

***Supplemental Directive 09-09***

***November 30, 2009***

## ***Introduction of Home Affordable Foreclosure Alternatives – Short Sale and Deed-in-Lieu of Foreclosure***

### **Background**

In Supplemental Directive 09-01, the Treasury Department (Treasury) announced the eligibility, underwriting and servicing requirements for the Home Affordable Modification Program (HAMP). Under HAMP, the servicers apply a uniform loan modification process to provide eligible borrowers with sustainable monthly payments for their first lien mortgage loans. While HAMP program guidelines are intended to reach a broad range of at-risk borrowers, it is expected that servicers will encounter situations where they are unable to approve a HAMP modification request, a HAMP modification is offered and not accepted by the borrower, or the borrower falls out of a HAMP modification. In these instances, the borrower may benefit from an alternative that helps the borrower transition to more affordable housing and avoid the stigma of a foreclosure.

This Supplemental Directive provides guidance to servicers for adoption and implementation of the Home Affordable Foreclosure Alternatives Program (HAFA). HAFA is part of HAMP and provides financial incentives to servicers and borrowers who utilize a short sale or a deed-in-lieu 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.

This Supplemental Directive provides guidance to servicers for adoption and implementation of HAFA for first lien mortgage loans that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages). In order for a servicer to participate in HAFA for Non-GSE Mortgages, the servicer must execute a servicer participation agreement and related documents (SPA) with Fannie Mae in its capacity as financial agent for the United States (as designated by Treasury) to participate in HAMP on or before December 31, 2009. In certain circumstances, Supplemental Directive 09-01 requires participating servicers to consider borrowers for other foreclosure prevention options, including short sale and deed-in-lieu programs. As a result, servicers already participating in HAMP must follow the guidance set forth in this Supplemental Directive, which provides servicers with the option to determine the extent to which short sales or deeds-in-lieu will be offered under this program. Servicers of mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac should refer to the HAFA announcement issued by

the applicable GSE. A loan must be HAMP eligible and meet the other requirements stated herein to be eligible for incentive compensation under HAFA.

The effective date of this Supplemental Directive is April 5, 2010. A servicer may elect to implement HAFA prior to April 5, 2010, provided that the servicer is able to collect and report all required information as described in the *Reporting Requirements* section of this Supplemental Directive. Borrowers may be accepted into HAFA if a Short Sale Agreement or DIL Agreement, as described in this Supplemental Directive, is fully-executed by the borrower and received by the servicer on or before December 31, 2012.

To help servicers implement HAFA, this Supplemental Directive covers the following topics:

- Foreclosure Alternatives
- HAFA Consideration
- Evaluation
- Short Sale
- Deed-in-Lieu
- General Terms and Conditions
- Incentive Compensation
- Standard Form Documents
- Reporting Requirements
- Compliance

### **Foreclosure Alternatives**

In a short sale, the servicer allows the borrower to list and sell the mortgaged property with the understanding that the net proceeds from the sale may be less than the total amount due on the mortgage. The short sale must be an arm's length transaction with the net sale proceeds (after deductions for reasonable and customary selling costs) being applied to a discounted ("short") mortgage payoff acceptable to the servicer. The servicer accepts the short payoff in full satisfaction of the total amount due on the first mortgage.

In a deed-in-lieu of foreclosure (DIL), the borrower voluntarily transfers ownership of the mortgaged property to the servicer in full satisfaction of the total amount due on the first mortgage. The servicer's willingness to approve and accept a DIL is contingent upon the borrower's ability to provide marketable title, free and clear of mortgages, liens and encumbrances. Generally, servicers require the borrower to make a good faith effort to sell the property through a short sale before agreeing to accept the DIL. However, under circumstances acceptable to the investor, the servicer may accept a DIL without the borrower first attempting to sell the property. With either the HAFA short sale or DIL, the servicer may not require a cash contribution or promissory note from the borrower and must forfeit the ability to pursue a deficiency judgment against the borrower.

Short sales and DILs are complex transactions involving coordination and cooperation among a number of parties including, but not limited to, servicers, appraisers, borrowers (sellers), buyers, real estate brokers and agents, title agencies, and often mortgage insurance companies and

subordinate and other lien holders. The 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.
- 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, servicers and investors.

### **HAFA Consideration**

Each participating servicer must develop a written policy, consistent with investor guidelines, that describes the basis on which the servicer will offer the HAFA program to borrowers. This policy may incorporate such factors as the severity of the loss involved, local market conditions, the timing of pending foreclosure actions and borrower motivation and cooperation.

Servicers must evaluate a borrower for a HAMP modification prior to any consideration being given to HAFA options in accordance with the provisions of Supplemental Directive 09-01 and any supplemental HAMP guidance. Borrowers that meet the eligibility criteria for HAMP but who are not offered a Trial Period Plan, do not successfully complete a Trial Period Plan, or default on a HAMP modification should first be considered for other loan modification or retention programs offered by the servicer prior to being evaluated for HAFA.

In accordance with the provisions of Supplemental Directive 09-01, a loan meets the basic eligibility criteria if all of the following conditions are met:

- The property is the borrower's principal residence;
- The mortgage loan is a first lien mortgage originated on or before January 1, 2009;
- The mortgage is delinquent or default is reasonably foreseeable;
- The current unpaid principal balance is equal to or less than \$729,750<sup>1</sup>; and
- The borrower's total monthly mortgage payment (as defined in Supplemental Directive 09-01) exceeds 31 percent of the borrower's gross income.

Pursuant to the servicer's policy, every potentially eligible borrower must be considered for HAFA before the borrower's loan is referred to foreclosure or the servicer allows a pending

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<sup>1</sup> This amount refers to 1 unit properties. Higher amounts apply to 2 to 4 unit dwellings. See Supplemental Directive 09-01.

foreclosure sale to be conducted. Servicers must consider possible HAMP eligible borrowers for HAFA within 30 calendar days of the date the borrower:

- Does not qualify for a Trial Period Plan;
- Does not successfully complete a Trial Period Plan;
- Is delinquent on a HAMP modification by missing at least two consecutive payments; or
- Requests a short sale or DIL.

The date and outcome of the HAFA consideration must be documented in the servicer's file.

## **Evaluation**

If the servicer determines that a borrower is eligible for a HAFA offer based on its written policy and this Supplemental Directive, the servicer must follow the steps below to determine if a short sale or DIL offer will be extended to the borrower.

**Borrower Solicitation and Response.** If the servicer has not already discussed a short sale or DIL with the borrower, the servicer must proactively notify the borrower in writing of the availability of these options 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 under HAFA. If the borrower fails to contact the servicer within the timeframe or at any time indicates that he or she is not interested in these options, the servicer has no further obligation to extend a HAFA offer.

**Expected Recovery through Foreclosure and Disposition.** Though not a HAFA requirement, it is expected that servicers will, in accordance with investor guidelines, perform a financial analysis to determine if a short sale or DIL is in the best interest of the investor, guarantor and/or mortgage insurer. The results of any analysis must be retained in the servicing file. The HAMP base NPV model does not project investor cash flows from either a short sale or DIL and should be used only to determine borrower eligibility for a HAMP modification.

**Use of Borrower Financial Information.** Verified borrower financial information obtained in conjunction with HAMP may be relied upon to determine a borrower's eligibility for HAFA. If financial and hardship information is documented and verified, no additional financial or hardship assessment is required by HAFA. However, in accordance with investor guidelines, the servicer may request updated financial information to evaluate the borrower. If a borrower was evaluated for HAMP based on verbal financial data, the servicer may send the borrower a Short Sale Agreement (SSA) and must require the borrower to deliver the financial information required under HAMP when the borrower returns the executed SSA. The servicer must verify a borrower's financial information through documentation and obtain a signed Hardship Affidavit prior to approving a short sale or accepting a DIL under HAFA.

**Property Valuation.** The servicer must, independent of the borrower and any other parties to the transaction, assess the current value of the property in accordance with the investor's guidelines. The servicer may not require the borrower to pay in advance for the valuation, but

may add the cost to the outstanding debt in accordance with the borrower's mortgage documents and applicable law in the event the short sale or DIL is not completed.

**Review of Title.** The servicer must review readily available information provided by the borrower, the borrower's credit report, the loan file or other sources to identify subordinate liens and other claims on title to determine if the borrower will be able to deliver clear, marketable title to a prospective purchaser or the investor. Although not required by HAFA, the servicer may order a title search or preliminary title report. The servicer may not charge the borrower in advance for any cost incurred in the title review, but may add the cost to the outstanding debt in accordance with the borrower's mortgage documents and applicable law in the event the short sale or DIL is not completed.

**Borrower Notice.** When a HAFA short sale or DIL is not available, the servicer must communicate this decision in writing to any borrower that requested consideration. The notice must explain why a short sale or DIL under HAFA cannot be offered, provide a toll free telephone number that the customer may call to discuss the decision and otherwise comply with the notice requirements of Supplemental Directive 09-08, *Borrower Notices*.

## **Short Sale**

The HAFA short sale process employs standard form documents and defined performance timeframes to facilitate clear communication between the parties to the listing and sale transaction. Servicers must adhere to the following guidelines in connection with the issuance of an SSA.

**Minimum Acceptable Net Proceeds.** Prior to approving a borrower to participate in a HAFA short sale, the servicer must determine the minimum acceptable net proceeds (minimum net) that the investor will accept from the transaction. Each servicer must develop a written policy, consistent with investor guidelines, that describes the basis on which the minimum net will be determined. This policy may incorporate such factors as local market conditions, customary transactional costs of such sales, and the amounts that may be required to release any subordinate liens on the property. A servicer's policy for determining the minimum net must be consistently applied for all loans serviced for that investor. The minimum net may be expressed as a fixed dollar amount, as a percentage of the current market value of the property, or as a percentage of the list price as approved by the servicer. Once determined, the servicer must document the minimum net in the servicing file for each property subject to HAFA. After signing an SSA, the servicer may not increase the minimum net requirement until the initial SSA termination date is reached (not less than 120 calendar days). Subsequent changes to the minimum net when the SSA is extended must be documented.

**Allowable Transaction Costs.** In determining the minimum net, the servicer must consider reasonable and customary real estate transaction costs for the community in which the property is located and determine which of these costs the servicer or investor is willing to pay from sale proceeds. The servicer must describe the costs that may be deducted from the gross sale proceeds in the SSA.

**Short Sale Agreement.** The HAFA SSA, which is attached as Exhibit A, outlines the roles and responsibilities of the servicer and borrower in the short sale listing process and provides key marketing terms, such as a list price or acceptable sale proceeds and the duration of the SSA. The HAFA Request for Approval of a Short Sale (RASS), which must accompany the SSA, is attached as Exhibit A1. The RASS is submitted to the servicer when an offer is received to provide the terms and conditions of the short sale and together with the sales contract, provides settlement instructions to the settlement agent. Either proactively, or at the request of an eligible borrower, the servicer will prepare and send an SSA to the borrower after determining that the proposed sale is in the best interest of the investor. The servicer will also provide the borrower a RASS, pre-populated with contact information for the servicer, the property address and the loan number.

In the event that a borrower has an executed sales contract and requests the servicer to approve a short sale under HAFA before an SSA has been executed, the servicer must evaluate the borrower for HAFA as described in this Supplemental Directive and must utilize the Alternative Request for Approval of a Short Sale (Alternative RASS).

While servicers may amend the terms of the SSA in accordance with investor requirements, applicable laws or local real estate practice, at a minimum the SSA must include the following:

- A fixed termination date not less than 120 calendar days from the effective date of the SSA (“Effective Date”). The Effective Date must be stated in the SSA and is the date the SSA is mailed to the borrower. The term of the SSA may be extended at the discretion of the servicer up to a total term of 12 months, in accordance with the requirements of the investor.
- A requirement that the property be listed with a licensed real estate professional who is regularly doing business in the community where the property is located.
- Either a list price approved by the servicer or the acceptable sale proceeds, expressed as a net amount after subtracting allowable costs that the servicer will accept from the transaction.
- The amount of closing costs or other expenses the servicer will permit to be deducted from the gross sale proceeds expressed as a dollar amount, a percentage of the list price or a list by category of reasonable closing costs and other expenses that the servicer will permit to be deducted from the gross sale proceeds.
- The amount of the real estate commission that may be paid, not to exceed 6% of the contract sales price, and notification if any portion of the commission must be paid to a contractor of the servicer that has been retained to assist the listing broker with the transaction.
- A statement by the borrower authorizing the servicer to communicate the borrower’s personal financial information to other parties (including Treasury and its agents) as necessary to complete the transaction.
- Cancellation and contingency clauses that must be included in listing and sale agreements notifying prospective purchasers that the sale is subject to approval by the servicer and/or third parties.



- Notice that the sale must represent an arm's length transaction and that the purchaser may not sell the property within 90 calendar days of closing, including certification language regarding the arm's length transaction that must be included in the sales contract.
- An agreement that upon successful closing of a short sale acceptable to the servicer, the borrower will be released from all liability for repayment of the first mortgage debt.
- An agreement that upon successful closing of a short sale acceptable to the servicer the borrower will be entitled to a relocation incentive of \$1,500, which will be deducted from the gross sale proceeds at closing.
- Notice that the servicer will allow a portion of gross sale proceeds to be paid to subordinate lien holders in exchange for release and full satisfaction of their liens.
- Notice that a short sale may have income tax consequences and/or may have a derogatory impact on the borrower's credit score and a recommendation that the borrower seek professional advice regarding these matters.
- The amount of the monthly mortgage payment, if any, that the borrower will be required to pay during the term of the SSA, which amount must not exceed 31% of the borrower's gross monthly income.
- An agreement that so long as the borrower performs in accordance with the terms of the SSA, the servicer will not complete a foreclosure sale.
- Terms under which the SSA can be terminated.

**Borrower Obligations.** The borrower must sign and return the SSA within 14 calendar days from its Effective Date along with a copy of the real estate broker listing agreement and information regarding any subordinate liens. In returning and signing the SSA the borrower agrees to:

- Provide all information and sign documents required to verify program eligibility.
- Cooperate with the listing broker to actively market the property and respond to servicer inquiries.
- Maintain the interior and exterior of the property in a manner that facilitates marketability.
- Work to clear any liens or other impediments to title that would prevent conveyance.
- Make the monthly payment stipulated in the SSA, if applicable.

**Monitoring Marketing Activity / Cause for Termination.** During the term of the SSA, the servicer may terminate the SSA before its expiration due to any of the following events:

- The borrower's financial situation improves significantly, the borrower qualifies for a modification, or the borrower brings the account current or pays the mortgage in full.
- The borrower or the listing broker fails to act in good faith in listing, marketing and/or closing the sale, or otherwise fails to abide by the terms of the SSA.
- A significant change occurs to the property condition and/or value.
- There is evidence of fraud or misrepresentation.
- The borrower files for bankruptcy and the Bankruptcy Court declines to approve the SSA.

- Litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance.
- The borrower fails to make the monthly payment stipulated in the SSA, if applicable.

**Request for Approval of Short Sale.** Within three business days following receipt of an executed purchase offer, the borrower or the listing broker must deliver to the servicer a completed RASS describing the terms of the sale transaction. With the RASS, the borrower must submit to the servicer:

- A copy of the executed sales contract and all addenda.
- Buyer's documentation of funds or buyer's pre-approval or commitment letter on letterhead from a lender.
- All information regarding the status of subordinate liens and/or negotiations with subordinate lien holders.

**Approval or Disapproval of Sale.** Within ten business days of receipt of the RASS and all required attachments, the servicer must indicate its approval or disapproval of the proposed sale by signing the appropriate section of the RASS and mailing it to the borrower.

The servicer must approve a RASS if the net sale proceeds available for payment to the servicer equal or exceed the minimum net determined by the servicer prior to the execution or extension of the SSA and all other sales terms and conditions in the SSA have been met. Additionally, the servicer may not require, as a condition of approving a short sale, a reduction in the real estate commission below the commission stated in the SSA.

The servicer may require that the sale closing take place within a reasonable period following acceptance of the RASS, but in no event may the servicer require that a transaction close in less than 45 calendar days from the date of the sales contract without the consent of the borrower.

**Alternative Request for Approval of Short Sale.** If the borrower has an executed sales contract and requests the servicer to approve a short sale under HAFA before an SSA has been executed, then the borrower must submit the request to the servicer in the form of the Alternative Request for Approval of Short Sale (Alternative RASS), attached as Exhibit B. Upon receipt of the Alternative RASS, the servicer must determine the basic eligibility of the borrower as described in the *HAFA Consideration* section of this Supplemental Directive. If the borrower appears to be eligible and was not previously considered for a Trial Period Plan, 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. In addition, the servicer must verify the borrower's financial information through documentation and obtain a signed Hardship Affidavit from the borrower prior to approving the short sale.

If the borrower does not wish to be considered for a modification, the servicer may consider the Alternative RASS in accordance with this Supplemental Directive without first having to enter into an SSA with the borrower. If the servicer approves the short sale, then the loan will qualify for the HAFA program. A borrower may not participate in a HAMP Trial Period Plan and agree



to a HAFA SSA simultaneously. In addition, the servicer must collect and report the information required under Supplemental Directive 09-06 prior to reporting any HAFA information required by this Supplemental Directive.

### **Deed-in-Lieu**

In accordance with investor requirements, servicers have the discretion to accept a HAFA DIL, which requires a full release of the debt and waiver of all claims against the borrower. The borrower must agree to vacate the property by a date certain, leave the property in broom clean condition and deliver clear, marketable title.

Typically, servicers require that the borrower make a good faith effort to list and market the property before the servicer will agree to accept a DIL. Under circumstances acceptable to the investor, servicers may agree to accept a DIL without requiring a marketing period. In either circumstance, the transaction will be eligible for incentives as described in the *Incentive Compensation* section of this Supplemental Directive if the borrower meets the HAFA eligibility criteria.

**SSA.** The SSA contains optional DIL language that may be included or deleted by the servicer prior to execution of the SSA. If the DIL language is included, the investor is obligated to accept a DIL in accordance with the terms of the SSA if the term of the SSA expires without resulting in a sale of the property. If the servicer offers the DIL option separately from the SSA or without a marketing period, the servicer must provide the Deed-in-Lieu Agreement form (“DIL Agreement”), attached as Exhibit C.

**DIL Terms.** The following terms apply to a HAFA DIL:

- **Marketable Title.** The borrower must be able to convey clear, marketable title to the servicer or investor. The requirements for extinguishment of subordinate liens as described in the *Release of Subordinate Liens* section of this Supplemental Directive apply to DIL transactions.
- **Written Agreement.** The conditions for acceptance of a DIL must be in writing and signed by both the servicer and borrower. They may be set forth in the SSA if approved with the short sale, or in the DIL Agreement.
- **Vacancy Date.** The SSA or DIL Agreement must specify the date by which the borrower must vacate the property, which in no event shall be less than 30 calendar days from the date of the termination date of the SSA or the date of a separate DIL Agreement, unless the borrower voluntarily agrees to an earlier date.
- **Relocation Assistance.** Borrowers who participate in a HAFA DIL transaction are eligible for \$1,500 in relocation assistance as described in the *Incentive Compensation* section of this Supplemental Directive.

## **General Terms and Conditions**

**Suspension of Foreclosure Sales.** At the servicer's discretion, the servicer may initiate foreclosure or continue with an existing foreclosure proceeding during the HAFA process, but may not complete a foreclosure sale:

- While determining the borrower's eligibility and qualification for HAMP or HAFA.
- While awaiting the timely return of a fully executed SSA.
- During the term of a fully executed SSA.
- Pending transfer of property ownership based on an approved sales contract per the RASS or Alternative RASS.
- Pending transfer of property ownership via a DIL by the date specified in the SSA or DIL Agreement.

**Payment Forbearance.** The servicer will identify in the SSA, Alternative RASS or DIL Agreement the amount of the monthly mortgage payment, if any, that the borrower is required to make during the term of the applicable agreement and pending transfer of property ownership, as applicable. In no event may the amount of the borrower's monthly payment exceed the equivalent of 31% of the borrower's gross monthly income. Servicers must develop a written policy in accordance with investor requirements that identifies the circumstances under which they will require monthly payments and how that payment will be determined. Any requirement for the borrower to make monthly payments must be in accordance with applicable laws, rules and regulations.

**Release of Subordinate Liens.** It is the responsibility of the borrower to deliver clear marketable title to the purchaser or investor and to work with the listing broker, settlement agent and/or lien holders to clear title impediments. The servicer may, but is not required to, negotiate with subordinate lien holders on behalf of the borrower. The servicer, on behalf of the investor, will authorize the settlement agent to allow up to an aggregate of \$3,000 of the gross sale proceeds as payment(s) to subordinate mortgage/lien holder(s) in exchange for a lien release and full release of borrower liability. Each lien holder, in order of priority, may be paid three percent (3%) of the unpaid principal balance of their loan, until the \$3,000 aggregate cap is reached. Payments will be made at closing from the gross sale proceeds and must be reflected on the HUD-1 Settlement Statement. Investors are eligible for incentive reimbursement for up to one-third of the cost to extinguish subordinate liens as described in the *Incentive Compensation* section of this Supplemental Directive.

**Release of First Mortgage Lien.** The servicer must release its first mortgage lien within ten business days (or earlier if required by state or local laws) after receipt of sale proceeds from a short sale or delivery of the deed and property in a DIL transaction. Additionally, the investor must waive all rights to seek a deficiency judgment and may not require the borrower to sign a promissory note for the deficiency.

**Borrower Fees.** Servicers may not charge the borrower any administrative processing fees in connection with HAFA. The servicer must pay all out-of-pocket expenses, including but not limited to notary fees, recordation fees, release fees, title costs, property valuation fees, credit

report fees, or other allowable and documented expenses, but the servicer may add these costs to the outstanding debt in accordance with borrower's mortgage documents and applicable laws in the event the short sale or DIL is not completed. Servicers may require borrowers to waive reimbursement of any remaining escrow, buy down funds or prepaid items, and assign any insurance proceeds to the investor, if applicable. Those funds will not be applied to reduce the total net proceeds from the sale.

**Mortgage Insurer Approval.** For loans that have mortgage insurance coverage, the servicer/investor must obtain mortgage insurer approval for HAFA foreclosure alternatives. A mortgage loan does not qualify for HAFA unless the mortgage insurer waives any right to collect additional sums (cash contribution or a promissory note) from the borrower.

### **Incentive Compensation**

Treasury will provide reimbursements and incentives as set forth below. However, no incentives will be paid to the borrower, servicer or investor if the net proceeds from a sale exceed the total amount due on the first mortgage when title is transferred. The amount of any contribution paid by a mortgage insurer or other provider of credit enhancement shall not be considered in determining whether the mortgage was paid in full and whether servicers are eligible for such incentive compensation.

Borrowers, servicers and investors will be eligible for HAFA incentives upon successful completion of the short sale or DIL if an SSA, Alternative RASS or DIL Agreement, as applicable, was executed on or before December 31, 2012. Servicers will be reimbursed by Treasury upon reporting the completed HAFA transaction as described in the *Reporting Requirements* section of this Supplemental Directive. For a short sale or DIL, incentives will be paid as follows:

**Borrower Relocation Assistance.** Following the successful closing of a short sale or DIL, the borrower shall be entitled to an incentive payment of \$1,500 to assist with relocation expenses. In a short sale transaction, the servicer must instruct the settlement agent to pay the borrower from sale proceeds at the same time that all other payments, including the payoff to the servicer, are disbursed by the settlement agent. The amount paid to the borrower must appear on the HUD-1 Settlement Statement.

If the servicer conducts a formal closing for a DIL transaction and the borrower has vacated the property, the borrower relocation incentive of \$1,500 must be paid at closing and reflected on the HUD-1 Settlement Statement. If at the time of closing the borrower has not vacated the property, the servicer must mail a check to the borrower within five business days of the borrower's vacancy and delivery of keys to the servicer or the servicer's agent. Similarly, if the DIL transaction is not conducted as a formal closing, the servicer must mail a check to the borrower within five business days from the later of the borrower's execution of the deed or the borrower's vacancy and delivery of keys to the servicer or servicer's agent.

Servicers will be reimbursed for the full amount of this incentive payment after the HAFA transaction is reported as described in *Reporting Requirements* section of this Supplemental Directive.

**Servicer Incentive.** The servicer will be paid \$1,000 to cover administrative and processing costs for a short sale or DIL completed in accordance with the requirements of HAFA and the applicable documents. Investors may elect to pay additional incentive compensation to servicers which will not affect the HAFA servicer incentive.

**Investor Reimbursement for Subordinate Lien Releases.** The investor will be paid a maximum of \$1,000 for allowing a total of up to \$3,000 in short-sale proceeds to be distributed to subordinate lien holders, or for allowing payment of up to \$3,000 to subordinate lien holders. This reimbursement will be earned on a one-for-three matching basis. For each three dollars an investor pays to secure release of a subordinate lien, the investor will be entitled to one dollar of reimbursement. To receive an incentive, subordinate lien holders must release their liens and waive all future claims against the borrower. The servicer is not responsible for any future actions or claims against the borrower by such subordinate lien holders or creditors.

### **Standard Form Documents**

Servicers are required to use the HAFA documents attached to this Supplemental Directive substantially the form provided, except that the servicer may amend the terms of the SSA or DIL Agreement in accordance with investor requirements, applicable laws or local real estate practice and may customize the forms with servicer specific logos.

**Document Retention.** Servicers 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 the document collection, servicers must retain detailed records of borrower solicitations or borrower-initiated inquiries regarding HAFA, the outcome of the evaluation for foreclosure alternatives under HAFA and specific justification with supporting details if foreclosure alternatives were denied. Records must also be retained to document the reasons for termination of the SSA or expiration of HAFA transactions without a completed short sale or acceptance of a DIL.

**Signatures and Electronic Documents.** All HAFA documentation must be signed by an authorized representative of the servicer and reflect the actual date of signature by the servicer's representative.

Unless a borrower or co-borrower is deceased or a borrower and a co-borrower are divorced, all parties who signed the original loan documents or their duly authorized representatives must execute the HAFA documents. If a borrower and a co-borrower are divorced and the property has been transferred to one spouse in the divorce decree, the spouse who no longer has an interest in the property is not required to execute the HAFA documents. Servicers may evaluate requests on a case-by-case basis when the borrower is unable to sign due to circumstances such as mental incapacity or military deployment.

Any party to a document utilized in HAFA may, subject to applicable law and any investor requirements or restrictions, prepare, sign and send the document through electronic means provided: (a) appropriate technology is used to store an authentic record of the executed document and the technology otherwise ensures the security, confidentiality and privacy of the transaction, (b) the document is enforceable under applicable law, (c) the servicer obtains the borrower's consent to use electronic means to enter into the document, (d) the servicer ensures that the borrower is able to retain a copy of the document and provides a copy to the borrower that the borrower may download, store and print, and (e) the borrower, at any time, may elect to enter into the document through paper means or to receive a paper copy of the document.

## **Reporting Requirements**

As a condition to receiving the incentive payments offered through HAFA, servicers are required to provide periodic HAFA loan level data to Fannie Mae, in its capacity as program administrator. The data submitted must be accurate, complete, timely, and agree with the servicer's records. Data will be reported by a servicer at key milestones in the transaction:

- **Notification** – when the SSA or DIL Agreement is signed and executed, or updated following an extension of the marketing terms;
- **Short Sale/DIL Loan Set Up** – at the transfer of property ownership (closing of a short sale or acceptance of DIL); and/or
- **Termination** – when the SSA or DIL Agreement expires or when the SSA or DIL Agreement is terminated by the servicer.

Each milestone is a separate data transmission and must be reported no later than the fourth business day of the month following the event. The required data elements are attached to this Supplemental Directive as Exhibit D. In addition, HAFA reporting requirements will be posted on the servicer web portal at [www.hmpadmin.com](http://www.hmpadmin.com). Note also that 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 April 5, 2010.

The HAFA reporting and payment processes are currently under development by Fannie Mae, in its capacity as program administrator. Subsequent guidance will be provided describing when the HAFA reporting and processes will be available. Servicers will not be required to report HAFA data until the reporting process is in place, but in this interim period servicers must collect and store information on all HAFA transactions so that the necessary data can be reported when the processes become available. In addition, HAFA incentives will not be paid until the payment process is available; borrowers, servicers and investors will be reimbursed for all incentives relating to HAFA transactions closed prior to the reporting and payment processes becoming available.

**Credit Bureau Reporting.** The servicer should continue to report a “full file” status to the major credit repositories for each loan under the HAFA program in accordance with the Fair Credit Reporting Act and the Consumer Data Industry Association's (“CDIA's”) Metro 2 Format credit bureau requirements. “Full file” reporting means that the servicer must describe the exact

status of each mortgage it is servicing as of the last business day of each month. The Payment Rating code should 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 HAFA transaction. Because CDIA’s Metro 2 format does not provide an Account Status Code allowable value for a short sale, a short sale should be identified with the reporting of Special Comment Code “AU”. The information below is consistent with “CDIA Mortgage and Home Equity Reporting Guidelines in Response to Current Financial Conditions” (May 2009).

Reporting should be as follows:

### **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 loan)
- 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

### **Compliance**

Servicers must comply with the HAFA short sale and DIL requirements specified in this Supplemental Directive and any subsequent policy guidance. Servicers must have adequate staffing and resources for responding to borrower requests for participation, for receiving and processing HAFA documents in accordance with program guidelines and for ensuring that inquiries and complaints about HAFA receive fair consideration, along with timely and appropriate response and resolution.

Treasury has selected Freddie Mac to serve as its compliance agent for HAFA. In its role as compliance agent, Freddie Mac will utilize Freddie Mac employees and contractors to conduct independent compliance assessments. The scope of the assessments will include, among other things, an evaluation of documented evidence to confirm adherence (e.g., accuracy and timeliness) to HAFA requirements with respect to the following:

- Assessment of the process for evaluating and approving borrowers for a HAFA short sale or DIL.



- Adherence to the standard policies and guidelines for completing HAFA short sales and DIL and consistent application of same.
- Determining fair market value, recommended list price, approved sale proceeds and approved minimum net proceeds, as applicable.
- Guidelines for allowable payoffs to junior lien holders.
- Use of standard documents and document retention.
- Completion of borrower, servicer and investor incentive payments.

The review will also confirm the existence and evaluate the effectiveness of the servicer's quality assurance program; such evaluation will include, without limitation, the timing and size of the sample selection, the scope of the quality assurance reviews, and the reporting and remediation process.

There will be two types of compliance assessments: on-site and remote. Both on-site and remote reviews will include the following activities (among others): notification, scheduling, self-assessments, documentation submission, interviews, file reviews, and reporting.

For on-site reviews, Freddie Mac will strive to provide the servicer with (i) a 30-day advance notification of a pending review and (ii) subsequent confirmation of the dates of the review; however, Freddie Mac reserves the right to arrive at the servicer's site unannounced. Freddie Mac will request the servicer to make available documentation, including, without limitation, policies and procedures, management reports, loan files and a risk control self assessment ready for review. Moreover, Freddie Mac may request additional loan files during the review. Interviews will usually be conducted in-person.

During the review window, Freddie Mac will review loan files and other requested documentation to evaluate compliance with HAFA terms. Upon the completion of the review, Freddie Mac will conduct an exit interview with the servicer to discuss preliminary assessment results.

For remote reviews, Freddie Mac will request the servicer to send documentation, including, without limitation, policies and procedures, management reports, loan files and a risk control self assessment within 30 calendar days of the request. In addition, time will be scheduled for phone interviews, including a results summary call after the compliance review is completed to discuss preliminary results.

The targeted time frame for publishing the servicer assessment report is 30 calendar days after the completion of the review. Treasury will receive a copy of the report five business days prior to the release of the report to the servicer. There will be an issue/resolution appeal process for servicer assessments. Servicers will be able to submit concerns or disputes to an independent quality assurance team within Freddie Mac.

A draft rating and implication methodology for the compliance assessments will be published in a subsequent Supplemental Directive and servicer feedback will be solicited prior to the finalization of the methodology.

**HELPING YOU STAY IN YOUR HOME.**

[Name of Servicer]  
[Address of Servicer]

[Loan #]  
[Servicer FAX]  
[Servicer Email]

[Date]

[Name of Borrower]  
[Name of Co-Borrower]  
[Address of Borrower]

[Borrower Phone]  
[Borrower Email]

Dear [borrower and co-borrower name(s)]:

If you are looking for help selling your home and avoiding foreclosure, the federal government has introduced the **Home Affordable Foreclosure Alternative (HAFA)** Program to help you. As your mortgage servicer, we are offering you the opportunity to participate in this program by utilizing HAFA's short sale option.

#### **Home Affordable Foreclosure Alternative Program – Short Sale**

A "short sale" is specifically designed to help borrowers who are unable to afford their first mortgage and want to sell their home to avoid foreclosure, even if the sale price may not pay off the amount owed on their mortgage. A short sale requires a number of parties (you, the buyer, your real estate broker, and sometimes mortgage insurance companies and other lenders) to work together to make this option successful. However, it could be a good solution for your current situation.

#### **How does a short sale work?**

- **Pre-Sale**—We will start by approving a list price for your home or give you the acceptable sale proceeds (the minimum amount that we must receive after sales costs) from the sale of your home. We will also identify the sales costs (broker commissions and closing costs) that may be deducted from the final sales price. You then list your property (like any home sale) with a local real estate broker at the approved price.
- **Offer**—When you get an offer on your home, you will submit the required documentation and we will approve the sale if it is in line with what we agreed to.
- **Closing**—Once the sale closes, we will release you from all responsibilities for repaying your mortgage. Plus, you will receive \$1,500 to help pay some of your moving expenses. (The check will be paid to you by the settlement agent as part of the closing.) In the event there is any money left over from the sale after paying the entire amount you owe on the mortgage plus the approved sale costs, you will not be eligible to receive the \$1,500.

#### **To participate in the Short Sale Program**

Please note, there is no guarantee that your home will sell under this program, and you are responsible for determining whether you want to sell your home for the price and terms described in this letter. The following pages detail your responsibilities, additional information on the short sale process and the Terms and Conditions. **Additionally, this letter constitutes an agreement between us and you ("Agreement") so please read it carefully and completely.**

If you agree to the terms of the Agreement and want to proceed with a short sale, you must complete, sign and return the Agreement back to us. If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

Sincerely,  
Servicer Name

### To Accept This Offer

- Please sign and return this Agreement. All owners of the property must sign this Agreement.
- Obtain your broker's signature to acknowledge this Agreement, because your broker plays an important role selling your property. The Short Sale Program sections (pages 2-4) contain important information that you and your broker will need to review and discuss.
- Include a copy of your signed listing agreement.
- Include information on other liens secured by your home (such as home equity loans, homeowner association liens, tax liens or judgments).
- *[Insert only if applicable:]* Complete and sign the Hardship Affidavit form.

We must have these documents by *[insert date 14 calendar days from this request]*. Please send us these documents at the following address: *[insert servicer address]*.

### Short Sale Program—Your Responsibilities

You have until *[insert date 120 calendar days from the date of this letter]* to sell your house. After that date, this Agreement terminates, unless it is extended by us. During this time you have certain responsibilities. You must:

- ❶ Keep your house and your property in good condition and repair and cooperate with your broker to show it to potential buyers.
- ❷ *[Insert only if applicable:]* Make partial mortgage payments of \$\_\_\_\_\_ by the first day of each month beginning on \_\_\_\_\_ 1, 20\_\_ until your house is sold and title is transferred. While you are selling your house, you still legally owe the full amount of your current monthly mortgage payment. However, as part of this Agreement, we will accept this reduced payment until the house is sold and closes or this Agreement expires. These payments do not constitute a modification of your mortgage.
- ❸ Be able to provide the buyer of your home with clear title. To start, determine if you have other loans, judgments or liens secured by your home, such as a home-equity line of credit or a second mortgage. If there are such liens, you will need to either pay these loans off in full or negotiate with the lien holders to release them before the closing date. Under this program, you must make sure other lien holders will agree not to pursue other legal action related to the pay off of their lien, such as a deficiency judgment. You can get help from your broker to negotiate with the other lien holders.
- ❹ We will allow up to 3% of the unpaid principal balance of each loan (not to exceed an aggregate of \$3,000 for all the loans in total) to be paid from the sale proceeds to help get a lien release. If you have these types of liens or loans on your home, please gather any paperwork you have (such as your last statement) and send it to us when you return this signed Agreement. Remember, clearing these other liens and delivering clear and marketable title is your responsibility.
- ❺ At several stages of the short sale process, such as after an offer is received, you will need to complete some paperwork. You are responsible for returning all documents within the time allowed in this Agreement.

If you fulfill these responsibilities, we will postpone any foreclosure sale during the period of this Agreement.

### Short Sale Program—Additional Information

- You can't list the property with or sell it to anyone that you are related to or have a close personal or business relationship with. In legal language, it must be an "arm's length transaction." If you have a real estate license you can't earn a commission by listing your own property. You may not have any agreements to receive a portion of the commission or the sales price after closing. Any buyer of your property must agree to not sell the home within 90 calendar days of the date it is sold by you. You may not have any expectation that you will be able to buy or rent *[servicer may delete "or rent" in accordance with investor guidelines]* your house back after the closing. Any knowing violation of the arm's length transaction prohibition may be a violation of federal law.
- We will need to talk to your broker and others involved in the sale. By signing this Agreement you are authorizing us to communicate and share personal financial information about your mortgage, credit history, subordinate liens, plans for relocation, with your broker and other third parties that could be involved in the transaction including employees of the United States Treasury and its financial agents, Fannie Mae and Freddie Mac.
- The difference between the remaining amount of principal you owe and the amount that we receive from the sale must be reported to the Internal Revenue Service (IRS) on Form 1099C, as debt forgiveness. In some cases, debt forgiveness could be taxed as income. The amount we pay you for moving expenses may also be reported as income. We suggest that you contact the IRS or your tax preparer to determine if you may have any tax liability.
- We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than the full payment. We have no control over, or responsibility for the impact of this report on your credit score. To learn more about the potential impact of a short sale on your credit you may want to go to <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.

*[Insert optional Deed-in-Lieu language if applicable:]*

If by the termination date of this Agreement, you have complied with all your responsibilities but are unable to sell your home, we will allow you to convey ownership of your home and all real property secured by your mortgage loan (your "Property"). While this action, called a deed-in-lieu of foreclosure, will not allow you to keep your Property, it will prevent you from going through a foreclosure sale and it will release you from all responsibility to repay the mortgage debt. Additionally, you will still be eligible to receive \$1,500 to help with your moving expenses.

You and all other occupants must vacate your Property and provide clear and marketable title with a general warranty deed or local equivalent by *[insert date at least 30 days after the date of this Agreement]*. You must leave the house in broom clean condition, free of interior and exterior trash, debris or damage, and all personal belongings must be removed from the Property. The yard must be clean and neat and you must deliver all the keys and controls, such as garage door openers, to us. You may be required to sign standard pre-closing documents as well as attend a closing of the conveyance of your Property where all borrowers on the mortgage must be present.

You must also be able to deliver marketable title free of any other liens. We will allow up to three percent (3%) of the unpaid principal balance of each subordinate lien, in order of priority, not to exceed \$3,000 in aggregate for all subordinate liens, to be deducted from the sale proceeds to pay subordinate lien holders to release their liens. We require each subordinate lien holder to release you from personal liability for the loans in order for the sale to qualify for this program, but we do not take any responsibility for ensuring that the lien holders do not seek to enforce personal liability against you. Therefore, we recommend that you take steps to satisfy yourself that the subordinate lien holders release you from personal liability.

By signing this letter, you are agreeing not only to a short sale but also to a deed-in-lieu of foreclosure if a short sale is not successful. If you have any questions about the deed-in-lieu of foreclosure, please call us before signing and returning this letter.]

## Important Program Information



### Short Sale Program—Receiving/Accepting an Offer

When you receive an offer on your home, you will send us a Request to Approve a Short Sale (RASS) form, a copy of which is attached to this Agreement as Exhibit A1. You will also need to send along a copy of the signed purchase offer and evidence that the buyer has funds to purchase the home, such as a letter that the buyer is approved for a mortgage loan. Within 10 business days of our receipt of these documents, we will approve the sale if it within the terms and conditions of this Agreement and any other liens are released.

When the sale closes in accordance with this Agreement, we will accept the net sale proceeds (all the funds that remain after the approved sales costs have been paid) in full satisfaction of your mortgage with us and will release you from all future liability.

We hope you decide to take advantage of this short sale option. If you or your broker have any questions about this Agreement please call us at xxx-xxx-xxxx. If you would like to speak with a counselor about this program, call the Homeowner's HOPE™ Hotline 1-888-995-HOPE (4673). The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

### Short Sale Agreement Terms and Conditions

1. **List Price or Acceptable Sale Proceeds.** *[Choose one and delete unnecessary text.]* [You agree to list the property in “as is” condition for [dollar amount].] OR [We will accept a sales contract where the proceeds from the sale, less the expenses stated in paragraph 5. *Allowable Costs*, nets [dollar amount].] We are not responsible for the accuracy of the list price and have no responsibility to you in the event the property is not sold. We may require you to adjust the list price or other offer terms.
2. **Listing Agreement.** The listing agreement must include the following clauses:
  - a. **Cancellation Clause.** “Seller may cancel this Agreement prior to the ending date of the listing period without advance notice to the broker, and without payment of a commission or any other consideration, if the property is conveyed to the mortgage insurer or the mortgage holder.”
  - b. **Listing Agreement Contingency Clause.** “Sale of the property is contingent on written agreement to all sale terms by the mortgage holder and the mortgage insurer (if applicable).”
3. **Property Maintenance and Expenses.** You are responsible for all property maintenance and expenses during the listing period including utilities, assessments, association dues and costs for interior and exterior upkeep required to show the property to its best advantage. Additionally, until ownership is transferred, you must report any and all property damage to us and file a hazard insurance claim for covered damage. Unless insurance proceeds are used to pay for repairs or personal property losses as provided in the mortgage documents, we may require that they be applied to reduce the mortgage debt.
4. *[Insert only if applicable:]* **Partial Mortgage Payments.** Beginning on \_\_\_\_\_ 1, 20\_\_\_\_, you will be required to make partial mortgage payments of \$\_\_\_\_\_ by the first day of each month during the term of the Agreement and pending transfer of property ownership. You are legally obligated to make the full amount of your current monthly mortgage payments. However, we will accept this reduced partial payment until the house is sold or this Agreement expires. The partial mortgage payments do not constitute a modification of your mortgage.
5. **Allowable Costs that May be Deducted from Gross Sale Proceeds**
  - a. **Closing Costs.** The closing costs paid by you or on your behalf as seller must be reasonable and customary for the market. *[Choose one and delete unnecessary text.]* [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed \$\_\_\_\_\_.] OR [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed \_\_\_\_% of the list price.] OR [Closing costs which may be deducted from the gross sale proceeds are limited to title search and escrow expenses usually paid by the seller; reasonable settlement escrow/attorney’s fees; transfer taxes and recording fees usually paid by the seller; termite inspection and treatment as required by law or custom; pro-rated real property taxes; and, negotiated real estate commissions not to exceed six percent (6%) of the contract sales price [add other closing costs that may be included].]
  - b. **Subordinate Liens.** We will allow up to three percent (3%) of the unpaid principal balance of each subordinate lien in order of priority, not to exceed a total of \$3,000, to be deducted from the gross sale proceeds to pay subordinate lien holders to release their liens. We require each subordinate lien holder to release you from personal liability for the loans in order for the sale to qualify for this program, but we do not take any responsibility for ensuring that the lien holders do not seek to enforce personal liability against you. Therefore, we recommend that you take steps to satisfy yourself that the subordinate lien holders release you from personal liability.
  - c. **Real Estate Commissions.** We will pay real estate commissions as stated in the listing agreement between you and your broker, not to exceed six percent (6%) of the contract sales price, to be paid to the listing and selling brokers involved in the transaction. Neither you nor the buyer may receive a commission. Any commission that would otherwise be paid to you or the buyer must be reduced from the commission due on sale. *[Optional text:]* Please note: We have retained a vendor to assist your listing broker with the sale, and this vendor must be paid \_\_\_\_% [or \$\_\_\_\_] from the commission.
  - d. **Borrower Relocation Assistance.** If the closing of the short sale occurs in accordance with this Agreement, you will be entitled to an incentive payment of \$1,500 to assist with relocation expenses. We will instruct the settlement agent to pay you from the sale proceeds at the same time that all other payments, including the payoff of our first mortgage, are disbursed by the settlement agent. Only one payment per household is provided for the relocation assistance, regardless of the number of borrowers.



6. **Sales Contracts.** Within three business days of a bona-fide purchase offer, you must submit a Request for Approval of a Short Sale, which is attached as Exhibit A1, along with a copy of a fully executed Sales Contract, all addenda and Buyer's documentation of funds or Buyer's pre-approval or commitment letter on letterhead from a lender.
7. **Parties to the Sale.** The Sales Contract must contain the following clauses: "Seller and Buyer each represent that the sale is an "arm's length" transaction and the Seller and Buyer are unrelated to each other by family, marriage or commercial enterprise." "The Buyer agrees not to sell the property within 90 days of closing of this sale."
8. **Closing.** The closing must occur within \_\_\_\_ calendar days of the Sales Contract execution date.
9. **Foreclosure Sale Suspension.** We may initiate or continue the foreclosure process as permitted by the mortgage documents; however, we will suspend any foreclosure sale date until the expiration date of this Agreement or the date of closing of an approved short sale, whichever is later, provided you continue to abide by the terms and conditions of this Agreement.
10. **Satisfaction and Release of Liability.** If all of the terms and conditions of this Agreement are met, upon sale and settlement of the property, servicer will prepare and send for recording a lien release in full satisfaction of the mortgage, foregoing all rights to personal liability or deficiency judgment.
11. *[Insert only if applicable.]* **Mortgage Insurer or Guarantor Approval.** The terms and conditions of the sale are subject to the written approval of the mortgage insurer or guarantor.
12. **Termination of This Agreement.** Unless otherwise agreed by the parties, this Agreement will terminate on *[insert date]*. We may also terminate this Agreement at any time if:
  - a. Your financial situation improves significantly, you qualify for loan modification, you bring the account current or you pay off the mortgage in full.
  - b. You or your broker fails to act in good faith in marketing and /or closing on the sale of the property, or otherwise fails to abide by the terms of this Agreement.
  - c. A significant change occurs to the property condition or value.
  - d. There is evidence of fraud or misrepresentation.
  - e. You file for bankruptcy and the Bankruptcy Court declines to approve the Agreement.
  - f. Litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance.
  - g. *[Insert only if applicable:]* You do not make the payments required under this Agreement.
13. **Settlement of a Debt.** The proposed transaction represents our attempt to reach a settlement of the delinquent mortgage. You are choosing to enter into this Agreement even though there is no guarantee that the transaction will be successful. In the event this transaction is unsuccessful, we may exercise our remedies under the mortgage, including foreclosure.

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Signature of Servicer Representative

---

Title

---

Printed Name of Servicer Representative

---

Date

Short Sale Agreement

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU SIGN, BECAUSE IT AFFECTS YOUR LEGAL RIGHTS.**

**Borrower Acknowledgement of Risks, Conditions and Contingencies.** In signing and returning this Short Sale Agreement I/we agree to all the stated terms and conditions.

_____ Borrower Signature	_____ Date	_____ Co- Borrower Signature	_____ Date
_____ Printed Name		_____ Printed Name	

**Acknowledgement by Listing Broker**

The undersigned listing broker ("Broker") is not a party of the Short Sale Agreement ("Agreement") above, but acknowledges that the Broker:

1. Has been retained by the borrower for the sale of the property.
2. Has reviewed the terms and conditions of the Agreement above.
4. Agrees that in the event of a conflict between the terms of the listing agreement and the terms agreed to by the borrower in the Agreement above, the listing agreement will be deemed amended to conform to the terms of the Agreement.
5. Acknowledges that pursuant to the Agreement, the Servicer will not review a sales contract unless a Request for Approval of Short Sale, attached as Exhibit A1 is completed.

_____ Listing Broker Name	_____ Listing Broker Signature
_____ Address:	_____ License #:
_____ Office Phone:	_____ Cell Phone:
_____ Date:	_____ E-mail Address:

**If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]**

If you would like to speak with a counselor about this program, call the Homeowner's HOPE™ Hotline 1-888-995-HOPE (4673). The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

**NOTICE TO BORROWER**

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: "Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or [www.sig tarp.gov](http://www.sig tarp.gov). Mail can be sent Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.



## HELPING YOU STAY IN YOUR HOME.



[Name of Servicer]  
[Address of Servicer]

[Loan #]  
[Servicer FAX]  
[Servicer Email]

[Date]

[Name of Borrower]  
[Name of Co-Borrower]  
[Address of Borrower]

[Borrower Phone]  
[Borrower Email]

RE: Request for Approval of Short Sale Pursuant to Agreement Dated [Date of SSA]

This is a Request for Approval of the Short Sale Pursuant to Agreement Dated [Date of SSA] between the above referenced Servicer ("Servicer") and the borrower and co-borrower ("Borrower" or "you"). Under penalty of perjury you certify that:

- 1) the sale of the property is an "arm's length" transaction, between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise;
- 2) there are no agreements or understandings between you and the Buyer that you will remain in the property as a tenant or later obtain title or ownership of the property;
- 3) neither you nor the Buyer will receive any funds or commissions from the sale of the property and
- 4) there are no agreements or offers relating to the sale or subsequent sale of the property that have not been disclosed to the Servicer.

Please complete, sign and return the Terms of Sale on the following page.

## Terms of Sale [All blanks to be completed by Borrower]:

1. Contract Sales Price	\$	6. Closing Date:
2. Less Total Allowable Closing Costs	\$	7. Approved Buyer(s):
a. Commissions	\$	
b. Settlement Escrow/Attorney Fees	\$	
c. Seller's Title and Escrow Fees	\$	8. Settlement Agent:
d. Subordinate Lien Payoff	\$	
e. Real Property Taxes	\$	
f. Real Property Taxes	\$	9. Settlement Agent's Address:
g. Termite Inspection/Repair	\$	
h. Borrower Relocation Assistance	\$ 1,500	
i. Other (attach explanation)	\$	
3. Net Proceeds to Servicer	\$	
4. Earnest Money Deposit	\$	10. Settlement Agent's Office Phone:
5. Down Payment	\$	11. Settlement Agent's Office Fax:

As required by the Short Sale Agreement, copies of the following documents are attached:

- ☐ Sales contract and all addenda
- ☐ Buyer's documentation of funds or Buyer's pre-approval or commitment letter on letterhead from lender

The Borrower represents that the information provided in this Request is true and accurate and authorizes the Servicer to disclose to the U.S. Department of the Treasury or other government agency, Fannie Mae and/or Freddie Mac any information provided in connection with the Making Home Affordable program.

Borrower Signature	Date	Co-Borrower Signature	Date
Printed Name		Printed Name	

If you would like to speak with a counselor about this program, call the Homeowners **HOPE™ Hotline 1-888-995-HOPE (4673)**. The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

**If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]**

### NOTICE TO BORROWER

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: "Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or [www.sig tarp.gov](http://www.sig tarp.gov). Mail can be sent Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.



**To be Completed by your Servicer**

**Approval of Short Sale** - The Servicer consents to this Request for Approval of Short Sale and agrees to accept all net proceeds from the settlement as full and final satisfaction of the first mortgage indebtedness on the referenced property. This agreement is subject to the following:

- A. **Terms** – The sale and closing comply with all terms and conditions of the Short Sale Agreement between the Servicer and the Borrower as well as all terms and representations provided herein by the Borrower.
- B. **Changes** – Any change to the terms and representations contained in this Request for Approval of Short Sale or the attached sales contract between you and the buyer must be approved by the Servicer in writing. The Servicer is under no obligation to approve such changes.
- C. **Subordinate Liens** – Prior to releasing any funds to holders of subordinate liens/mortgages, the closing agent must obtain a written commitment from the subordinate lien holder that it will release Borrower from all claims and liability relating to the subordinate lien in exchange for receiving the agreed upon payoff amount.
- D. **HUD-1** – A HUD-1 Settlement Statement, which will be signed by you and the buyer at closing, must be provided to the Servicer not later than one business day before the date indicated in Line 4, *Closing Date*.
- E. **Bankruptcy** – If you are currently in bankruptcy or you file bankruptcy prior to closing, you must obtain any required consent or approval of the Bankruptcy Court.
- F. **Tax Consequences** – A short payoff of the mortgage may have tax consequences. You are advised to contact a tax professional to determine the extent of tax liability, if any.
- G. **Credit Bureau Reporting** – We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than the full payment. We have no control over or responsibility for the impact of this report on your credit score. To learn more about the potential impact of a short sale on your credit you may want to go to <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.
- H. **Payment Instructions** – Payoff funds and a final HUD-1 Settlement Statement must be received by the Servicer within 48 hours of closing in accordance with the attached wiring instructions. [*include instructions*]
- I. **Closing Instructions** – [*include proprietary closing instructions, if any*]

**If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]**

\_\_\_\_\_  
Signature of Servicer Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name of Servicer Representative

\_\_\_\_\_  
Date

**Disapproval of Short Sale** - The Servicer disapproves this Request for Approval of Short Sale, for the following reasons (check all applicable reasons):

<input type="checkbox"/>	You did not comply with all terms and conditions of the Short Sale Agreement between Servicer and Borrower dated ____/____/____ as it relates to section/s: _____
<input type="checkbox"/>	<p>The Request for Approval of Short Sale was not complete and/or fully executed.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Failure to provide executed sales contract or addenda</li> <li><input type="checkbox"/> Failure to provide buyer's documentation of funds to close or buyer's pre-approval or commitment letter on letterhead from lender</li> </ul>
<input type="checkbox"/>	<p>The net proceeds available to pay off the first mortgage loan are insufficient, due to:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Contract sales price is below list price stated in Short Sale Agreement</li> <li><input type="checkbox"/> Net proceeds amount is less than acceptable net proceeds stated in Short Sale Agreement</li> <li><input type="checkbox"/> Excessive financial concessions</li> <li><input type="checkbox"/> Excessive commissions</li> <li><input type="checkbox"/> Excessive closing costs</li> <li><input type="checkbox"/> Excessive payments to subordinate liens/mortgages OR release of subordinate liens did not occur</li> </ul>
<input type="checkbox"/>	The mortgage insurer did not approve the short sale.
<input type="checkbox"/>	Other:

**If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]**

---

Title

Date \_\_\_\_\_



## HELPING YOU STAY IN YOUR HOME.



[Name of Servicer]  
[Address of Servicer]

[Loan #]  
[Servicer FAX]  
[Servicer Email]

[Name of Borrower]  
[Name of Co-Borrower]  
[Address of Borrower]

[Borrower Phone]  
[Borrower Email]

[Date]

RE: Request for Approval of Short Sale

You have taken an important step toward selling your home and avoiding foreclosure by participating in the federal government's **Home Affordable Foreclosure Alternative** (HAFA) Program. This letter is a Request for Approval of a Short Sale and contains important information.

Read the following pages carefully and complete, sign and return the Terms and Conditions.

If you have not previously contacted us regarding eligibility for a loan modification, you should consider this alternative. Under the Home Affordable Modification Program (HAMP), you may qualify for a modification with affordable and sustainable monthly payments that would allow you to keep your home. Please contact us by *[insert date 14 calendar days from date of this request]* if you wish to be considered for a loan modification.

**If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]**

Sincerely,

Servicer Name

The borrower and co-borrower, if applicable ("Borrower" or "you"), of the above loan contacted the Servicer ("Servicer" or "we") because your mortgage payments are no longer affordable and you would like to avoid foreclosure. After listing your house for sale, an offer was received. However, the sale may not be sufficient to pay off the loan. This is a Request for Approval of a Short Sale ("Request") of the subject property, the net sale proceeds from which we agree to accept as the payoff of the mortgage loan even though the proceeds are expected to be less than the full amount due.

### Short Sale Program—Terms and Conditions of the Request are as follows:

#### 1. Allowable Costs that May be Deducted from Gross Sale Price

- a. **Closing Costs.** The closing costs paid by you or on your behalf as seller must be reasonable and customary for the market. [Choose one and delete unnecessary text.] [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed \$\_\_\_\_\_.] OR [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed \_\_\_\_% of the list price.] OR [Closing costs which may be deducted from the gross sale proceeds are limited to title search and escrow expenses usually paid by the seller; reasonable settlement escrow/attorney's fees; transfer taxes and recording fees usually paid by the seller; termite inspection and treatment as required by law or custom; pro-rated real property taxes; and, negotiated real estate commissions not to exceed six percent (6%) of the contract sales price [add other closing costs that may be included].]
- b. **Subordinate Liens.** We will allow up to three percent (3%) of the unpaid principal balance of each subordinate lien in order of priority, not to exceed a total of \$3,000, to be deducted from the gross sale proceeds to pay subordinate lien holders to release their liens. We require each subordinate lien holder to release you from personal liability for the loans in order for the sale to qualify for this program, but we do not take any responsibility for ensuring that the lien holders do not seek to enforce personal liability against you. Therefore, we recommend that you take steps to satisfy yourself that the subordinate lien holders release you from personal liability.
- c. **Real Estate Commissions.** We will pay real estate commissions as stated in the listing agreement between you and your broker, not to exceed six percent (6%) of the contract sales price, to be paid to the listing and selling brokers involved in the transaction. Neither you nor the buyer may receive a commission. Any commission that would otherwise be paid to you or the buyer must be reduced from the commission due on sale. [Optional text:] Please note: We have retained a vendor to assist your listing broker with the sale, and this vendor must be paid \_\_\_\_% [or \$\_\_\_\_] from the commission.
- d. **Borrower Relocation Assistance.** If the closing of the short sale occurs in accordance with this Agreement, you will be entitled to an incentive payment of \$1,500 to assist with relocation expenses. We will instruct the settlement agent to pay you from the sale proceeds at the same time that all other payments, including the payoff of our first mortgage, are disbursed by the settlement agent. Only one payment per household is provided for the relocation assistance, regardless of the number of borrowers.

2. **Property Maintenance and Expenses.** You are responsible for all property maintenance and expenses of your home until you convey your Property to us, including utilities, assessments, association dues, and costs for interior and exterior maintenance. Additionally, you must report any and all property damage to us and file a hazard insurance claim for covered damage. Unless insurance proceeds are used to pay for repairs or personal property losses, we may require that they be applied to reduce the mortgage debt.
3. [Insert only if applicable:] **Partial Mortgage Payments.** Beginning on \_\_\_\_\_ 1, 20\_\_\_\_, you will be required to make partial mortgage payments of \$\_\_\_\_\_ by the first day of each month during the term of the Request and pending transfer of property ownership. You are legally obligated to make the full amount of your current monthly mortgage payments. However, we will accept this reduced partial payment until the house is sold or this Agreement expires. The partial mortgage payments do not constitute a modification of your mortgage.

4. **Parties to the Sale.** The Sales Contract must include the following clauses: "Seller and Buyer each represent that the sale is an "arm's length" transaction and the Seller and Buyer are unrelated to each other by family, marriage or commercial enterprise." "The Buyer agrees not to sell the property within 90 days of closing of this sale."
5. **Foreclosure Sale Suspension.** We may initiate or continue the foreclosure process as permitted by the mortgage documents; however, we will suspend any foreclosure sale date until the expiration date of this Request or the date of closing of an approved short sale, whichever is later, provided that you abide by its terms and conditions.
6. **Satisfaction and Release of Liability.** If all of the terms and conditions of this Request are met, upon sale and settlement of the property, we will prepare and send to the settlement agent for recording, a lien release in full satisfaction of the mortgage, foregoing all rights to pursue a deficiency judgment.
7. *[Insert only if applicable.]* **Mortgage Insurer or Guarantor Approval.** The terms and conditions of the purchase contract are subject to the written approval of the mortgage insurer or guarantor.
8. **Termination of This Request.** Unless otherwise agreed by the parties, this Request will terminate on *[insert date]* if the sale does not close. This Request may be terminated earlier if:
  - a. You fail to provide all the required documents listed above.
  - b. Your financial situation improves significantly, you qualify for a modification, you bring the account current or you pay off the mortgage in full.
  - c. You or your broker fails to act in good faith in closing on the sale of the property or otherwise fails to abide by the terms of this Request.
  - d. A significant change occurs to the property condition or value.
  - e. There is evidence of fraud or misrepresentation.
  - f. You file for bankruptcy and the Bankruptcy Court declines to approve the Request.
  - g. Litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance.
  - h. *[Insert only if applicable:]* You do not make the payments required under this Request.
9. **Settlement of a Debt.** The proposed transaction represents the Servicer's attempt to reach a settlement of the delinquent mortgage. You are choosing to enter into this transaction even though there is no guarantee that the transaction will be successful. In the event this transaction is unsuccessful, the Servicer may exercise all remedies under the mortgage, including foreclosure.

Under penalty of perjury, you certify that:

5. the sale of the property is an "arm's-length" transaction, between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise;
6. there are no agreements or understandings between you and the Buyer that you will remain in the property as a tenant or later obtain title or ownership of the property;
7. neither you nor the Buyer will receive any funds or commissions from the sale of the property and
8. there are no agreements or offers relating to the sale or subsequent sale of the property that have not been disclosed to the Servicer.

## Terms of Sale [All blanks to be completed by Borrower]:

6. Contract Sales Price	\$	12. Closing Date:
7. Less Total Allowable Closing Costs	\$	13. Approved Buyer(s):
a. Commissions	\$	
b. Settlement Escrow/Attorney Fees	\$	
c. Seller's Title and Escrow Fees	\$	14. Settlement Agent:
d. Subordinate Lien Payoff	\$	
e. Real Property Taxes	\$	
f. Real Property Taxes	\$	15. Settlement Agent's Address:
g. Termite Inspection/Repair	\$	
h. Borrower Relocation Assistance	\$ 1,500	
i. Other (attach explanation)	\$	
8. Net Proceeds to Servicer	\$	
9. Earnest Money Deposit	\$	16. Settlement Agent's Office Phone:
10. Down Payment	\$	17. Settlement Agent's Office Fax:

As required by the Short Sale Program, copies of the following documents are attached:

- ☐ Signed Request;
- ☐ Copy of a signed listing agreement with a real estate broker, if applicable;
- ☐ Executed copy of the sales contract and all addenda;
- ☐ Buyer's documentation of funds or Buyer's pre-approval or commitment letter on letterhead from a lender;
- ☐ Information about other liens secured by your home such as home-equity loans;
- ☐ [Insert only if applicable:] Completed and signed Hardship Affidavit form; and
- ☐ Servicer must have these documents no later than [insert date 14 calendar days from date of this request] or we will not be able to respond to this request. Please send us these documents at the following address: [insert servicer address].

The Borrower represents that the information provided in this Request is true and accurate and authorizes the Servicer to disclose to the U.S. Department of the Treasury or other government agency, Fannie Mae and/or Freddie Mac any information provided in connection with the Making Home Affordable program.

Borrower Signature	Date	Co- Borrower Signature	Date
_____	_____	_____	_____
Printed Name		Printed Name	

If you would like to speak with a counselor about this program, call the Homeowner's **HOPE™ Hotline 1-888-995-HOPE (4673)**. The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

**If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]**

### NOTICE TO BORROWER

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: "Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or [www.sig tarp.gov](http://www.sig tarp.gov). Mail can be sent Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.



**To be Completed by your Servicer**

**Approval of Short Sale** - The Servicer consents to this Request for Approval of Short Sale and agrees to accept all net proceeds from the settlement as full and final satisfaction of the first mortgage indebtedness on the referenced property. This approval is subject to the following:

- A. **Terms** – The sale and closing comply with all terms and conditions of the Request as well as all terms and representations provided herein by the Borrower.
- B. **Changes** – Any change to the terms and representations contained in the Request or the attached sales contract between you and the buyer must be approved by the Servicer in writing. The Servicer is under no obligation to approve such changes.
- C. **Subordinate Liens** – Prior to releasing any funds to holders of subordinate liens/mortgages, the closing agent must obtain a written commitment from the subordinate lien holder that it will release Borrower from all claims and liability relating to the subordinate lien in exchange for receiving the agreed upon payoff amount.
- D. **HUD-1** – A HUD-1 Settlement Statement, which will be signed by you and the buyer at closing, must be provided to the Servicer not later than one business day before the date indicated in Line 4, *Closing Date*.
- E. **Bankruptcy** – If you are currently in bankruptcy or you file bankruptcy prior to closing, you must obtain any required consent or approval of the Bankruptcy Court.
- F. **Tax Consequences** – A short payoff of the mortgage may have tax consequences. You are advised to contact a tax professional to determine the extent of tax liability, if any.
- G. **Credit Bureau Reporting** – We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than the full payment. We have no control over or responsibility for the impact of this report on your credit score. To learn more about the potential impact of a short sale on your credit you may want to go to <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.
- H. **Payment Instructions** – Payoff funds and a final HUD-1 Settlement Statement must be received by the Servicer within 48 hours of closing in accordance with the attached wiring instructions. *[include instructions]*
- I. **Closing Instructions** – *[include proprietary closing instructions, if any]*

**If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]**

\_\_\_\_\_  
Signature of Servicer Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name of Servicer Representative

\_\_\_\_\_  
Date

**To be Completed by your Servicer**

**Disapproval of Short Sale** - The Servicer disapproves this Request for Approval of Short Sale, for the following reasons (check all applicable reasons):

<input type="checkbox"/>	You did not comply with all terms and conditions of the Request for Approval of Short Sale as it relates to section/s: _____ _____
<input type="checkbox"/>	The Request for Approval of Short Sale was not complete and/or fully executed. <ul style="list-style-type: none"> <li><input type="checkbox"/> Failure to provide executed sales contract or addenda</li> <li><input type="checkbox"/> Failure to provide buyer's documentation of funds to close or buyer's pre-approval or commitment letter on letterhead from lender</li> </ul>
<input type="checkbox"/>	The net proceeds available to pay off the first mortgage loan are insufficient, due to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Contract sales price is below list price stated in Short Sale Agreement</li> <li><input type="checkbox"/> Net proceeds amount is less than acceptable net proceeds stated in Short Sale Agreement</li> <li><input type="checkbox"/> Excessive financial concessions</li> <li><input type="checkbox"/> Excessive commissions</li> <li><input type="checkbox"/> Excessive closing costs</li> <li><input type="checkbox"/> Excessive payments to subordinate liens/mortgages OR release of subordinate liens did not occur</li> </ul>
<input type="checkbox"/>	The mortgage insurer, investor or guarantor of the loan did not approve the short sale.
<input type="checkbox"/>	Other: _____

**If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]**

\_\_\_\_\_  
Signature of Servicer Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name of Servicer Representative

\_\_\_\_\_  
Date



# HELPING YOU STAY IN YOUR HOME.



[Name of Servicer]  
[Address of Servicer]

[Loan #]  
[Servicer FAX]  
[Servicer Email]

[Date]

[Name of Borrower]  
[Name of Co-Borrower]  
[Address of Borrower]

[Borrower Phone]  
[Borrower Email]

Dear [borrower and co-borrower name(s)]:

As your mortgage servicer, we are offering you the opportunity to participate in the federal government's **Home Affordable Foreclosure Alternative** (HAFA) Program by utilizing the Deed-in-Lieu of Foreclosure (DIL) option to avoid foreclosure.

## Home Affordable Foreclosure Alternative Program – Deed-in-Lieu of Foreclosure

A "deed-in-lieu of foreclosure" is specifically designed to help borrowers who are unable to afford their first mortgage and want to avoid foreclosure. With a DIL, you voluntarily transfer ownership of your home and all real property secured by your mortgage loan (Property) to us to satisfy the total amount due on the first mortgage.

**[Include or delete as appropriate.]** While you previously entered into a Short Sale Agreement (and you complied with all your responsibilities), your Property did not sell. The DIL option will not allow you to keep your Property, however, it will prevent you from going through a foreclosure sale and it will release you from all responsibility to repay the mortgage debt. Additionally, you will be eligible to receive an assistance payment of \$1,500 to help with your moving expenses.

## How does a DIL work?

- **Title**—You and all other occupants must vacate your Property and provide clear and marketable title with a general warranty deed or local equivalent by *[insert date at least 30 days after the date of this Agreement]*.
  - You must also be able to deliver marketable title free of any other liens. We will contribute up to three percent (3%) of the unpaid principal balance of each subordinate lien, not to exceed a total of \$3,000, toward paying off any subordinate lien holders.
  - We require each subordinate lien holder to release you from personal liability for the loans in order for the sale to qualify for this program, but we do not take any responsibility for ensuring that the lien holders do not seek to enforce personal liability against you. Therefore, we recommend that you take steps to satisfy yourself that the subordinate lien holders release you from personal liability.
- **Property Condition**—You must leave the house in broom-clean condition, free of interior and exterior trash, debris or damage, and all personal belongings must be removed from the Property. The yard must be clean and neat and you must deliver all the keys and controls (e.g., garage door openers) to us.
- **Transfer/Closing**—You may be required to sign standard pre-closing documents as well as attend a closing of the transfer of your Property where all borrowers on the mortgage must be present.

The following pages detail your responsibilities, additional information on the DIL process and the Terms and Conditions. **Additionally, this letter constitutes an agreement between us and you ("Agreement").** If you agree to the terms of the Agreement and want to proceed with a DIL, you must complete, sign and return the Agreement back to us. If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

Sincerely,

Servicer Name

## DIL Program—Terms and Conditions

Other terms and conditions to the Deed-in-Lieu Agreement (“Agreement”):

1. **Property Maintenance and Expenses.** You are responsible for all property maintenance and expenses of your Property until you convey it to us including utilities, assessments, association dues, and costs for interior and exterior maintenance. Additionally, you must report any and all property damage to us and file a hazard insurance claim for covered damage. Unless insurance proceeds are used to pay for repairs or personal property losses, we may require that they be applied to reduce the mortgage debt.
2. *[Insert only if applicable:]* **Partial Mortgage Payments.** You will be required to make partial mortgage payments of \$ \_\_\_\_\_ by the first day of each month, beginning on \_\_\_\_\_ 1, 20\_\_\_\_, until title to your house is transferred to us. You are legally obligated to make the full amount of your current monthly mortgage payments. However, we will accept the new partial payment until you have conveyed your Property. The partial mortgage payments do not constitute a modification of your mortgage.
3. **Borrower Relocation Assistance.** If you comply with all your responsibilities under the Agreement, you will be entitled to an incentive payment of \$1,500 to assist with relocation expenses. If there is a formal closing and you have vacated your Property, you will receive your incentive payment at closing. If at the time of closing you have not vacated your Property, we will mail you a check within 5 business days from when you vacate your Property and deliver the keys to us. Similarly, if a formal closing is not conducted, we will mail you a check within 5 business days from the later of when you execute the deed to us or when you vacate your Property and deliver the keys to us. Only one payment per household is provided for the relocation assistance, regardless of the number of borrowers.
4. **Foreclosure Sale Suspension.** We may initiate or continue the foreclosure process as permitted by the mortgage documents; however, we will suspend any foreclosure sale date until the conveyance of your Property has been completed, provided you continue to abide by the terms and conditions of this Agreement.
5. **Satisfaction and Release of Liability.** If all of the terms and conditions of this Agreement are met, upon conveyance of your Property to us by General Warranty deed or the equivalent in the state where your Property is located, we will prepare and record a lien release in full satisfaction of the mortgage, foregoing all rights to pursue a deficiency judgment.
6. *[Insert only if applicable]* **Mortgage Insurer or Guarantor Approval.** The terms and conditions of the Agreement are subject to the written approval of the mortgage insurer or guarantor.
7. **Termination of This Agreement.** We may terminate this Agreement at any time if:
  - a. Your financial situation improves significantly, you qualify for loan modification, you bring the account current or you pay off the mortgage in full.
  - b. You fail to act in good faith with the Agreement.
  - c. A significant change occurs to the property condition or value.
  - d. There is evidence of fraud or misrepresentation.
  - e. You file for bankruptcy and the Bankruptcy Court declines to approve the agreement.
  - f. Litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance.
  - g. *[Insert only if applicable:]* You do not make the payments required under this Agreement.
8. **Settlement of a Debt.** The proposed transaction represents our attempt to reach a settlement of the delinquent mortgage. You are choosing to enter into this Agreement even though there is no guarantee that the transaction will be successful. In the event this transaction is unsuccessful, we may exercise our remedies under the mortgage, including foreclosure.
9. **Possible Income Tax Considerations.** The difference between the remaining amount of principal you owe and the current market value of the property must be reported to the Internal Revenue Service (IRS) on Form 1099-C as debt forgiveness. In some cases, debt forgiveness could be taxed as income. The amount we pay you for moving expenses may also be reported as income. We suggest that you contact the IRS or your tax preparer to determine if you may have any tax liability.

**Credit Bureau Reporting.** We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than the full payment. We have no control over, or responsibility for the impact of this report on your credit score. To learn more about the potential impact of a deed-in-lieu on your credit, you may want to go to <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.

## DIL Program—Agreement

By signing this Agreement, you are agreeing to a deed-in-lieu of foreclosure. If you have any questions about the deed-in-lieu of foreclosure, please call us before signing and returning this Agreement.

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU SIGN, BECAUSE IT AFFECTS YOUR LEGAL RIGHTS.**

**Borrower Acknowledgement of Risks, Conditions and Contingencies.** In signing and returning this Deed-in-Lieu Agreement I/we agree to all the stated terms and conditions.

_____	_____	_____	_____
Borrower Signature	Date	Co- Borrower Signature	Date
_____		_____	
Printed Name		Printed Name	

If you would like to speak with a counselor about this program, call the Homeowner's **HOPE™ Hotline 1-888-995-HOPE (4673)**. The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

**If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]**

### NOTICE TO BORROWER

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: "Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or [www.sig tarp.gov](http://www.sig tarp.gov). Mail can be sent Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.



## Exhibit D – HAFA Data Elements

M=Mandatory; C=Conditional; O=Optional									
Ref ID	Short Sale or Deed-in-Lieu Notification or Notification Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
<b>KEY IDENTIFIERS</b>									
1	M	M	M	M	HAMP Registration Number	The unique identifier for the servicer participating in the HAMP program.	Numeric(15)		
2	M	M	M	M	HAMP Servicer Number	A unique identifier assigned to each Servicer that is participating in the HAMP program.	Numeric(9)		
3	M	M	M	M	Servicer Loan Number	The unique identifier assigned to the loan by the lender that is servicing the loan for the first lien.	Text(30)		
4	C	C	C	C	GSE Servicer Number	The Fannie Mae or Freddie Mac unique Servicer identifier.	Text (30)	If GSE loan	
5	C	C	C	C	GSE Loan Number	A unique identifier assigned to each loan by a GSE (Fannie or Freddie).	Text (30)	If GSE loan	
6	M	M	M	M	Investor Code	Owner of the mortgage.	Numeric(4,0)		enumeration: 1 Fannie Mae 2 Freddie Mac 3 Private 4 Portfolio 5 GNMA 6 FHA/VA 7 State or Local Housing Finance Agency  * indicates Investor Codes currently eligible for HAMP

		M=Mandatory; C=Conditional; O=Optional							
Ref ID	Short Sale or Deed-in-Lieu Notification Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
LOAN LEVEL DATA									
7	C		C	C	Borrower Last Name	The last name of the Borrower. This is also known as the family name or surname.	Text(100)	If loan is not in HAMP system	
8	C		C	C	Borrower First Name	First name of the Borrower of record	Text(100)	If loan is not in HAMP system	
9	C		C	C	Borrower Social Security Number	The social security number of the Borrower	Numeric(9)	If loan is not in HAMP system	
10	C		C	C	Co-Borrower Last Name	Last name of the Co-borrower of record	Text(100)	If co-borrower on loan and if loan is not in HAMP system	
11	C		C	C	Co-Borrower First Name	First name of the Co-borrower of record	Text(100)	If co-borrower on loan and if loan is not in HAMP system	
12	O		O	O	Co-Borrower Social Security Number	The social security number of the Co-borrower	Numeric(9)	If co-borrower on loan and if loan is not in HAMP system and if available	
13	M	M	M	M	Program Type/ Campaign ID	A new program type that will identify campaign types. The unique identifier of a Loan Workout Campaign.	Text(14)		enumeration: HMP3 - Deed-in-Lieu HMP5 - Short Sale
14	M	M	M	M	Submission Status	Status of loan data being submitted.	Numeric(4,0)		enumeration: 8 Short Sale or Deed-in-Lieu Notification 9 Short Sale Loan Set-up 10 Deed-in-Lieu Loan Set-up 11 Cancellation 12 Correction 13 Short Sale or Deed-in-Lieu Extension

		M=Mandatory; C=Conditional; O=Optional							
Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
15	C		C	C	Property Street Address	The street address of the subject property.	Text(200)	If loan is not in HAMP system	
16	C		C	C	Property City	The name of the city where the subject property is located.	Text(100)	If loan is not in HAMP system	
17	C		C	C	Property State	The 2-character postal abbreviation of the state, province, or region of the subject property.	Text(2)	If loan is not in HAMP system	enumeration: WY,WV,WI,WA,VT,VI,VA,UT,TX,TN,SD,SC,RI,PR,PA,OR,OK,OH,NY,NV,NM,NJ,NH,NE,ND,NC,MT,MS,MO,MN,MI,ME,MD,MA,LA,KY,KS,IN,IL,ID,IA,HI,GU,GA,FL,DE,DC,CT,CO,CA,AZ,AR,AL,AK
18	C		C	C	Property Zip Code	The code designated by the postal service to direct the delivery of physical mail or which corresponds to a physical location. In the USA, this can take either a 5 digit form (ZIP Code) or a 9-digit form (ZIP + 4).	Text(9)	If loan is not in HAMP system	
19	C		C	C	Date of Original Note	The date the mortgage note was signed.	Date(CCYY-MM-DD)	If loan did not enter a HAMP trial.	
20	C		C	C	Front Ratio Before Modification	The front-end DTI (principal, interest, taxes, insurance and association dues (PITIA)) housing ratio as of the HAMP modification evaluation.	Numeric(4,2)	If loan did not enter a HAMP trial.	

		M=Mandatory; C=Conditional; O=Optional							
Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
21	C		C	C	Property Usage Type Code	A code identifying the use by the borrower of the property.	Numeric(4,0)	If loan did not enter a HAMP trial.	enumeration: 1 Principal Residence 2 Second or Vacation Home 3 Investment Property
22	C		C	C	Loan Status Type Code	A code specifying whether the loan is in default, imminent default or current status as of the HAMP modification evaluation.	Numeric(4,0)	If loan did not enter a HAMP trial.	enumeration: 1 Default 2 Imminent Default 3 Current
23	M		M	M	Borrower Execution Date	This is the date that the borrower signed the Short Sale Agreement or Deed-in-Lieu Agreement.	Date(CCYY-MM-DD)		
24	M		M	M	Agreement Issue Date	This is the date that the Short Sale Agreement or the Deed-in-Lieu Agreement was issued.	Date(CCYY-MM-DD)		
25	M		M	M	Agreement Expiration Date	The expiration date of the Short Sale Agreement or Deed-in-Lieu Agreement.	Date(CCYY-MM-DD)		
26	M		M	M	Short Sale or Deed-in-lieu Reason Code	A field identifying the reason for the borrower entering into a Short Sale or Deed-in-Lieu transaction.	Numeric(4,0)		enumeration: 1 Does not qualify for a Trial Period Plan 2 Does not successfully complete a Trial Period Plan 3 Is delinquent on a HAMP modification by missing at least two consecutive payments 4 Requests a Short Sale or Deed-in-Lieu



		M=Mandatory; C=Conditional; O=Optional							
Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
27	C		C	C	Short Sale or Deed-in-Lieu Reason Date	For loans that do not qualify for a HAMP trial modification or the borrower declines a modification, this is the date that a trial modification was not offered to the borrower or was not accepted by the borrower. For a borrower who did not successfully complete a trial plan, this is the trial fall out date.	Date(CCYY-MM-DD)	If Short Sale or Deed-in-Lieu Reason code is 1, 2 or 4	
28	M		M		Property List Price	At notification this is the original list price of the property. At extension or correction, it is the latest list price of the property as of the extension or correction. At loan set up, it is the ending list price of the property as of the Transaction Closing Date.	Currency(20, 2)		
29	M		M	M	Property Vacancy Date	The Short Sale Agreement or Deed-in-Lieu Agreement will state the date by which the property must be vacated, which in no event will be less than 30 calendar days from expiration day of the Short Sale Agreement (or any extension thereof) or the date of a separate Deed-in-Lieu Agreement.	Date(CCYY-MM-DD)		

		M=Mandatory; C=Conditional; O=Optional							
Ref ID	Short Sale or Deed-in-Lieu Notification or Notification Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
30	M		M		Minimum Net Return to Investor Amount	The minimum net return is the minimum acceptable net proceeds that the investor will accept from the transaction. The minimum net return must be reported as a dollar amount.	Currency(20, 2)		
31			C	C	Mortgage Insurance Waiver Approval Indicator	For loans with mortgage insurance coverage, this attribute indicates whether the mortgage insurers provided delegations of authority to execute a Short Sale or Deed-in-Lieu in accordance with the foreclosure alternative guidelines and waives any right to collect additional sums from the borrower.	Boolean	If mortgage insurance is on the loan	True/False
32			M	M	Unpaid Principal Balance Amount	The unpaid principal balance of a loan as of the time of the Short Sale or Deed-in-Lieu transaction.	Currency(20, 2)		
33			M	M	Property Sale or Transaction Amount	The sale or transfer price of the property.	Currency(20, 2)		

		M=Mandatory; C=Conditional; O=Optional							
Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
34			M		Total Allowable Costs	The total allowable costs associated with selling the property that can be deducted from the gross sale price at closing. Allowable costs may include subordinate lien release amount, borrower relocation assistance, sales commission, closing costs for taxes, title, attorney fees and other miscellaneous expenses. The closing costs and real estate commissions should be reasonable and customary based on the community in which the property is located.	Currency(20, 2)		
35			M	M	Transaction Closing Date	The date on which the Short Sale or Deed in Lieu transaction is closed.	Date(CCYY-MM-DD)		
36			C	C	Subordinate Lien Release Reimbursement Amount	The total amount of reimbursement paid by the servicer to subordinate lien holder(s) to secure release of subordinate lien. This amount may not exceed \$3,000.	Currency(20, 2)	If subordinate lien release reimbursement is applicable	

	M=Mandatory; C=Conditional; O=Optional								
Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
37		M			Short Sale or Deed-in-Lieu Cancellation Reason Code	A field indicating the reason why a Short Sale or Deed-in-Lieu transaction was cancelled.	Numeric(4,0)		enumeration: 1. Agreement Expiration 2. Agreement Termination 3. Notification Cancellation 4. Loan Set up Cancellation