obtain a subsequent value in connection with any resulting DIL. Fannie Mae will reimburse the servicer for the cost of obtaining a BPO or, where required, an appraisal.

Fannie Mae has established a network of vendors that all servicers must use for obtaining BPOs (and appraisals, when required). The vendor list is available on eFannieMae.com with the effective date on which each vendor is authorized to receive referrals for mortgage loans owned or securitized by Fannie Mae. Effective on or before August 1, 2010 (depending on the servicer's implementation date of Fannie Mae HAFA), servicers must utilize a vendor from Fannie Mae's network to obtain a BPO (or appraisal, if required) in connection with the evaluation of a HAFA short sale or DIL.

**Note:** If a servicer previously obtained an appraisal in conjunction with a mortgage loan that is eligible for a HAFA short sale, the servicer must obtain a BPO or appraisal through Fannie Mae's vendor without regard to the age of the appraisal in order to obtain the Minimum Acceptable Net Proceeds (MANP) from Fannie Mae. The MANP is the baseline value to be used by the servicer to establish a list price that is reflective of current market conditions.

The vendor will provide the results of the BPO (or appraisal, if required) to the servicer as well as directly to Fannie Mae. Fannie Mae will review the estimated sales price rendered by the BPO (or market value as indicated by an appraisal) to determine whether it is acceptable. Servicers will have access to the results of Fannie Mae's review through HSSN via the Asset Management Network on eFannieMae.com. For more information on how to access and use this new functionality in HSSN, refer to eFannieMae.com.

If a short sale is requested, the information provided will include the MANP that Fannie Mae will accept as a short payoff of the mortgage loan or a request to the servicer to obtain a second BPO (or appraisal) from the vendor. Fannie Mae expects that a servicer will develop a process for determining a sales price based on the current market conditions of the property location so as to facilitate a sale within the specified marketing period. The servicer must establish a list price that is greater than the MANP.

## Review of Title

The servicer must review readily available information provided by the borrower, the borrower's credit report, the mortgage loan file, and other sources identifying subordinate liens and other claims on title to determine if the borrower will be able to deliver marketable title to a prospective purchaser or Fannie Mae. The servicer may, in its discretion, order a title search or preliminary title report for a short sale. For a DIL, the servicer must obtain all information about any liens, impediments, or potential title defects or other matters that may impede a sale or the acceptance of a DIL; therefore, a title insurance policy is required. The amount of title insurance coverage must be based on the estimated sales price of the property as determined by a BPO or appraisal obtained in connection with the DIL. Fannie Mae will reimburse the servicer for allowable costs for the title insurance policy.

## Short Sale Process

### *Servicing Guide,* Part VII, Section 604: Preforeclosure Sales

### Servicer Duties and Responsibilities

The short sale process requires that the servicer actively oversee the sale of the mortgaged property by communicating with and providing instruction to the listing agent. At a minimum, the servicer's duties and responsibilities are as follows:

- establish a list price that reflects current market conditions to facilitate a sale within the specified marketing period;
- ensure the listing agent's marketing plan includes appropriate methods for property exposure, including a "For Sale" sign, Multiple Listing Service(s), flyers, print ads, open houses as well as appropriate usage of the internet;
- obtain monthly feedback from the listing agent through a statistical and narrative marketing update (providing, at a minimum, the number of showings and prospective buyer feedback on price and property condition);
- obtain monthly geographical comparables from the listing agent to determine whether the local market conditions have changed;
- make adjustments to the list price as necessary (within the limitations of the pre-established MANP);

- review each sales contract in detail to verify that the contract sales price and terms comply with the *HAFA Short Sale Agreement* and this Announcement;
- work with the title company to resolve any issues that may delay the closing;
- provide instructions to the title company regarding closing of the transaction in compliance with the *HAFA Short Sale Agreement*;
- review the HUD-1 Settlement Statement for accuracy within 48 hours of closing; and
- ensure the sales proceeds are received on a timely basis.

Servicers must also comply with any other directives that Fannie Mae may provide.

### Minimum Acceptable Net Proceeds

Prior to execution of the *HAFA Short Sale Agreement* (or approval of a sales contract if no *HAFA Short Sale Agreement* is executed), the servicer must document Fannie Mae's MANP in the servicing file. The servicer must not increase the MANP requirement following execution of the *HAFA Short Sale Agreement*. The MANP must be kept confidential and must not be shared with interested parties to the transaction (for example, the buyer, seller, or real estate agents).

### Allowable Short Sale Transaction Costs

The servicer must specify in the *HAFA Short Sale Agreement* the transaction costs which may be deducted from the contract sales price. Allowable transaction costs typically include:

- real estate sales commission customary for the market. The servicer may not require that the commission be reduced to less than 6 percent of the sales price of the property;
- real estate taxes and other assessments prorated to the date of closing;
- local and state transfer taxes and stamps;
- title and settlement charges typically paid by the seller;
- seller's attorney fees for settlement services typically provided by a title or escrow company;
- wood-destroying pest inspections and treatment, when required by local law or custom;
- homeowners' or condominium association fees that are past due, if applicable.

Allowable transaction costs also include any amounts authorized by Fannie Mae.

Fees paid to a third party to negotiate a short sale with the servicer (commonly referred to as "short sale negotiation fees" or "short sale processing fees") must not be deducted from the sales proceeds or charged to the borrower. Additionally, the servicer, its agents, or any outsourcing firm it employs must not charge (either directly or indirectly) any outsourcing fee, short sale negotiation fee, or similar fee in connection with any Fannie Mae loan.

### HAFA Short Sale Agreement

The servicer will prepare and send to the borrower a *HAFA Short Sale Agreement*, including Exhibit A1, *HAFA Request for Approval of Short Sale* (RASS), pre-populated with contact information for the servicer, the property address and the servicer's loan number no later than 14 calendar days after the later to occur:

- the servicer's determination that a borrower meets the basic eligibility criteria described in this Announcement and,
- Fannie Mae's communication of the MANP to the servicer.

The *HAFA Short Sale Agreement* effective date is the date that the *HAFA Short Sale Agreement* is mailed to the borrower. The servicer must instruct the borrower and listing agent to sign and return the *HAFA Short Sale Agreement*, together with all other required documentation within 14 calendar days of the *HAFA Short Sale Agreement* effective date.

The servicer may, at its discretion, consider the offer of a *HAFA Short Sale Agreement* to have expired at the end of 14 calendar days if the borrower has not submitted:

- the fully-executed *HAFA Short Sale Agreement*,
- a copy of the real estate broker listing agreement, and
- information concerning any other liens.

If the borrower indicates an interest in proceeding with a Fannie Mae HAFA short sale or DIL, but the borrower's submission is incomplete, the servicer may work with the borrower and listing agent to complete the submission for up to 10 calendar days after the expiration of the offer of a *HAFA Short Sale Agreement.*

The minimum marketing period for a property subject to the *HAFA Short Sale Agreement* must be no less than 120 calendar days from the *HAFA Short Sale Agreement* effective date but may be longer subject to Fannie Mae's prior written approval and the agreement of the servicer and borrower, provided any extension will not otherwise delay a foreclosure sale.

The servicer may terminate the *HAFA Short Sale Agreement* before its expiration due to any of the following events:

- the borrower's financial condition significantly improves, the borrower qualifies for a loan modification, or the borrower brings the mortgage loan current or pays it off in full;
- the borrower or listing agent fails to act in good faith in listing, marketing or closing the short sale, or otherwise fails to abide by the terms of the *HAFA Short Sale Agreement*;
- a significant change occurs in the property's condition or value;
- the borrower files for bankruptcy and the bankruptcy court declines to approve the *HAFA Short Sale Agreement;*
- litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance;
- there is evidence of fraud or misrepresentation; or
- the borrower fails to make the monthly payment required under the *HAFA Short Sale Agreement,* if applicable.

The borrower is not required to sign a *HAFA Short Sale Agreement* if the property is already subject to an existing listing agreement. If the servicer becomes aware that the property is subject to a listing agreement or the borrower presents a contract or offer, the servicer must determine the eligibility of the borrower as described in the Eligibility section, follow the steps as previously outlined to establish the MANP, and, if applicable, advise the borrower to adjust the listing or sales price as necessary.

The servicer must obtain a copy of the listing agreement and any contract sales offer, request the borrower's written authorization to communicate directly with the borrower's real estate broker, and ask the borrower or broker to provide updates to the servicer every 30 days regarding the status of marketing the property. If any such update is not received, the servicer

must contact the borrower or broker, provided the borrower has authorized such direct contact with the broker, to obtain a marketing update.
If no *HAFA Short Sale Agreement* has been signed, the servicer must instruct the borrower to submit an *Alternative RASS* in the event an offer to purchase the property is received.

### Offer Receipt and Response

To enable the servicer to evaluate a bona fide sales contract, the borrower must provide the details of the sales contract using the RASS or the Alternative RASS, as applicable. The listing agent and borrower must submit the complete and executed RASS or Alternative RASS to the servicer along with supporting documentation within 3 business days after receipt of a fully executed sales contract. The borrower must provide the following supporting documentation:

- a copy of the executed sales contract and all addenda;
- a copy of the listing agreement, if any, if not previously provided;
- all information readily available to the borrower regarding the status of other liens on the property; and
- the buyer's documentation of funds or pre-approval or commitment letter on letterhead from a mortgage lender indicating that the buyer is approved for financing sufficient to complete the purchase of the property. The only acceptable condition of approval is the completion of an appraisal reflecting a property value equal to or greater than the purchase price stated in the sales contract or a satisfactory inspection of the subject property.

The servicer must review and evaluate the sales contract information detailed on the RASS or the Alternative RASS along with the supporting documentation. The servicer must respond to the borrower within 10 business days of receipt of a completed RASS or Alternative RASS and all required documentation indicating acceptance or rejection of or a counter to the offer, signing the appropriate section of the RASS or the Alternative RASS, and returning it to the borrower. The servicer must approve the short sale if the net proceeds available from the sale for payment to the servicer equal or exceed the MANP and all other terms and conditions in the *HAFA Short Sale Agreement*, if applicable, or this Announcement have been met.

If the contract sales price will provide net proceeds equal to or greater than the MANP, and all other terms are consistent with the terms identified in the *HAFA Short Sale Agreement*, if applicable, or this Announcement, the servicer does not have to request Fannie Mae prior approval. If the offer (after all counteroffers) falls below the predetermined MANP and in the servicer's prudent judgment the offer merits further consideration, the servicer must submit a case in the HSSN for Fannie Mae's review within 10 business days of receipt of RASS or the Alternative RASS. Fannie Mae will provide a response to the servicer within 5 business days after receipt of the case in HSSN.

Accepted offers must close no later than 60 days after the contract execution or approval by the servicer or Fannie Mae, whichever occurs later. In no event may the servicer require the transaction to close in less than 45 days of the dated sales contract without the consent of the borrower. All closing extensions will require Fannie Mae approval by submitting a non-delegated case through HSSN.

Prior to the conveyance of title to the mortgaged property in a short sale, the servicer must confirm that the closing attorney or agent has received from all subordinate lienholders evidence of lien release and agreement to release the borrower from liability.

## DIL Offer

If the DIL offer is made at the expiration of the short sale marketing period, the servicer may use the BPO (or appraisal, if required) obtained for the short sale. Otherwise, the servicer must obtain a BPO or appraisal in order to evaluate a DIL.

If a borrower is interested in leasing the property, the borrower must first be evaluated for a D4L by the servicer and either approved or rejected before a *HAFA DIL Agreement* is sent to the borrower. The servicer will prepare and send to the borrower a *HAFA DIL Agreement* no later than 14 calendar days from the date of the D4L decision.

The *HAFA DIL Agreement* must state the date by which the property must be vacated, which must be within 30 calendar days from the date the servicer mailed or delivered the *HAFA DIL Agreement,* unless the borrower is pre-approved for a D4L.

The servicer (or the servicer's legal counsel) will prepare and transmit to the borrower a warranty deed (or such other transfer document ordinarily used in the property's jurisdiction) and related DIL documents (which may include an estoppel affidavit) in a form compliant with applicable law and sufficient to obtain insurable title. A title insurance policy is required. The DIL documents must establish that the transfer of the property is a voluntary and absolute conveyance of title, is not intended as security or to create a trust, and shall not effect a merger of the underlying estate with the lien of the mortgage. The DIL must be conditioned upon Fannie Mae's execution of the DIL indicating acceptance of the transfer of title. The borrower shall have 14 calendar days from the date the servicer transmits the *HAFA DIL Agreement* to return a signed *HAFA DIL Agreement* to the servicer.

Before the servicer may accept the DIL, the borrower must sign the DIL, release (if applicable) and any other documents related to DIL required by state law or typical in the jurisdiction. In addition, the servicer must obtain a commitment from a title insurer to issue a policy of title insurance insuring that, after acceptance of the DIL by Fannie Mae, Fannie Mae will have marketable title to the property. With these conditions met, the servicer may accept the DIL by executing the DIL on behalf of Fannie Mae.

Prior to acceptance of a DIL in connection with the D4L, the servicer must ensure that the borrowers execute in favor of Fannie Mae, the servicer, and their agents a general release of all claims arising prior to the acceptance of the DIL which relate in any way to the mortgage loan or the property.

## Use of Electronic Records

The servicer and borrower may, subject to applicable law, prepare, sign and send the *HAFA Short Sale Agreement* or the *HAFA DIL Agreement* through electronic means provided:

- appropriate technology is used to store an authentic record of the executed agreement and the technology otherwise ensures the security, confidentiality, and privacy of the transaction;
- the agreement is enforceable under applicable law;
- the servicer obtains the borrower's consent to use electronic means to enter into the agreement;
- the servicer ensures that the borrower is able to retain a copy of the agreement and provides a copy to the borrower that the borrower may download, store, and print; and

- the borrower, at any time, may elect to enter into the agreement through paper means or to receive a paper copy of the agreement.

## Temporary Suspension of Foreclosure

### Initiation of Foreclosure

Servicers are reminded that, while evaluating a borrower's eligibility for or pursuing a Fannie Mae HAFA short sale or DIL, the servicer must still follow Fannie Mae requirements related to the initiation of foreclosure for defaulted mortgage loans. However, provided the servicer has received a fully executed *HAFA Short Sale Agreement* and all supporting documentation and mortgage insurer approval, if required, for mortgage loans in Georgia, Missouri, Texas, Virginia and other states in which a foreclosure sale would otherwise be scheduled prior to the end of the marketing period, a servicer must delay the initiation of foreclosure until such time as the sale would be scheduled after the marketing period has expired. For mortgage loans secured by properties in any other state, the servicer must not delay the initiation of foreclosure proceedings unless it receives prior written approval to do so from Fannie Mae and the mortgage insurer, if applicable.

### Conduct of Pending Foreclosure

A servicer must continue to pursue a pending foreclosure while evaluating a borrower's eligibility for a Fannie Mae HAFA short sale or DIL, waiting for the timely return of the signed agreement and all supporting documentation, and for the duration of the agreement. The servicer must advise the borrower that the foreclosure proceedings will continue while the property is listed for sale, but the terms of the *HAFA Short Sale Agreement* will be honored as long as the property is sold before the *HAFA Short Sale Agreement* expiration date. The servicer must suspend any foreclosure sale scheduled:

- during the term of a fully executed *HAFA Short Sale Agreement* (provided the borrower is complying with the terms of the agreement),
- pending transfer of property ownership based on an approved sales contract (until the closing date stated in the approved sales contract), and
- pending transfer of property ownership via a DIL provided the transfer occurs before the date specified in the *HAFA DIL Agreement*.

If foreclosure proceedings have been initiated on a mortgage loan secured by a property approved for a Fannie Mae HAFA short sale, the servicer must attempt to schedule a foreclosure sale after the expiration of the 120-day marketing period whenever feasible.

Without Fannie Mae's prior written consent, a servicer must not consider or solicit a borrower for a Fannie Mae HAFA short sale or DIL with respect to a mortgage loan if:

- a foreclosure sale is scheduled to be held within 60 days of the borrower's request for a Fannie Mae HAFA short sale or DIL or a determination that the borrower is ineligible for HAMP;
- a foreclosure could be initiated and reasonably be expected to result in a foreclosure sale being held within 60 days of the borrower's request for a Fannie Mae HAFA short sale or DIL or a determination that a borrower is ineligible for HAMP; or

- 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.

## Payments Pending Sale or DIL

During the term of an executed *HAFA Short Sale Agreement* or *HAFA DIL Agreement* and pending transfer of property ownership based on an approved sales contract per the RASS or the Alternative RASS or via a DIL, a borrower may be required to make monthly payments. The servicer will identify the amount of the monthly payment, if any, that the borrower is required to pay based on a review of the borrower's financial circumstances. The amount of the monthly payment will be documented in the relevant Agreement. In no event may the amount of the borrower's monthly payment exceed 31 percent of the borrower's gross monthly income.

For a borrower who enters into a *HAFA Short Sale Agreement* or *HAFA DIL Agreement* after foreclosure proceedings have been initiated, the servicer must consult with its legal counsel to determine whether monthly payments can be accepted without adversely affecting the pending foreclosure action and whether any additional actions must be taken (for example, entering into a stipulation with the borrower) to accept the payments without compromising the pending foreclosure action.

Servicers are reminded that, with respect to any MBS mortgage loan with a pool issue date from June 1, 2007 through December 1, 2008, any period of forbearance must not exceed the maximum six consecutive months of forbearance as permitted under the governing MBS Trust documents.

## Release of First Mortgage Lien

The servicer must follow applicable local or state laws or regulations regarding the time of release of its first mortgage lien after receipt of sale proceeds from a short sale or delivery of the deed and property in a DIL transaction in compliance with the terms of the applicable agreement. If local or state law does not require release within a specified time frame, the servicer must release its first mortgage lien within 30 business days after the completion of the Fannie Mae HAFA short sale or DIL.

## Mortgage Insurance

### Mortgage Insurer Approval

### *Servicing Guide,* Part VII, Section 604.04: Discussing Sale With the Mortgage Insurer

Fannie Mae is working with mortgage insurers to obtain delegations of authority so that servicers can more efficiently process Fannie Mae HAFA short sale and DIL requests without the need to obtain mortgage insurer approval on individual mortgage loans. A list of the mortgage insurers from which Fannie Mae has received a delegated authority agreement will be posted on eFannieMae.com.

For mortgage insurers not on this list, servicers must continue to obtain their approval on a case-by-case basis. The servicer must not agree to a short sale unless that mortgage insurer agrees in writing to:

- waive its property acquisition rights before the claim is filed, and
- settle the claim by paying the lesser of the full percentage options under the terms of the master policy or the amount required to make Fannie Mae whole (the sum of the outstanding principal balance, interest accrued at the note rate from the last paid installment date, and miscellaneous expenses, less any cash contribution from the borrower or the property purchaser).

Servicers must comply with all obligations related to the submission of mortgage insurance claims. A loan will not qualify for a Fannie Mae HAFA short sale or DIL if the mortgage insurer requires a borrower contribution or promissory note as a condition to its approval of the transaction.

## Mortgage Insurance Claims

## *Servicing Guide,* Part VII, Section 604.06: Mortgage Insurance Claims

Servicers are responsible for filing all primary mortgage insurance claims on all conventional first lien mortgage loans on which Fannie Mae bears the risk of loss and which are insured under a master primary policy issued by a participating mortgage insurer other than Republic Mortgage Insurance Company. The mortgage insurance claim must be filed so that the claim proceeds are sent directly to Fannie Mae. Fannie Mae will file primary mortgage insurance claims on mortgage loans insured by Republic Mortgage Insurance Company.

Once the mortgage insurance claim is filed, the servicer must:

- remove the loan from Fannie Mae's investor reporting system with an Action Code 71 (Liquidated Third Party Sale) in the first Loan Activity Record that it transmits following the short sale and report the net proceeds from the sale through Fannie Mae's Cash Remittance System using the 310 Remittance Code;
- provide the mortgage insurer with a copy of the HUD-1 Settlement Statement, a copy of the property valuation, and a copy of the approval letter stating the terms and conditions of any short payoff;
- submit a final *Cash Disbursement Request* (Form 571) for reimbursement no later than 30 calendar days following the short sale;
- if the mortgage loan has flood insurance coverage, follow the procedures in the *Servicing Guide,* Part II, Chapter 5: Insurance Losses, for determining whether any insured flood damage has occurred and file any flood insurance claim, as applicable.

Generally, after completion of the tasks outlined in the paragraph above, the servicer is not required to take any further action with respect to the mortgage loan or the mortgaged property unless it is contacted by a Fannie Mae eviction attorney. If the servicer fails to provide requested documentation, it will be required to indemnify Fannie Mae for any losses caused by its inaction. As always, the servicer must provide any additional information requested by the mortgage insurer in order to process the claim.

# Reporting Requirements

## Reporting to Fannie Mae

### *Servicing Guide,* Part VII, Section 604.07: Accounting and Reporting, and Section 606: Deeds-in-Lieu of Foreclosure

**Delinquency Status Reporting**

The servicer must meet the following delinquency reporting requirements:

- If the borrower makes monthly payments pending the sale or DIL under the terms of an agreement, servicers must report Delinquency Status Code 09 (Forbearance) during the term of the executed agreement and pending transfer of property ownership.
- For a short sale, servicers must report Delinquency Status Code 17 (Preforeclosure Sale) with the first delinquency status information it transmits to Fannie Mae after the servicer agrees to a short sale offer.
- For a DIL, servicers must report Delinquency Status Code 44 (Deed-in-Lieu) with the first delinquency status information it transmits to Fannie Mae after approval of a DIL.

**Reporting Cases to HSSN**

**Short Sale:** Within 24 hours after the servicer receives the final signed HUD-1 Settlement Statement and the net sales proceeds (but in no event after the date the Action Code 71 is reported to Fannie Mae's investor reporting system), it must report the completion of the short sale by submitting a closed case in HSSN.

In addition, the servicer must forward a copy of the HUD-1 Settlement Statement and a copy of the claim for loss that was filed with the mortgage insurer to the National Property Disposition Center within five business days after the sale. For MBS pool mortgages accounted for under the regular servicing option (and MBS pool mortgages serviced under a shared-risk special servicing option, Rural Development mortgages serviced under the regular servicing option, or any mortgages subject to some type of recourse or other credit enhancement arrangement), the servicer must report the payoff as it would report the payoff of any other regular servicing option pool mortgage loans, as the servicer must absorb any losses and expenses related to the short sale.

**DIL:** Within 24 hours after a borrower executes the warranty deed, the servicer must submit a closed case in HSSN and an REOgram® to notify Fannie Mae of the property acquisition. After the servicer receives the executed DIL, it must report the completion of the DIL through HSSN by submitting a closed case. The servicer is also required to submit the recorded DIL documents to the following address:

Fannie Mae
National Property Disposition Center (NPDC)
12th Floor, Attn: Title Dept.
P.O. Box 650043
Dallas, TX 75265-0043

**Investor Reporting and Remitting**

The servicer must meet the following investor reporting requirements:

- For a short sale, servicers must report Action Code 71 (Liquidated Third-Party Sale) to Fannie Mae's investor reporting system in the first Loan Activity Record that it transmits following the short sale to remove the mortgage loan from Fannie Mae's active accounting records. ***The servicer must report the net short sales proceeds and advance the borrower incentive in the amount of $3,000 to Fannie Mae using the Remittance Code 310** (as described in the Borrower Incentive section below).
- For a DIL, servicers must report Action Code 70 (Liquidation Held for Sale) for an uninsured conventional mortgage loan or Action Code 72 (Liquidation – Pending conveyance) for any other type of mortgage loan to Fannie Mae's investor reporting system to remove the mortgage loan from Fannie Mae's active accounting records.

Additionally, the servicer must submit an REOgram within 24 hours after the date the DIL is executed (as outlined in the *Servicing Guide,* Part VIII, Section 114.01: Submitting the REOgram). REOgrams must also indicate in the comments field that the DIL was a D4L, when applicable (as noted in Announcement 09-33, *New Deed-for-Lease™ Program*).

Fannie Mae HAFA short sale or DILs are available for borrowers who are in default and those who are at imminent risk of default based on the HAMP eligibility requirements. As such, servicers are reminded that in accordance with the *Servicing Guide*, Part VII, Section 604.07: Accounting and Reporting, the servicer must account for all short sales and report them to Fannie Mae regardless of whether Fannie Mae is made whole or incurs a loss. The servicer must report the short sale:

- in the first delinquency status information it transmits to Fannie Mae after it agrees to the sale if Fannie Mae will **not** incur a loss or,
- in the first delinquency status information it transmits to Fannie Mae after Fannie Mae approves a short sale that **will** result in a loss.

After the servicer receives the final signed HUD-1 Settlement Statement and the net sales proceeds, it must report the completion of the short sale to Fannie Mae through HSSN.

For MBS mortgage loans accounted for under the regular servicing option (and MBS mortgage loans serviced under a shared-risk special servicing option, Rural Development mortgage loans serviced under the regular servicing option, or any mortgage loans subject to some type of recourse or other credit enhancement arrangement), the servicer must report the payoff just as it would report the payoff of any other regular servicing option MBS mortgage loans, since the servicer must absorb any losses and expenses related to the short sale.

For MBS special servicing option pool mortgage loans, the servicer must not request reimbursement for Fannie Mae's share of the amount required to remove the mortgage loan (or participation interest in the mortgage loan) from the pool, since Fannie Mae will automatically reimburse the servicer for this amount after it remits the funds and reports the applicable action code required to remove the mortgage loan (or participation interest in the mortgage loan) from the pool.

## Reporting to Treasury

In addition to reporting to Fannie Mae, if a short sale or DIL is executed under the Fannie Mae HAFA program, the servicer will be required to report the HAFA transaction to Treasury. Each servicer must report periodic HAFA activity to Treasury through the servicer web portal accessible on HMPadmin.com. A borrower may be accepted into Fannie Mae's HAFA program if a *HAFA Short Sale Agreement* or *HAFA DIL Agreement* is fully executed by the borrower and received by the servicer on or before December 31, 2012.

Treasury's reporting requirements include the following key milestones:

- notification (at the time that a *HAFA Short Sale Agreement* or *HAFA DIL Agreement* is signed), and
- short sale or DIL loan set up (closing of a short sale or transfer of property ownership through a DIL), or
- termination (when the *HAFA Short Sale Agreement* or *HAFA DIL Agreement* expires or when the servicer makes a decision not to pursue a short sale or DIL).

Each milestone is a separate data transmission which must be reported no later than the $4^{th}$ business day of the month following the event. The reporting information required under Schedule I and Schedule IV of Supplemental Directive 09-06 must be provided by the servicer for all HAFA transactions, including those that occur prior to August 1, 2010.

Additional reporting information, including the HAFA data dictionary and transactional file layouts, are available on the secured site of HMPadmin.com.

## Credit Bureau Reporting

As described in the *Servicing Guide,* Part VII, Section 209: Notifying Credit Repositories, the servicer must continue to report a "full-file" status report to the four major credit repositories in accordance with the Fair Credit Reporting Act and credit bureau requirements as provided by the Consumer Data Industry Association (CDIA).

"Full-file" reporting means that the servicer must describe the exact status of each mortgage loan it is servicing as of the last business day of each month. The Payment Rating code must be the code that properly identifies whether the account is current or past due within the activity period being reported prior to completion of the short sale or DIL transaction.

Because CDIA's Metro 2 format does not provide an Account Status Code allowable value for a short sale, servicers must identify a short sale by reporting a Special Comment Code "AU" the final month of credit bureau reporting in which the status code 13 is reported. The information below is consistent with current "CDIA Mortgage and Home Equity Reporting Guidelines in Response to Current Financial Conditions."

Upon closing, servicers must report:

**Short Sales**
- Account Status Code - 13 (Paid or closed/zero balance)
- Payment Rating - 0, 1, 2, 3, 4, 5, or 6
- Special Comment Code - AU (account paid in full for less than the full balance)

- Current Balance - $0
- Amount Past Due - $0
- Date Closed - MMDDYYYY
- Date of Last Payment - MMDDYYYY

**Deed-in-Lieu**
- Account Status Code - 89 (Deed-in-lieu of foreclosure on a defaulted mortgage)
- Payment Rating - 0, 1, 2, 3, 4, 5, or 6
- Current Balance - $0
- Amount Past Due - $0
- Date Closed - MMDDYYYY
- Date of Last Payment - MMDDYYYY

## Fees and Incentive Compensation

### Allowable Subordinate Lien Payments

Allowable payments from the sales proceeds to all subordinate mortgage lienholders to facilitate lien releases must not exceed $6,000 in aggregate. Each lienholder in order of priority may be paid 6 percent of the unpaid principal balance of its loan, until the $6,000 cap is reached.

The servicer must not authorize the settlement agent to allow more than an aggregate of $6,000 of sale proceeds as payment(s) to subordinate mortgage or lienholder(s) in exchange for a lien release and full release of liability. Payment made from the sales proceeds must be reflected on the HUD-1 Settlement Statement.

Prior to releasing any funds to any subordinate mortgage or lienholder, the servicer through its agent must obtain written commitment from the subordinate lienholder that it will release the borrower from all claims and liability relating to the subordinate lien in exchange for receiving the agreed upon payoff amount. The servicer must require the closing attorney or agent to either confirm that they are in receipt of this commitment from subordinate lienholders on the HUD-1 Settlement Statement or request that a copy of the written commitment provided by the subordinate lienholder be sent to the servicer with the HUD-1 Settlement Statement which is provided in advance of the closing.

Subordinate mortgage or lienholder(s) may not require contributions from either the real estate agent or borrower as a condition for releasing its lien and releasing the borrower from personal liability.

### Fees and Charges

Servicers must not charge borrowers any fees for participation in a Fannie Mae HAFA short sale or DIL. The servicer must pay all out-of-pocket expenses, including but not limited to, notary fees, recordation fees, lien release fees, title costs, property valuation fees, credit report fees, or other allowable and documented expenses. A servicer must require borrowers to waive reimbursement of any remaining escrow, buydown funds, or prepaid items and assign any insurance proceeds and/or refunds, if applicable, to be applied to the total payoff amount.

Fannie Mae will reimburse the servicer for allowable out-of-pocket expenses, including the cost of obtaining an appraisal or BPO. Fannie Mae will not reimburse for the credit report fees.

The servicer should request reimbursement for Fannie Mae's share of all allowable expenses, such as property valuation fees, title costs, and other documented expenses related to the short sale or DIL for a conventional mortgage in which Fannie Mae bears the risk of loss by submitting a *Cash Disbursement Request*. These costs should be included with all other allowable expenses and not claimed separately. On DIL transactions, Fannie Mae will continue to reimburse the servicer for attorneys' fees (up to $350) and for any of the costs for obtaining a title insurance policy.

For MBS special servicing option pool mortgage loans, the servicer must not request reimbursement for Fannie Mae's share of the amount required to remove the mortgage (or participation interest in the mortgage) from the pool, as Fannie Mae will automatically reimburse the servicer for this amount after the servicer remits the funds and reports the applicable action code required to remove the mortgage (or participation interest in the mortgage) from the pool. (Servicers should also refer to the *Servicing Guide,* Part X, Section 302.02: "Scheduled/Scheduled" Remittance Types.)

## Incentive Compensation

New incentives identified in this Announcement are applicable only for all Fannie Mae HAFA short sales and DILs on Fannie Mae mortgage loans and are effective with cases closed in HSSN after the date of this Announcement. All HAFA incentive fees will be paid via Fannie Mae's payment process, in its capacity as Program Administrator for the Treasury Department ("Program Administrator"), after the servicer has reported the HAFA short sale or DIL transaction to the Program Administrator. Servicers **must not** include request for the incentive fee for eligible HAFA loans in the *Cash Disbursement Request* (Form 571).

**Servicer Incentives**
For all first lien mortgage loans owned or securitized by Fannie Mae in which Fannie Mae bears the risk of loss, servicers will be entitled to an incentive payment following successful completion of a Fannie Mae HAFA short sale or DIL. No borrower or servicer incentives will be paid, however, if the net proceeds from a property sale exceed the total amount of the indebtedness on the first mortgage lien. The amount of any contribution paid by a mortgage insurer or other provider of a credit enhancement shall not be considered in determining whether the mortgage was paid in full or the servicer is eligible for incentive compensation.

- Upon verification of a successful Fannie Mae HAFA short sale, Fannie Mae will pay the servicer a $2,200 incentive fee.
- Following the successful completion of a Fannie Mae HAFA DIL, Fannie Mae will pay the servicer a $1,500 incentive fee.

A servicer or borrower incentive will not be paid for short sales or DILs on Fannie Mae second lien mortgage loans.

Servicer incentive payments for mortgage loans eligible under HAFA will be paid via Fannie Mae's payment process, in its capacity as Program Administrator for the Treasury, after the servicer has reported the HAFA short sale or DIL transaction to the Program Administrator.

**Borrower Incentive**
The borrower will be entitled to an incentive payment of $3,000 to assist with relocation expenses following successful completion of a HAFA short sale or a DIL. For a HAFA short

sale, the servicer must instruct the settlement agent to pay the borrower the relocation incentive at closing from the sales proceeds at the same time that all other payments are disbursed, including the payoff to the servicer. The borrower incentive payment amount must be reflected on the HUD-1 Settlement Statement as $3,000 in line 403 with a note to indicate "HAFA Relocation Assistance from [Servicer Name]" and the settlement agent must adjust line 504 (Payoff of first mortgage loan) to reflect a reduction for the same amount. In all cases, the cash to the borrower in line 603 (Cash to Seller) must be exactly $3,000.

The servicer must include the $3,000 borrower incentive in the Total Settlement Charges for the case submitted in HSSN. The servicer must advance the amount of the borrower incentive to Fannie Mae by including it with the payoff remittance. **(*Deleted reference to Special Remittance Code 370.)** The servicer will be reimbursed for the full amount of the borrower incentive via Fannie Mae's payment process, in its capacity as Program Administrator for the Department of the Treasury ("Program Administrator"), after the servicer has reported the HAFA short sale transaction to the Program Administrator.

For a DIL (except in cases of a D4L), if the borrower has not vacated the property before closing or if no formal closing of a DIL transaction occurs, the servicer must mail a check for the incentive payment to the borrower within 5 business days of the last to occur of:

- The borrower delivers to the servicer the executed warranty deed.
- The borrower vacates the property, leaving it in acceptable condition.
- The borrower delivers keys to the property to the servicer or its agent.

The servicer will be reimbursed by Fannie Mae for the borrower incentive payment. Borrower incentive payments for DIL must be identified in cases entered in HSSN as a "Relocation Assistance Expense" or "Cash for Keys Amount" (for non-delegated cases).

Borrower incentive payments for mortgage loans eligible under HAFA will be paid via Fannie Mae's payment process, in its capacity as Program Administrator, after the servicer has reported the HAFA DIL transaction to the Program Administrator.

In the case of a D4L, the borrower incentive will not be paid by the servicer but instead will be paid by Fannie Mae or its agent pursuant to the terms indicated in the lease agreement.

A servicer may not require the borrower to apply the borrower incentive payment to obtain the release of other liens or non-real estate title impediments.

## Record Retention

### *Servicing Guide,* Part I, Section 405: Record Retention

Servicers are reminded that, unless otherwise directed by Fannie Mae, the servicer must retain all documentation for mortgage loans owned or securitized by Fannie Mae in accordance with the *Servicing Guide*, or for such longer period as may be required pursuant to applicable law. For HAFA loans, a servicer must retain all documents and information received during the process of determining borrower eligibility and qualification for HAFA for a period of seven years from the date of document collection or, in accordance with the *Servicing Guide*, for four years from the date the mortgage loan is liquidated (measured from the date of payoff or the date any applicable claims proceeds are received), whichever is later.

Documentation includes detailed records of borrower solicitation or borrower-initiated inquiries related to a short sale or DIL, copies or originals of any and all sales contracts, offer response letters, the *HAFA Short Sale Agreement*, listing agreement(s), the *HAFA DIL Agreement*, mortgage insurance claim submission(s) and payment(s), real estate purchase and sale contracts and any addenda, BPOs or appraisals, the closing or settlement statement, closing instructions to the closing agent, a copy of the net proceeds check, and any other related documents that are necessary or customary to effect a short sale or transfer by DIL.

Records must also be retained to document reasons for a borrower's default on an agreement or expiration of an agreement without a successfully completed short sale or acceptance of a DIL. Servicers must also retain all sales contracts, if any, that did not result in a short sale.

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For additional information on Fannie Mae's HAFA program, including a job aid on HAFA implementation, refer to eFannieMae.com. Servicers should contact their Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicer Support Center at 1-888-FANNIE5 (888-326-6435) with any questions regarding this Announcement.

Gwen Muse-Evans
Vice President
Chief Risk Officer for Credit Portfolio Management