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Federal Government's Foreclosure Alternatives Program Takes Effect On April 5, 2010

Introduction

On February 18, 2009, the Obama administration announced the creation of the Making Home Affordable Program (MHAP), which is intended to help resurrect the housing market by assisting homeowners to stay in their homes and avoid foreclosure. MHAP includes loan modification and refinance programs that are presently in effect. Participation in MHAP is mandatory for the 2,300 servicers of loans owned or guaranteed by Fannie Mae or Freddie Mac.? Participation for all other servicers is voluntary but strongly encouraged. The servicers that elect to participate are contractually bound to agree that, among other things, they will evaluate borrowers for the MHAP programs, including loan modifications.?

As of January 2010, 110 servicers had signed on to MHAP, a significant increase from the 14 servicers that had signed on as of May 2009. Given the number of loans owned or guaranteed by Fannie Mae or Freddie Mac and the number of servicers that have signed on to MHAP, approximately 89 percent of all the eligible loans in the United States are now covered by MHAP.

Beginning April 5, 2010, another component of MHAP, the Home Affordable Foreclosure Alternatives (HAFA) program, will go into effect. HAFA offers foreclosure alternatives by way of providing incentives to servicers and borrowers to pursue short sales and deeds in lieu of foreclosure. Below is a discussion of HAFA's key components and future considerations.??

The HAFA Procedure

HAFA is available to a borrower who meets the general eligibility requirements for MHAP modification but does not qualify for a modification or was unable to complete the modification process, i.e., could not make all the required payments during the trial or modification period. The general eligibility requirements for MHAP modification are that (1) the property is owner occupied; (2) there is an unpaid principal balance that is equal to or less than $729,750 for a single-family home; (3) there is a first lien mortgage that was originated on or before January 1, 2009; (4) the borrower's monthly mortgage payment is greater than 31 percent of his or her monthly gross income; and (5) the borrower cannot afford the mortgage payments, due to financial hardship.

Under HAFA, after determining that modification is not possible and prior to moving toward foreclosure, the participating servicers must determine whether the subject borrower qualifies for a short sale (i.e., a sale of the property for less than the amount owed to the lender on the mortgage). The servicer will consider the property's value, the expected marketing time for the property, the condition of the title, and whether the net sales proceeds will exceed what would be recovered in a foreclosure. To establish property value and the minimum acceptable net return (pursuant to investor guidance), the servicer must obtain an appraisal performed under the Uniform Standards of Professional Appraisal Practice or broker price opinion(s). The servicer must also provide the borrower with instructions as to the list price of the property and the permitted reductions in price. The servicer must approve an offer to purchase if the net sales proceeds available for payment to the servicer are equal to or exceed the minimum acceptable net return previously determined by the servicer.

HAFA also requires that participating servicers utilize standardized short sale documents published by HAFA, which are intended to streamline the short sale process. Under this standardized process, servicers must allow borrowers at least 120 days (but no more than one year) to market and sell the property. If the borrower fails to sell the property within the agreed-upon time period, the servicer may consider accepting a deed in lieu of foreclosure.

To encourage successful completion of a short sale, HAFA offers the following incentives: