

## DISSENTING VIEWS

Just 48 days after the “Hope For Homeowners Act” was enacted into law (Public Law 110–289), the Financial Services Committee, through H.R. 6694, voted to reverse policy direction and reinstate the seller-funded downpayment assistance program on a limited basis. While I support gift downpayments by family members, religious organizations, employers, or unions, for example, I cannot support seller-funded third-party interest downpayment programs that distort the price of homes, increase defaults on government-insured mortgages, and lead to possible fraud. Reviving this program is unwise, and I therefore opposed this legislation during Committee consideration.

The controversy surrounding seller-funded downpayment assistance on Federal Housing Administration (FHA)-insured loans dates back to 1999, when the Clinton Administration proposed rules to address what the Department of Housing and Urban Development (HUD), under then-Secretary Andrew Cuomo, perceived as a “clear quid pro quo between the homebuyer’s purchase of the property and the seller’s ‘contribution’ or payments to the non-profit organization.”<sup>1</sup> While the Clinton administration’s proposed rule was never finalized, it did highlight a practice that prompted increasing scrutiny and further investigation by several other agencies.

Indeed, HUD, the Internal Revenue Service (IRS), and the Government Accountability Office (GAO) have all expressed concerns about the providers of this assistance and its effect on the future solvency of the FHA program. In a 2007 report, GAO stated:

Assistance from seller-funded nonprofits alters the structure of the purchase transaction in important ways. First, because many seller-funded nonprofits require property sellers to make a payment to their organization, assistance from these nonprofits creates an indirect funding stream from property sellers to homebuyers. Second, GAO analysis indicated that FHA-insured homes bought with seller-funded nonprofit assistance were appraised at and sold for about 2 to 3 percent more than comparable homes bought without such assistance.<sup>2</sup>

According to HUD, seller-funded downpayment loans are three times more likely to end up in foreclosure as loans without such assistance. Nearly 16 percent of loans made with seller-funded downpayment assistance in 2000 have already gone to claim, compared to just 6 percent of borrower-funded loans. Similarly, nearly 7 percent of loans made in 2004 have gone to claim, compared to just 1.7 percent of borrower-funded loans. This difference may be

<sup>1</sup> See *Federal Register*, September 14, 1999, “Sources of Homeowner Downpayment; Proposed Rule” page 49956–49958.

<sup>2</sup> Seller-Funded Down-Payment Assistance Changes the Structure of the Purchase Transaction and Negatively Affects Loan Performance (GAO–07–1033T June 22, 2007).

explained, in part, by the higher sales prices of comparable homes bought with seller-funded assistance.

Below is a chart showing claim rates over the last 7 years for the Seller Funded Downpayment Assistance Program.

To-Date Claim Rates on FHA Single-Family Purchase Loan Endorsements by Source of Downpayment Funds

Fiscal Year	Borrower (percent)	Relative (percent)	Government agency (percent)	SFDPA (percent)	Employer (percent)
2000	6.09	8.19	13.26	15.78	9.52
2001	5.42	6.41	12.79	15.65	7.24
2002	4.10	4.25	9.76	12.40	5.50
2003	2.85	3.08	7.64	9.80	3.68
2004	1.61	2.10	4.23	6.74	3.33
2005	0.84	0.97	2.04	3.60	1.42
2006	0.16	0.16	0.42	0.86	0.49

Data as of December 31, 2007.  
Source: U.S. Dept of HUD.

*Explanatory Note: Claim rates decline each year because newer loans have had less time to go to claim*

In 2006, the IRS issued a revenue ruling that stripped these organizations of their tax exempt status, ruling that sellers often raise the property price to cover the cost of the downpayment, resulting in no net benefit to the buyer. The IRS stated, as early as 2002, that “in a typical scheme, there is a direct correlation between the amount of down-payment assistance provided to the buyer and the payment received from the seller. Moreover, the seller pays the organization only if the sale closes, and the organization usually charges an additional fee for its services.”

The IRS added that “the payments [from the seller] do not proceed from detached and disinterested generosity, but rather are in response to an anticipated economic benefit, namely facilitating the sale of the seller’s home.” Nothing in H.R. 6694 addresses these concerns.

In what appears to be a circumvention of sound lending policy, the seller-funded downpayments allow potential homeowners to purchase homes without any of their own money at risk. Where I come from, this means the homeowner has “no skin in the game.” Hence, the potential for defaults and foreclosures increases substantially.

In testimony earlier this year, FHA Commissioner Brian Montgomery warned this Committee that his agency could lose \$4.6 billion in 2008 largely due to expected losses from mortgages issued with seller-funded downpayment assistance.

While I recognize that H.R. 6694 attempts to mitigate some of these risks by limiting the use of seller-funded downpayment assistance to borrowers with credit scores above 620, this approach does not go far enough, in my view, to address the very serious concerns that prompted the statutory elimination of the seller-funded downpayment assistance program in the first place.

Given the potentially devastating effect of these programs on the financial standing of the FHA, it should come as no surprise that the Bush administration and HUD have serious concerns about this legislation.

Currently, we are in a housing market environment where the overall mortgage delinquency rate is at its highest level in 29 years, according to data released earlier this month by the Mortgage Bankers Association. Almost 10 percent of all outstanding mortgages are now either delinquent or in foreclosure. It does not make sound policy to overload the FHA program at a time when FHA is already being asked to refinance an estimated 400,000 troubled borrowers on the brink of default and possible foreclosure as part of the "Hope for Homeowners Act of 2008" program created just 48 days ago.

It is for these reasons that I must oppose this legislation.

SPENCER BACHUS.

