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MORTGAGE FINANCING

Seller-Funded Down-Payment Assistance Changes the Structure of the Purchase Transaction and Negatively Affects Loan Performance

Statement of William B. Shear, Director
Financial Markets and Community Investment

June 22, 2007

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Highlights

Highlights of GAO-07-1033T, a testimony before the Subcommittee on Housing and Community Opportunity, Committee on Financial Services, House of Representatives

Why GAO Did This Study

The Federal Housing Administration (FHA) differs from other key mortgage industry participants in that it allows borrowers to obtain down-payment assistance from nonprofit organizations (nonprofits) that operate programs supported partly by property sellers. Research has raised concerns about how this type of assistance affects home purchase transactions. To assist Congress in considering issues related to down-payment assistance, this testimony provides information from GAO's November 2005 report, *Mortgage Financing: Additional Action Needed to Manage Risks of FHA-Insured Loans with Down Payment Assistance* (GAO-06-24). Specifically, this testimony discusses (1) trends in the use of down-payment assistance with FHA-insured loans, (2) the impact that the presence of such assistance has on purchase transactions and house prices, and (3) the influence of such assistance on loan performance.

What GAO Recommends

In the report discussed in this testimony, GAO made recommendations designed to better manage the risks of loans with down-payment assistance generally and from seller-funded nonprofits in particular. Consistent with our recommendations, HUD recently issued a proposed rule that would prohibit the use of seller-funded down-payment assistance with FHA-insured loans.

www.gao.gov/cgi-bin/getrpt?GAO-07-1033T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact William B. Shear at (202) 512-8678 or shearw@gao.gov.

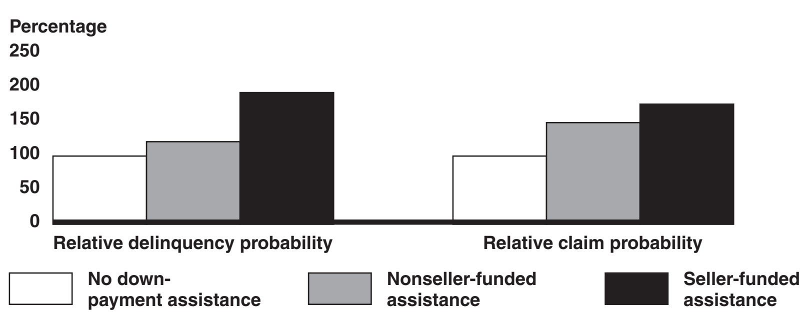
What GAO Found

The proportion of FHA-insured purchase loans that were financed in part by down-payment assistance increased from 35 percent to nearly 50 percent from 2000 through 2004. Assistance from nonprofit organizations that received at least part of their funding from property sellers accounted for much of this increase, growing from about 6 percent of FHA-insured purchase loans in 2000 to approximately 30 percent in 2004. More recent data indicate that in 2005 and 2006, the percentages of FHA-insured loans with down-payment assistance from all sources and from seller-funded nonprofits were roughly equivalent to 2004 levels.

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.

Regardless of the source of assistance and holding other variables constant, GAO analysis indicated that FHA-insured loans with down-payment assistance have higher delinquency and insurance claim rates than do similar loans without such assistance. Furthermore, loans with assistance from seller-funded nonprofits do not perform as well as loans with assistance from other sources (see fig.). This difference may be explained, in part, by the higher sales prices of comparable homes bought with seller-funded assistance and the homebuyers having less equity in the transaction.

Effect of Down-Payment Assistance on the Probability of Delinquency and Claim



Source: GAO.

Note: Loans without assistance are set at 100 percent. Data are from a national sample of FHA-insured loans from 2000, 2001, and 2002; and the analysis controlled for selected variables.

Madam Chairwoman and Members of the Subcommittee:

I am pleased to be here today to discuss issues concerning down-payment assistance for homebuyers. Making a down payment on a mortgage can benefit both the homebuyer and the mortgage provider. For example, a down payment creates "instant equity" for the new homeowner, and we and others have shown that mortgage loans with greater owner investment generally perform better.[1] However, many families have difficulty saving sufficient funds for a down payment and loan closing costs. One way to make homeownership affordable to more families is to allow homebuyers to obtain these funds from third parties such as relatives, employers, government agencies, and nonprofit organizations (nonprofits).

Like many conventional lenders, the Federal Housing Administration (FHA) of the Department of Housing and Urban Development (HUD) allows down-payment assistance from third-party sources. One of the primary goals of FHA, which insures single-family mortgages made by private lenders, is to expand homeownership opportunities for first-time homebuyers and other borrowers who would not otherwise qualify for conventional mortgages on affordable terms. FHA borrowers often have limited resources to meet the 3 percent borrower investment FHA requires and many obtain down-payment assistance. Unlike other key mortgage industry participants, FHA allows borrowers to obtain this assistance from nonprofits that operate programs supported partly by financial contributions and service fees from participating property sellers.

My testimony today is based on a report we issued in November 2005 on down-payment assistance used with FHA-insured mortgages.[2] My discussion will focus on (1) trends in the use of down-payment assistance with FHA-insured loans, (2) the impact that the presence of such assistance has on purchase transactions and house prices, and (3) the influence of such assistance on loan performance.

In preparing our November 2005 report, we analyzed loan-level data from HUD on single-family home purchase mortgages. These data included two samples of FHA-insured loans from fiscal years 2000, 2001, and 2002—a

[1]For example, see GAO, *Mortgage Financing: Actions Needed to Help FHA Manage Risks from New Mortgage Loan Products*, GAO-05-194 (Washington, D.C.: Feb. 11, 2005).

[2]GAO, *Additional Action Needed to Manage Risks of FHA-Insured Loans with Down Payment Assistance*, GAO-06-24 (Washington, D.C.: Nov. 9, 2005).

national sample and a sample from three metropolitan statistical areas (MSA) with high rates of down-payment assistance—and performance data on those loans as of June 30, 2005.[3] We reviewed FHA reports and guidance for loans with down-payment assistance and examined practices used by other mortgage industry participants for loan products that permit similar assistance. We also examined the sales prices of homes by the use and source of down-payment assistance using property value estimates derived from an Automated Valuation Model (AVM).[4] Finally, we interviewed real estate agents, lenders, appraisers, and other key players involved in transactions with down-payment assistance.

In summary, we found that:

- The proportion of FHA-insured purchase loans that were financed in part by down-payment assistance from various sources increased from 35 percent to nearly 50 percent from 2000 through 2004, while the overall number of loans that FHA insured fell sharply. Assistance from nonprofit organizations funded by property sellers accounted for a growing percentage of that assistance. More specifically, about 6 percent of FHA-insured loans in 2000 received down-payment assistance from seller-funded nonprofits, but by 2004 nonprofit assistance had grown to about 30 percent. More recent data indicate that in 2005 and 2006, the percentages of FHA-insured loans with down-payment assistance from all sources and from seller-funded nonprofits were roughly equivalent to 2004 levels.

- Down-payment assistance provided by a seller-funded nonprofit can alter the structure of the purchase transaction in important ways. First, when homebuyers receive such assistance, many of the nonprofits require property sellers to make a payment to the nonprofit that equals the amount of assistance the homebuyer receives, plus a service fee, after the closing. This requirement creates an indirect funding stream from property sellers to homebuyers that does not exist in other transactions, even those involving some other type of down-payment assistance. Second, according to mortgage industry participants and a HUD contractor's study, property sellers that have provided down-payment assistance through nonprofits

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[3]The data consisted of purchase loans insured by FHA's 203(b) program, its main single-family program, and its 234(c) condominium program. The three MSAs were Atlanta, Indianapolis, and Salt Lake City. All years are fiscal years unless otherwise indicated.

[4]AVMs encompass a range of computerized econometric models that use property characteristics and trends in sales prices to provide estimates of residential real estate property values. AVMs are widely used in the mortgage industry for quality control and other purposes.

then often raised the sales prices of the homes involved in order to recover the required payments to the organizations.[5] Similarly, our analysis found 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.

- Loans with down-payment assistance do not perform as well as loans without down-payment assistance. This may be partially explained by the homebuyer having less equity in the transaction. Holding other variables constant, our analysis indicated that FHA-insured loans with down-payment assistance had higher delinquency and insurance claim rates than similar loans without such assistance. For example, we found that the probability that loans with down-payment assistance from a seller-funded nonprofit would result in insurance claims was 76 percent higher in the national sample and 166 percent higher in the MSA sample than it was for comparable loans without assistance. These differences in performance may also be explained, in part, by the higher sales price of comparable homes bought with seller-funded down-payment assistance. Due partly to the adverse performance of loans with seller-funded down-payment assistance, FHA has estimated that in the absence of program changes its single-family mortgage insurance program would require a subsidy—that is, appropriations—in 2008.

Our 2005 report made recommendations designed to better manage the risks of loans with down-payment assistance generally and from seller-funded nonprofits specifically. Consistent with our recommendations, HUD, among other things, recently issued a proposed rule that would prohibit the use of seller-funded down-payment assistance in conjunction with FHA-insured loans.[6]

Background

Congress established FHA in 1934 under the National Housing Act (P.L. 73-479) to broaden homeownership, protect and sustain lending institutions, and stimulate employment in the building industry. FHA's single-family programs insure private lenders against losses from borrower defaults on mortgages that meet FHA's criteria for properties with one to four housing units. FHA historically has played a particularly large role among minority,

[5]Concentrance Consulting Group, *An Examination of Downpayment Gift Programs Administered by Nonprofit Organizations*, prepared for the U.S. Department of Housing and Urban Development (Washington, D.C.: March 2005).

[6]See 72 Fed. Reg. 27048 (May 11, 2007).

lower-income, and first-time homebuyers. In 2006, 79 percent of FHA-insured home purchase loans went to first-time homebuyers, 31 percent of whom were minorities.

In recent years, FHA's volume of business has fallen sharply. More specifically, the number of single-family loans that FHA insured fell from about 1.3 million in 2002 to 426,000 in 2006. To help FHA adapt to recent trends in the mortgage market, in 2006 HUD submitted a legislative proposal to Congress that included changes that would adjust loan limits for the single-family mortgage insurance program, eliminate the requirement for a minimum down payment, and provide greater flexibility to FHA to set insurance premiums based on risk factors. According to HUD, a zero-down-payment mortgage product would provide FHA with a better way to serve families in need of down-payment assistance.

As previously noted, some nonprofits that provide down-payment assistance receive contributions from property sellers. When a homebuyer receives down-payment assistance from one of these organizations, the organization requires the property seller to make a financial payment to their organization. These nonprofits are commonly called "seller-funded" down-payment assistance providers. A 1998 memorandum from HUD's Office of the General Counsel found that funds from a seller-funded nonprofit were not in conflict with FHA's guidelines prohibiting down-payment assistance from sellers.[7] FHA does not approve down-payment assistance programs administered by nonprofits. Instead, lenders are responsible for assuring that down-payment assistance from a nonprofit meets FHA requirements.

[7]HUD Office of the General Counsel, April 7, 1998; Memorandum; Subject: Nehemiah Homeownership 2000 Program—Downpayment Assistance.

Purchase Loans with Seller-Funded Down-Payment Assistance Have Become a Substantial Part of FHA's Portfolio and Are More Prevalent in Areas with Lower House Price Appreciation

Loans with down-payment assistance have come to constitute a substantial portion of FHA's portfolio in recent years, particularly as the number of loans without such assistance has fallen sharply. For example, from 2000 to 2004, the total proportion of FHA-insured single-family purchase loans that had a loan-to-value (LTV) ratio greater than 95 percent and that also involved down-payment assistance from any source grew from 35 to nearly 50 percent.[8] Assistance from nonprofit organizations, about 93 percent of which were funded by sellers, accounted for an increasing proportion of this assistance. Approximately 6 percent of FHA-insured loans received down-payment assistance from nonprofit organizations in 2000, but, by 2004 this figure had grown to about 30 percent. FHA data for 2005 and 2006 indicate that the percentages of loans with down-payment assistance from any source and from seller-funded nonprofits remained at roughly 2004 levels.

Growth in the number of seller-funded nonprofit providers and the greater acceptance of this type of assistance have contributed to the increase in the use of down-payment assistance. According to industry professionals, relatives have traditionally provided such assistance, but in the past decade or so other sources have emerged, including not only seller-funded nonprofit organizations but also government agencies and employers. The mortgage industry has responded by developing practices to administer this type of assistance, for instance, FHA policies require gift letters and documentation of the transfer of funds. Lenders also reported that seller-funded down-payment assistance providers have developed practices accepted by FHA and lenders. For example, seller-funded programs have standardized gift letter and contract addendum forms for documenting both the transfer of down-payment assistance funds to the homebuyer and the financial contribution from the property seller to the nonprofit organization. As a result, for FHA-insured loans, lenders are increasingly aware of and willing to accept down-payment assistance, including from seller-funded nonprofits.

We found that states that have higher-than-average percentages of FHA-insured loans with nonprofit down-payment assistance, primarily from seller-funded programs, tended to be states with lower-than-average house

[8]LTV ratio is the loan amount divided by the sales price or appraised value of the property. The data sample we relied on included only FHA-insured, single-family purchase loans with an LTV ratio greater than 95 percent. Loans with an LTV ratio greater than 95 percent account for almost 90 percent of FHA's portfolio.

price appreciation rates.[9] From May 2004 to April 2005, 35 percent of all FHA-insured purchase loans nationwide involved down-payment assistance from a nonprofit organization, and 15 states had percentages that were higher than this nationwide average. Fourteen of these 15 states also had house price appreciation rates that were below the median rate for all states. In addition, the eight states with the lowest house price appreciation rates in the nation all had higher-than-average percentages of nonprofit down-payment assistance. Generally, states with high proportions of FHA-insured loans with nonprofit down-payment assistance were concentrated in the Southwest, Southeast, and Midwest.

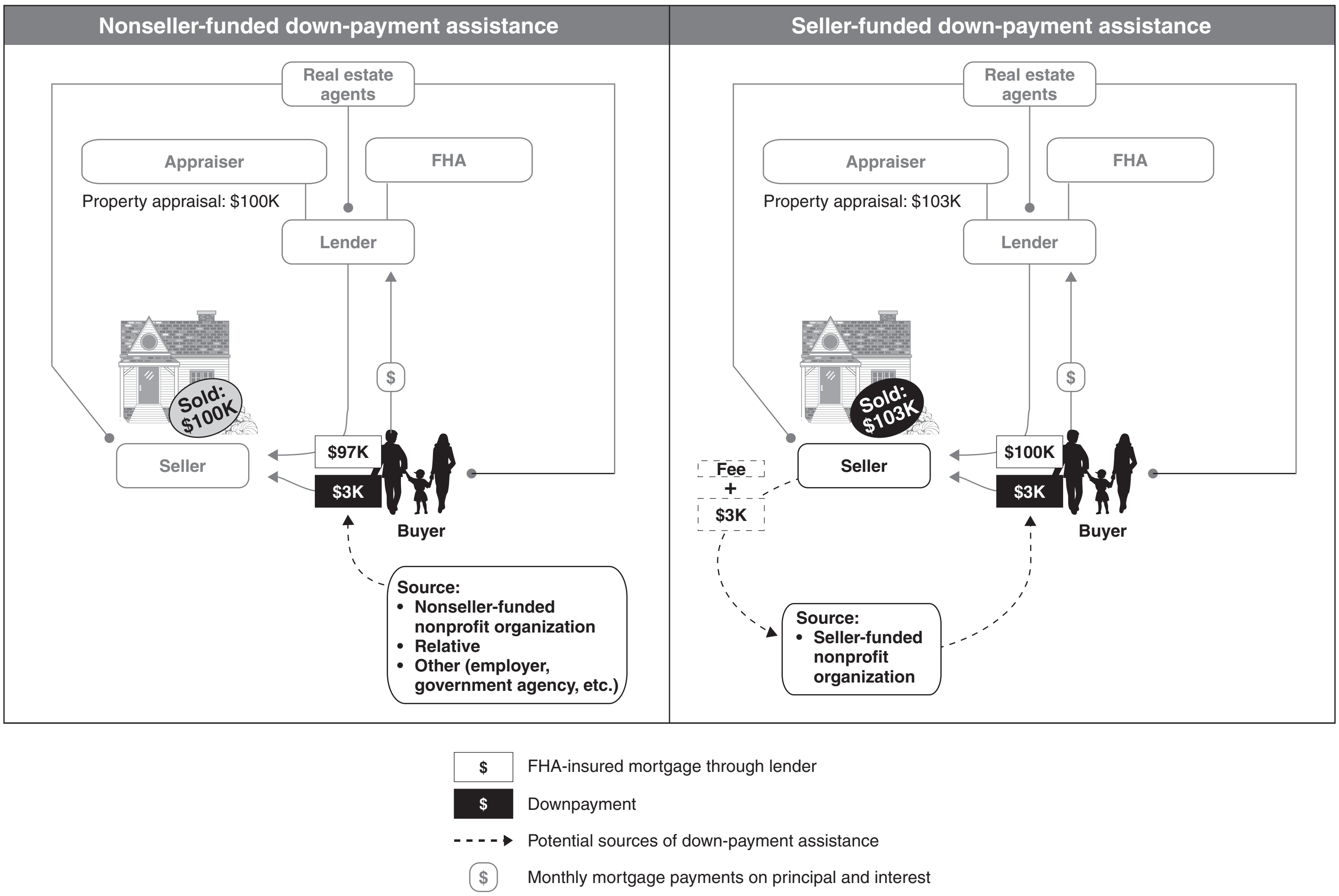
Seller-Funded Assistance Affects Home Purchase Transactions and Can Raise House Prices

The presence of down-payment assistance from seller-funded nonprofits can alter the structure of purchase transactions. When buyers receive assistance from sources other than seller-funded nonprofits, the home purchase takes place like any other purchase transaction—buyers use the funds to pay part of the house price, the closing costs, or both, reducing the mortgage by the amount they pay and creating "instant equity." However, seller-funded down-payment assistance programs typically require property sellers to make a financial contribution and pay a service fee after the closing, creating an indirect funding stream from property sellers to homebuyers that does not exist in a typical transaction (see fig. 1).[10]

[9]We measured house price appreciation using data from Global Insight, Inc., for the end of the fourth quarter of 2003 to the end of the fourth quarter of 2004.

[10]Organizations commonly require property sellers to provide both a financial payment equal to the amount of assistance paid to the homeowner and a service fee.

Figure 1: Structure of FHA Individual Purchase Transaction, with Nonseller-Funded Down-Payment Assistance and with Seller-Funded Down-Payment Assistance



Source: GAO.

Our analysis indicated, and mortgage industry participants we spoke with reported, that property sellers often raised the sales price of their properties in order to recover the contribution to the seller-funded nonprofit that provided the down-payment assistance. Marketing materials from seller-funded nonprofits often emphasize that property sellers using these down-payment assistance programs earn a higher net profit than property sellers who do not. These materials show sellers receiving a higher sales price that more than compensates for the fee typically paid to the down-payment assistance provider. Several mortgage industry participants we interviewed noted that when homebuyers obtained down-payment assistance from seller-funded nonprofits, property sellers increased their sales prices to recover their payments to the nonprofits providing the assistance. An earlier study by a HUD contractor corroborates the existence of this practice.[11] Some mortgage industry participants we met with told us that they viewed down-payment assistance from seller-funded nonprofits as a seller inducement. However, FHA has not viewed such assistance as a seller inducement and therefore does not subject this assistance to the limits that it otherwise places on contributions from sellers.

Some mortgage industry participants told us that homes purchased with down-payment assistance from seller-funded nonprofits might be appraised for higher values than they would be without this assistance. Appraisers we spoke with said that lenders, realtors, and sellers sometimes pressured them to "bring in the value" in order to complete the sale. The HUD contractor study corroborates the existence of these pressures. Our analysis of a national sample of FHA-insured loans endorsed in 2000, 2001, and 2002 suggested that homes with seller-funded assistance were appraised and sold for about 3 percent more than comparable homes without such assistance. Additionally, our analysis of more recent loans—a sample of FHA-insured loans settled in March 2005—indicated that homes sold with nonprofit assistance were appraised and sold for about 2 percentage points more than comparable homes without nonprofit assistance.[12]

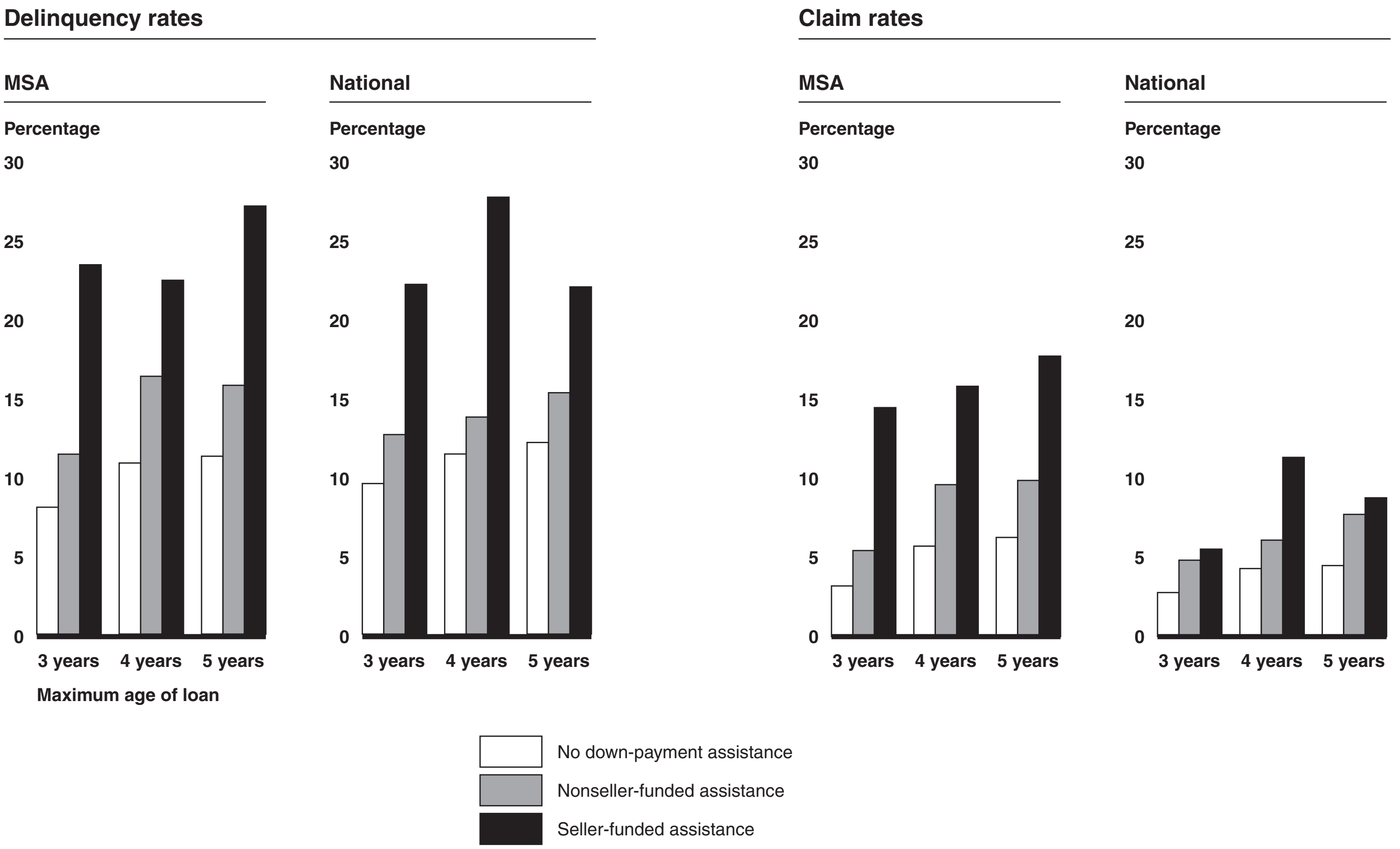
[11]Concentrance Consulting Group, *An Examination of Downpayment Gift Programs Administered by Nonprofit Organizations.*

[12]To perform this analysis, we contracted with First American Real Estate Solutions to provide estimates of the value of homes in a sample of FHA-insured loans. The values were calculated for the month prior to the closing, using an AVM.

FHA-Insured Loans with Down Payment Assistance, Particularly from Seller-Funded Nonprofits, Do Not Perform as Well as Similar Loans without Assistance

We found that FHA-insured loans with down-payment assistance do not perform as well as loans without it. As part of our evaluation, we analyzed loan performance by source of down-payment assistance, controlling for the maximum age of the loan, as of June 30, 2005. We used two samples of FHA-insured purchase loans from 2000, 2001, and 2002—a national sample and a sample from three MSAs with high rates of down-payment assistance. We grouped the loans into the following three categories: loans with assistance from seller-funded nonprofit organizations, loans with assistance from nonseller-funded sources, and loans without assistance. As shown in figure 2, in both samples and in each year, loans with down-payment assistance from seller-funded nonprofit organizations had the highest rates of delinquency and insurance claims, and loans without assistance the lowest. Specifically, between 22 and 28 percent of loans with seller-funded assistance had experienced a 90-day delinquency, compared with 11 to 16 percent of loans with assistance from other sources and 8 to 12 percent of loans without assistance. The claim rates for loans with seller-funded assistance ranged from 6 to 18 percent, for loans with other sources of assistance from 5 to 10 percent, and for loans without assistance from 3 to 6 percent.

Figure 2: Delinquency and Claim Rates, by Maximum Age of Loan and Source of Down-Payment Funds

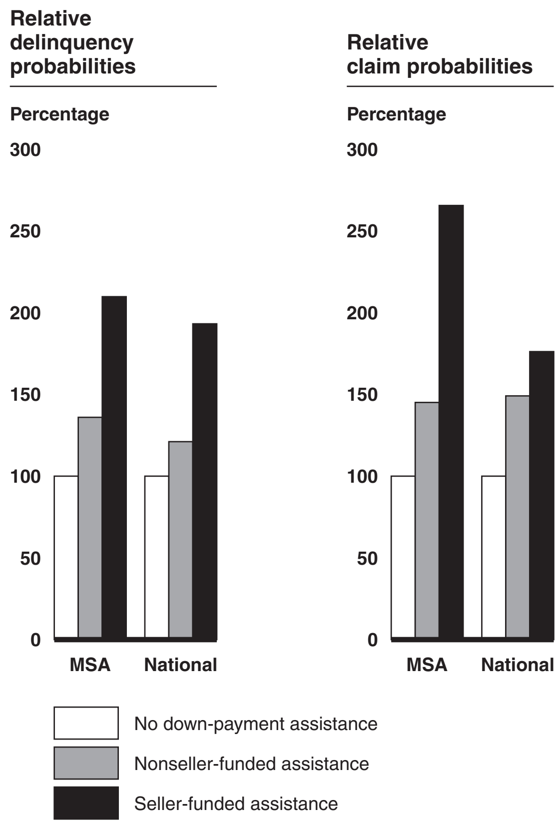


Source: GAO.

Note: Analysis based on data from two samples of loans drawn for a file review study funded by HUD and conducted by the Concentrance Consulting Group. The sampled loans were purchase money loans endorsed in 2000, 2001, and 2002 with LTV ratios greater than 95 percent. The national sample consisted of just over 5,000 loans, and the MSA sample consisted of 1,000 loans for each of the three MSAs: Atlanta, Indianapolis, and Salt Lake City.

In addition, we analyzed loan performance by source of down-payment assistance holding other variables constant. Here we found that FHA-insured loans with down-payment assistance had higher delinquency and claim rates than similar loans without such assistance (see fig. 3). The results from the national sample indicated that assistance from a seller-funded nonprofit raised the probability that the loan had gone to claim by 76 percent relative to similar loans with no assistance. Differences in the MSA sample were even larger; the probability that loans with seller-funded nonprofit assistance would go to claim was 166 percent higher than it was for comparable loans without assistance. Similarly, results from the national sample showed that down-payment assistance from a seller-funded nonprofit raised the probability of delinquency by 93 percent compared with the probability of delinquency in comparable loans without assistance. For the MSA sample, this figure was 110 percent.

Figure 3: Effect of Down-Payment Assistance on the Probability of Delinquency and Claim, Controlling for Selected Variables



Source: GAO.

Note: Loans without down-payment assistance are set at 100 percent. The results show the effect of a change in the variable on the odds ratio—that is, the probability of a claim (or delinquency) divided by the probability of not experiencing a claim (or delinquency). However, the probability of experiencing a claim or delinquency in any given quarter is fairly small; so, the change in the odds ratio is very close to the change in the probability. The analysis is based on data from two samples of loans drawn for a file review study funded by HUD and conducted by the Concentrance Consulting Group. The loans in the samples were endorsed in 2000, 2001, and 2002 and had LTV ratios greater than 95 percent. The national sample consisted of just over 5,000 loans and the MSA sample consisted of 1,000 purchase money loans for each of the three MSAs: Atlanta, Indianapolis, and Salt Lake City. The loan performance data (current as of June 2005) are from HUD's Single-Family Data Warehouse.

The weaker performance of loans with seller-funded down-payment assistance may be explained, in part, by the higher sales prices of homes bought with this assistance and the homebuyer having less equity in the transaction. The higher sales price that often results from a transaction involving seller-funded down-payment assistance can have the perverse effect of denying buyers any equity in their properties and creating higher effective LTV ratios. FHA has requirements which have the effect of ensuring that FHA homebuyers obtain a certain amount of “instant equity” at closing, but seller-funded down-payment assistance effectively undercuts these requirements. That is, when the sales price represents the fair market value of the house, and the homebuyer contributes 3 percent of the sales price at the closing, the LTV ratio is less than 100 percent. But when a seller raises the sales price of a property to accommodate a contribution to a nonprofit that provides down-payment assistance to the buyer, the buyer’s mortgage may represent 100 percent or more of the property’s true market value. Our prior analysis has found that, controlling for other factors, high LTV ratios lead to increased claims.

The adverse performance of loans with seller-funded down-payment assistance has had negative consequences for FHA. FHA has estimated that its single-family mortgage insurance program would require a subsidy—that is, appropriations—in 2008 in the absence of program changes. According to FHA, the growing share of FHA-insured purchase loans with seller-funded assistance has contributed to FHA’s worsening financial performance.

Our 2005 report made recommendations designed to better manage the risks of loans with down-payment assistance generally and from seller-funded nonprofits specifically. We recommended that FHA consider risk mitigation techniques such as including down-payment assistance as a factor when underwriting loans. We also recommended that FHA take additional steps to mitigate the risk associated with loans with seller-funded down-payment assistance, such as treating such assistance as a seller inducement and therefore subject to the prohibition against using seller contributions to meet the 3 percent borrower contribution requirement.

Consistent with our recommendations, FHA is testing additional predictive variables, including source of the down payment, for inclusion in its mortgage scorecard (an automated tool that evaluates the default risk of borrowers). Additionally, in May 2007 HUD issued a proposed rule that would prohibit the use of seller-funded down-payment assistance in conjunction with FHA-insured loans. FHA also has been anticipating a reduction in the number of loans with down-payment assistance from seller-funded nonprofit organizations as a result of actions taken by the Internal Revenue Service (IRS). Citing concerns about seller-funded nonprofits raised by our report and the 2005 HUD contractor study, IRS issued a ruling in May 2006 stating that these organizations do not qualify as tax-exempt charities, thereby making loans with such assistance ineligible for FHA insurance. In a press announcement of the ruling, IRS stated that funneling down-payment assistance from sellers to buyers through "self-serving, circular-financing arrangements" is inconsistent with operation as a charitable organization. According to FHA, as of June 2007, IRS had rescinded the charitable status of three of the 185 organizations that IRS is examining.

Madam Chairwoman, this concludes my prepared statement. I would be happy to answer any questions at this time.

Contacts and Acknowledgments

For further information on this testimony, please contact William B. Shear at (202) 512-8678 or shearw@gao.gov. Individuals making key contributions to this testimony included Steve Westley (Assistant Director), Emily Chalmers, Chris Krzeminski, and Andy Pauline.

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