

Obama Administration Announces Financial Incentives and Uniform Process for Short Sales



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Responding to the call of the National Association of REALTORS®, on May 14, 2009, the Obama Administration announced incentives and uniform procedures for short sales under its new Foreclosure Alternatives Program (FAP). For borrowers who are unable to retain their home under the Making Home Affordable Loan Modification Program, the servicer may consider a short sale or, if that is not successful, a deed-in-lieu of foreclosure. Participating servicers must comply with program requirements so long as they do not conflict with contractual agreements with investors. Late July is the Treasury Department's current target for issuing guidelines and forms necessary to start the program.

- **Borrowers (Homeowners).** Borrowers/homeowners qualify under the FAP if they meet minimum eligibility requirements for the Home Affordable Modification program but don't qualify for a modification or do not successfully complete the three month trial period. Before proceeding with a foreclosure, servicers must determine if a short sale is appropriate.
- **Incentives.** Incentives include: (1) \$1,000 for servicers for successful completion of a short sale or deed-in-lieu of foreclosure; (2) \$1,500 for borrowers/homeowners to help with relocation expenses; and (3) up to \$1,000 toward the cost of paying junior lien holders to release their liens (one dollar from the government for every \$2 paid by the investors to the second lien holders).
- **Standardized Documents.** The program will include streamlined and standardized documents, including a Short Sale Agreement and an Offer Acceptance Letter. The goal is to minimize complexity and increase use of the short sale option.
- **Property Valuation by Appraisal or BPO.** Servicers will independently establish both property value and minimum acceptable net return, in accordance with investor requirements. The price may be determined based on an appraisal or one or more broker price opinions (BPOs), issued no more than 120 days before the date of the short sale agreement.
- **Timeline.** In the Short Sale Agreement, servicers must give borrowers/homeowners at least 90 days to market and sell the property, or up to one year, depending on market conditions. Property must be listed with a licensed real estate professional with experience in the neighborhood. No foreclosure may take place during the marketing period (at least 90 days) specified in the Short Sale Agreement.
- **Commissions.** The Short Sale Agreement must specify the reasonable and customary real estate commissions and costs that may be deducted from the sales price. The servicer must agree not to negotiate a lower commission after an offer has been received.
- **No Borrower Fees.** Servicers may not charge fees to borrowers/homeowners for participating in the FAP.
- **Program Expiration.** The program is in effect through 2012.
- **Deed-in-Lieu of Foreclosure Option.** Servicers have the option to require the borrower/homeowner to agree to deed the property to the servicer in exchange for a release from the debt if the property does not sell within the time allowed in the Short Sale Agreement (plus any extensions).

