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REPORT
110–905

FHA SELLER-FINANCED DOWNPAYMENT REFORM AND RISK-BASED PRICING AUTHORIZATION ACT OF 2008

OCTOBER 2, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6694]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 6694) to revise the requirements for seller-financed downpayments for mortgages for single-family housing insured by the Secretary of Housing and Urban Development under title II of the National Housing Act and to authorize risk-based insurance premiums for certain mortgagors under such mortgages, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "FHA Seller-Financed Downpayment Reform and Risk-Based Pricing Authorization Act of 2008".

SEC. 2. FHA SELLER-FINANCED DOWNPAYMENT PROGRAM.

Paragraph (9) of section 203(b) of the National Housing Act (12 U.S.C. 1709(b)(9)) is amended—

(1) in subparagraph (C), by striking "In no case shall the funds required by subparagraph (A)" and inserting the following: "Except in the case of a mortgage described in subparagraph (D), the funds required by subparagraph (A) shall not"; and

(2) by adding at the end the following new subparagraphs:

"(D) EXCEPTIONS TO PROHIBITED SOURCES.—A mortgage described in this subparagraph is any of the following mortgages:

"(i) A mortgage under which the mortgagor has a credit score equivalent to a FICO score of 680 or greater.

"(ii) A mortgage under which—

"(I) the mortgagor has a credit score equivalent to a FICO score of at least 620 but less than 680; and

"(II) mortgage insurance premiums charged are established—

"(aa) at levels necessary, but no higher than needed, to allow such class of loans to be insured without resulting in a need for an appropriation for a credit subsidy, which may exceed the maximum amount permitted under section 203(c)(2)(B);

"(bb) in the case of the single premium collected at the time of insurance, in an amount not exceeding 3.0 percent of the amount of the original principal obligation of the mortgage; and

"(cc) in the case of the annual premium for a mortgage under which the mortgagor has a credit score equivalent to a FICO score of at least 640 but less than 680, in an amount not exceeding 1.25 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected at the time of insurance and without taking into account delinquent payments or prepayments).

"(iii) For mortgages insured in fiscal year 2010 or thereafter, a mortgage under which the mortgagor has a credit score equivalent to a FICO score of 619 or less, but only if the Secretary certifies that such loans can be insured without resulting in a need for an appropriation for a credit subsidy. For such mortgages, the Secretary may charge premiums at levels authorized under items (bb) and (cc) of clause (ii)(II) and may establish a credit or FICO score limitation or impose such other requirements as are necessary to meet the conditions for certification under this clause.

"(E) REQUIREMENTS FOR DOWNPAYMENT ASSISTANCE ENTITIES.—Any entity participating in a program that provides downpayment assistance for a mortgage described in subparagraph (D) pursuant to the exception under subparagraph (C), which programs shall include programs of governmental agencies and private nonprofit organizations, shall, before the closing for the loan involved in the mortgage in connection with which such assistance is provided—

"(i) offer to make available, to the mortgagor, counseling regarding the responsibilities and financial management involved in homeownership;

"(ii) if such offer is accepted by the mortgagor, make such counseling available for the mortgagor; and

"(iii) in the case of any such entity that is a private nonprofit organization, implement a conflict of interest policy that prohibits directors, officers, employees, and immediate family members from receiving financial benefits from any entity that is providing the program with goods or services other than the homeownership assistance program entity itself or its wholly owned affiliate.

"(F) CIVIL MONEY PENALTIES FOR IMPROPERLY INFLUENCING APPRAISALS.—The Secretary may impose a civil money penalty, in the same manner and to the same extent as for a violation under section 536, for compensating, instructing, inducing, coercing, or intimidating any person who conducts an appraisal of the property to be subject to a mortgage described in subparagraph (D) and under which any part of the funds required by subparagraph (A) are provided to a party described in subparagraph (C), or attempting to compensate, instruct, induce, coerce, or intimidate such a person, for the purpose of causing the appraised value assigned to the property under the appraisal to be based on any other factor other than the independent judgment of such person exercised in accordance with applicable professional standards.".

SEC. 3. LIMITATIONS ON RISK-BASED PRICING.

Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)) is amended by adding at the end the following new paragraphs:

"(3) LIMITATIONS ON RISK-BASED PRICING.—Except as provided in paragraph (4), the Secretary of Housing and Urban Development shall not take any action on or after October 1, 2008, to implement or carry out—

"(A) risk-based premiums, which are designed for mortgage lenders to offer borrowers an FHA-insured product that provides a range of mortgage insurance premium pricing, based on the risk that the insurance contract represents, as set forth in the Notice published in the Federal Register on May 13, 2008 (Vol. 73, No. 93, Pages 27703 through 27711) (effective July 14, 2008); or

"(B) any other risk-based premium product related to the insurance of any mortgage on a single family residence under this title, where the premium price for such new product is based in whole or in part on a borrower's Decision Credit Score, as that term is defined in the Notice referred to in subparagraph (A), or any successor thereto.

"(4) FLEXIBLE RISK-BASED PREMIUMS.—Notwithstanding paragraph (3) of this subsection and section 2133 of the FHA Modernization Act of 2008 (Public Law 110–289):

"(A) AUTHORITY.—In the case only of a mortgage under which the mortgagor has a credit score equivalent to a FICO score of less than 600, the Secretary may establish a mortgage insurance premium structure involving a single premium payment collected prior to the insurance of the mortgage or annual payments (which may be collected on a periodic basis), or both, under which the rate of premiums for such a mortgage may vary according to the credit risk associated with the mortgagor and the rate of any annual premium for such a mortgage may vary according to such credit risk during the mortgage term as long as the basis for determining the variable rate is established before the execution of the mortgage. The Secretary may change a premium structure established under this subparagraph but only to the extent that such change is not applied to any mortgage already executed.

"(B) ESTABLISHMENT AND ALTERATION OF PREMIUM STRUCTURE.—A premium structure shall be established or changed under subparagraph (A) only by providing notice to mortgagees and to the Congress, at least 30 days before the premium structure is established or changed.

"(C) ANNUAL REPORT REGARDING PREMIUMS.—The Secretary shall submit a report to the Congress annually setting forth the rate structures and rates established and altered pursuant to this paragraph during the preceding 12-month period and describing how such rates were determined.

"(D) CONSIDERATIONS FOR PREMIUM STRUCTURE.—When establishing and collecting premiums for mortgages insured under a premium structure established under this paragraph, the Secretary shall consider the following:

"(i) The effect of the proposed premiums or structure on the Secretary's ability to meet the operational goals of the Mutual Mortgage Insurance Fund as provided in section 202(a).

"(ii) Underwriting variables.

"(iii) The extent to which new pricing under the proposed premiums or structure has potential for acceptance in the private market.

"(iv) The administrative capability of the Secretary to administer the proposed premiums or structure.

"(v) The effect of the proposed premiums or structure on the Secretary's ability to maintain the availability of mortgage credit and provide stability to mortgage markets.

"(E) AUTHORITY TO BASE PREMIUM PRICES ON PRODUCT RISK.—

"(i) AUTHORITY.—In establishing premium rates under this title, the Secretary may provide for variations in such rates according to the credit risk associated with the type of mortgage product that is being insured under this title, which may include providing that premium rates differ between fixed-rate mortgages and adjustable-rate mortgages insured pursuant to section 251, between mortgages for condominiums and mortgages for other interests in properties, between mortgages having different ratios of the principal obligation under the mortgage to the appraised value of the property, and between such other products as the Secretary considers appropriate.

"(F) PAYMENT INCENTIVES.—

"(i) AUTHORITY.—With respect to mortgages for which insured the Secretary is authorized to establish a premium structure under this paragraph, the Secretary shall provide that the payment incentive under subparagraph (ii) applies upon the expiration of the 5-year period beginning upon the time of insurance of such a mortgage, and the Secretary may provide that the payment incentive under clause (ii) applies upon the expiration of the 3-year period beginning upon the time of insurance of such a mortgage. The Secretary may limit such discretionary authority to mortgages prepaid or paid in full during the 2-year period beginning 3 years after the time of insurance of such a mortgage.

"(ii) PAYMENT INCENTIVE.—In the case of any mortgage to which the payment incentive under this subparagraph applies, if, during the period referred to in clause (i), all mortgage payments, including insurance premiums, for such mortgage have been paid on a timely basis, upon the expiration of such period the Secretary shall refund to the mortgagor, upon payment in full of the obligation of the mortgage, all or a portion of—

"(I) the amount by which the single premium payment for such mortgage collected at the time of insurance exceeded the amount of the single premium payment chargeable under paragraph (2) at the time of insurance for a mortgage of the same product type having the same terms, but for which the mortgagor has a credit score equivalent to a FICO score of 600 or more; and

"(II) in the case only of mortgages for which annual premiums are established and collected under subparagraph (G), the amount by which the cumulative amount of annual premiums paid exceeded the amount of the maximum annual premium that otherwise may be established and collected notwithstanding such subparagraph.

"(G) OPTION FOR HIGHER ANNUAL PREMIUM IN LIEU OF HIGHER UP-FRONT PREMIUM.—In the case only of mortgages for which the Secretary is authorized to establish a premium structure under this paragraph, notwithstanding paragraph (2)(B) of this subsection, the Secretary may establish and collect, for a period not exceeding the first 5 years of the term of the mortgage, annual premium payments in an amount not exceeding 0.75 percent of the remaining insured principal balance of the mortgage (excluding the portion of the remaining balance attributable to the premium collected under paragraph (2)(A) and without taking into account delinquent payments or prepayments), except that—

"(i) the Secretary may utilize such authority only for such classes of mortgagors that the Secretary determines would otherwise be subject to a single premium payment collected at the time of insurance exceeding 2.25 percent of the amount of the original insured principal obligation of the mortgage; and

"(ii) for such mortgages, the Secretary may not establish or collect a single premium payment collected at the time of insurance exceeding 2.25 percent of such original insured principal obligation.".

PURPOSE AND SUMMARY

H.R. 6694, the "FHA Seller-Financed Downpayment Reform and Risk-Based Pricing Authorization Act of 2008," includes provisions to modify two pending FHA policy changes that were included in P.L. 110–289, the "Housing and Economic Recovery Act of 2008," that are scheduled to become effective on October 1, 2008.

First, the bill would provide an exception to the prohibition included in Section 2113 of P.L. 110–289 against the use of direct or indirect assistance from the seller of the property being financed to meet the 3.5 percent cash down payment requirement for FHA loans. The bill permits such assistance for borrowers with a credit score equivalent to a FICO score of at least 680, and for borrowers with a credit score equivalent to a FICO score of at least 680, and for borrowers with a credit score equivalent of between 620 and 679, subject to higher premiums being established for this latter class of borrowers in amounts necessary to avoid the need for any credit subsidy appropriation.

Second, the bill would eliminate the one-year moratorium, effective October 1st, that was included in Section 2133 of P.L. 110–289, on the use of risk-based pricing based on the credit score of the borrower—replacing it with permanent authority to implement risk-based pricing for borrowers below a FICO credit score equivalent of 600, but prohibiting such authority for borrowers equal to or higher than that 600 level.

BACKGROUND AND NEED FOR LEGISLATION

Seller-financed loans

For many years, an important component of FHA single family loans has been the Seller-Financed Gift Downpayment Loan Program. Under this program, otherwise creditworthy homebuyers that are unable to meet the 3 percent FHA cash down payment requirement (subsequently raised to 3.5 percent under P.L. 110–289) have been able to meet the FHA down payment requirement through down payment assistance through qualified nonprofit intermediaries, which provide such assistance in whole or in part through assistance provided by the seller of the property being financed.

The FY 2009 HUD budget placed this program into a separate line item and proposed its elimination, arguing that the program has incurred unacceptable losses, and that is ongoing existence could jeopardize the FHA single family loan program. As a result, continued existence of the full program would have required appropriators to make a substantial appropriation, in excess of $1 billion, to provide the authority to continue the program as is.

In response, Section 2213 of the "Housing and Economic Recovery Act" (P.L. 110–289) included language explicitly prohibiting these loans from being insured after October 1, 2008.

However, a review of the rule HUD proposed on May 11, 2008 to eliminate such loans demonstrates that a complete elimination of the program is not needed to address the fiscal concerns that precipitated the Congressional elimination of the program. Supplemental data published on June 16 for that rule included detailed data on different classes of seller-financed gift downpayment loans. Data from that publication shows that seller financed gift down

payment loans to borrowers with a FICO score of 680 and higher actually make a profit for taxpayers (i.e., there is a negative credit subsidy rate). Further, data shows that borrowers between a 620 and 679 FICO score incur a modest loss; however, the loss for such class of borrowers could be covered by charging the new higher upfront 3 percent fee permitted under P.L. 110–289 and by charging higher annual fees of around 1.25 percent for borrowers with a FICO score equivalent of 640 to 679, and a slightly higher fee for borrowers between 620 and 639.

Section 2 of H.R. 6694, relying on data from the HUD rule, provides a limited exception to the pending prohibition against seller-financed gift down payment loans by permitting such loans to borrowers above a 680 FICO score equivalent. Section 2 also permits loans to borrowers between a 620 and 680 FICO score, but specifically authorizes higher annual premiums up to the 1.25 percent level for borrowers between 640 and 679 and higher fees as necessary for borrowers between 620 and 639. This section includes language explicitly requiring that premiums be set "at levels necessary, but no higher than needed, to allow such class of loans to be insured without resulting in a need for an appropriation for a credit subsidy." Such language effectively requires the loans to be financially self-sufficient.

Finally, Section 2 permits loans to borrowers below a FICO score equivalent of 620 in fiscal year 2010 and beyond—but only if the Secretary certifies that this can be done without the need for a credit subsidy, again requiring that any such loans be financially self-sufficient. Authority is granted to HUD to "impose such other requirement as are necessary" to meet the conditions for such certification, thus granting authority for other reforms that might reduce risk.

In order to address program concerns regarding the reliability of appraisals, the bill includes a provision, adopted as a committee amendment, to give HUD authority to impose civil money penalties to any person who either does, or tries to, compensate, instruct, induce, coerce, or intimidate any person conducting an appraisal of a loan financed with seller-financed assistance for the purpose of causing the appraised value to be based on any other factor than the independent judgment of such person in accordance with applicable professional standards.

Risk-based pricing

On April 5, 2006, HUD unveiled its legislative proposal to modernize the Federal Housing Administration. The top priority identified in that letter was the granting of authority for FHA to utilize risk-based pricing under its single family loan program, and HUD has continued to advocate this provision as a critical priority from that time through the ultimate enactment this summer of FHA reform legislation.

Risk-based pricing permits different levels of premiums to be charged to different classes of borrowers, based on their credit risk. There has not been much real dispute that it is appropriate for FHA to be able to charge different levels of premiums based on features of the loan itself—e.g., the level of loan to value (LTV), whether the loan is fixed rate or variable rate, and whether the loan is for a condominium vs. for a fee simple property.

The issue in contention is whether FHA should charge different premium levels (either upfront, annual, or both) for different borrowers with the same loan characteristics, but with different credit or FICO scores. Historically, FHA has not engaged in risk based pricing based on credit risk. However, while HUD has been asking Congress to explicitly authorize such risk based pricing in statute, HUD has taken the position that it has inherent authority to do this. On May 13, 2008, HUD published a notice in the Federal Register, effective July 14, which implements risk-based pricing on a broad scale. Prior to this notice, FHA charged all borrowers an upfront fee of 1.5 percent. The May 13 notice implemented risk-based pricing, with upfront premiums for loans above a 95 percent loan to value (LTV) ranging from 1.25 percent for borrowers over a 680 Decision Credit (FICO) score to 2.25 percent for borrowers between a 500 and 559 FICO score equivalent.

However, two weeks later, on July 30, the President signed into law P.L. 110–289, the "Housing and Economic Recovery Act of 2008." Section 2133 of that act imposes a one-year moratorium, starting on October 1st, of any risk based pricing relative to a borrower's Decision Credit Score. Thus, at the end of this month, HUD will have to return to a uniform pricing schedule based on a borrower's credit risk, and has stated that it may have to raise premiums if such authority lapses.

Proponents of risk-based pricing argue that such authority provides for a more accurate pricing of the loan relative to the risk of default, foreclosure, and loss. HUD has argued that in the absence of such authority, the uniform price it has to charge will overcharge better credit risk borrowers and undercharge higher risk borrowers, relative to risk. Most significantly, this might result in FHA not being able to serve certain classes of riskier borrowers at all, where a uniform fee is not sufficient to cover the risk of such borrowers.

Opponents of risk-based pricing have argued that risk-based pricing undermines a long established tradition of cross-subsidization in FHA loans, in which profits from higher credit quality borrowers can partially subsidize the cost of loans to lower credit quality borrowers. Critics argue that the result of risk-based pricing is that fees are raised for lower credit quality borrowers—precisely the borrowers for whom affordable homeownership is most challenging. Another criticism made against risk-based pricing is that HUD's proposals to cut fees for better quality borrowers reflect an effort to increase market share at the expense of private sector lenders, rather than furthering the mission of filling gaps in the private sector.

H.R. 1852, the House-passed FHA reform bill from last year, attempted to strike a balance between these two competing concerns, by permitting risk-based pricing for borrowers below a 560 equivalent FICO score, and prohibiting it above such levels. This would have allowed FHA to charge the higher premiums necessary to serve the lowest credit quality borrowers, while retaining substantial cross subsidization benefits from the borrowers above that level. This pricing framework is also consistent with historical private sector lending practices. Finally, to protect borrowers below the credit cutoff point, the bill included a "Payment Incentives" provision, based on a previous HUD budget, which provided that

if a borrower made five years of on-time payments, the borrower would be entitled to a refund of the higher premiums paid at the time when the loan was paid off in full. Thus, borrowers who ultimately turned out not to be a higher credit risk do not in the end pay higher premiums.

Section 3 of H.R. 6694 would eliminate the moratorium from P.L. 110–289, and replace it with permanent statutory authority, using a framework similar to that found in H.R. 1852, including authorizing refunds of the higher premiums caused by risk-based pricing for borrowers that make at least five years of on-time payment. The major difference from H.R. 1852 is that Section 3 sets a slightly higher cutoff (600) than was included in H.R. 1852, in order to reflect more information, including detailed pricing grids available under the July 14 rule. Thus, the bill permits risk-based pricing based on credit score to borrowers below a 600 FICO score equivalent, but bars such pricing for borrowers at or above this 600 level.

HEARINGS

The Subcommittee on Housing and Community opportunity held a hearing on June 22, 2007 entitled "Homeowner Downpayment Assistance Programs and Related Issues." The following witnesses testified:

Panel One

- Ms. Margaret Burns, Director, Office of Single Family Housing Program Development, Federal Housing Administration.
- Mr. James Heist, Assistant Inspector General for Audits, Office of the Inspector General, U.S. Department of Housing and Urban Development.
- Mr. William B. Shear, Director, Financial Markets and Community Investment, U.S. Government Accountability Office.

Panel Two

- Ms. Ann Ashburn, Ameridream Inc., President and Chief Executive Officer.
- Mr. Scott C. Syphax, President and Chief Executive Officer, Nehemiah Corporation of America.
- Mr. John Osta, Vice President, Gallinger Realty USA.
- Mr. C. Todd Richardson, Vice President of Legal Affairs, C. P. Morgan.
- Dr. Steven Fuller, Center for Regional Analysis, George Mason University School of Public Policy.
- Ms. Beverly Queen, Homeowner.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 16, 2008, and ordered H.R. 6694, the "FHA Seller-Financed Downpayment Reform and Risk-Based Pricing Authorization Act of 2008", as amended, favorably reported by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were

taken with in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a voice vote.

During the consideration of the bill, the following amendments were considered:

An amendment by Ms. Brown-Waite (and Mr. Wilson), No. 1, regarding civil money penalties for improperly influencing appraisals, was agreed to by a voice vote.

An amendment by Mr. Al Green (and Mr. Gary Miller, Ms. Waters and Mr. Shays), No. 2, manager's amendment making various technical and substantive changes, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 6694 includes provisions to modify two pending FHA policy changes that were included in P.L. 110–289, the "Housing and Economic Recovery Act of 2008." First, the bill would provide an exception to the prohibition in Section 2113 of P.L. 110–289 against the use of direct or indirect assistance from the seller of the property being financed to meet the 3.5 percent cash down payment requirement for FHA loans. The bill permits such assistance for borrowers with a credit score equivalent to a FICO score of at least 680, and for borrowers with a credit score equivalent of between 620 and 679, subject to higher premiums being established for this latter class of borrowers in amounts necessary to avoid the need for any credit subsidy appropriation. Second, the bill would eliminate the one-year moratorium, effective October 1st, that was included in Section 2133 of P.L. 110–289, on the use of risk-based pricing based on the credit score of the borrower—replacing it with permanent authority to implement risk-based pricing for borrowers below a FICO credit score equivalent of 600, but prohibiting such authority for borrowers above such a credit score equivalent.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

SEPTEMBER 29, 2008.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6694, the FHA Seller-Financed Downpayment Reform and Risk-Based Pricing Authorization Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 6694—FHA Seller-Financed Downpayment Reform and Risk-Based Pricing Authorization Act of 2008

Summary: H.R. 6694 would amend the Housing and Economic Recovery Act of 2008 (HERA) to provide exceptions to the prohibition that becomes effective on October 1, 2008, on seller contributions to homebuyers' downpayments. Seller contributions are a form of downpayment assistance to homebuyers that is provided by the seller (or a third party that is being reimbursed by the seller) toward the downpayment on a single-family loan insured by the Federal Housing Administration (FHA). Enacting this legislation would permit certain borrowers to receive such downpayment assistance and allow FHA to charge higher premiums for its mortgage insurance for such borrowers based on the credit score of the borrower.

Enacting this legislation also would eliminate the one-year moratorium, effective October 1, 2008, included in HERA, prohibiting FHA from implementing risk-based pricing of its mortgage insurance based on a borrower's credit score. The bill would authorize a "flexible risk-based" program for FHA that would permit risk-based pricing for borrowers with low credit scores. H.R. 6694 also would require FHA under certain circumstances to provide such borrowers with refunds of the premiums they paid.

CBO estimates that implementing H.R. 6694 would result in a net decrease in discretionary spending of $13 million over the 2009–2013 period, assuming enactment of appropriation laws necessary to implement FHA's single-family program and the Mortgage-Backed Securities (MBS) program of the Government National Mortgage Association (GNMA).

Enacting this legislation also would establish civil penalties (which are recorded in the budget as revenues) for certain violations related to real estate appraisals by interested parties in connection with the downpayment assistance program. CBO estimates that any increase in revenues resulting from those civil penalties

would not be significant. Enacting this bill would not affect direct spending.

H.R. 6694 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 6694 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Cost of Seller-Financed Downpayment Assistance:						
Estimated Authorization Level	0	*	*	*	*	*
Estimated Outlays	0	*	*	*	*	*
Additional GNMA Offsetting Collections:						
Estimated Authorization Level	−13	−13	−13	−13	−13	−65
Estimated Outlays	−13	−13	−13	−13	−13	−65
Cost of Payment Incentives:						
Estimated Authorization Level	0	13	13	13	13	52
Estimated Outlays	0	13	13	13	13	52
Total Changes:						
Estimated Authorization Level	−13	0	0	0	0	−13
Estimated Outlays	−13	0	0	0	0	−13

Note: GNMA = Government National Mortgage Association; *= costs or savings of less than $500,000.

Basis of Estimate: For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2009.

Seller-Financed Downpayment Program

Under this legislation, a borrower would be permitted to use seller-financed assistance towards a downpayment if the borrower has a FICO[1] score of at least 620. In addition, FHA would be permitted to charge an up-front premium (a fee applied to the loan's value) and annual premium (a fee applied to the loan's outstanding balance) at levels that correspond to a borrower's risk, within certain limits.

Budgeting procedures for federal credit programs require that funds must be appropriated in advance to cover the estimated subsidy cost of loan guarantees on a present-value basis. Based on information from the Office of Management and Budget (OMB), CBO assumes that FHA would charge premiums that would result in an average subsidy rate near zero. Thus, CBO estimates that this provision would result in a negligible cost or savings of less than $500,000 a year over the 2009–2013 period.

Starting in 2010, this legislation also would permit borrowers with FICO scores of less than 620 to receive an FHA guarantee, but only if the Secretary of Housing and Urban Development certifies that such loans could be insured without the need for an appropriation to cover any credit subsidy costs. Based on information from OMB, however, CBO estimates that the subsidy rate for such loans would likely exceed zero. Therefore, we estimate that this

[1] FICO scores are derived from models developed by the Fair Isaac Corporation and are used by lenders and others to assess the credit risk of a prospective borrower.

provision would result in no additional loan guarantees over the 2009–2013 period.

GNMA savings

GNMA is responsible for guaranteeing securities backed by pools of mortgages that are insured by the federal government. In exchange for a fee charged to lenders or issuers of the securities, GNMA guarantees the timely payments of scheduled principal and interest due on the pooled mortgages that back those securities. Because the value of the fees collected by GNMA is estimated to exceed the cost of loan defaults in each year, the Administration estimates that the GNMA MBS program will have a subsidy rate of −0.21 percent in 2009, resulting in the net collection of receipts to the federal government.

CBO estimates that most of the new loan guarantees made under this legislation would be included in GNMA's MBS program and that FHA would insure an additional $6 billion in new loan guarantees annually as a result of changes to the seller-financed downpayment program. Thus, CBO estimates that implementing the MBS program under this legislation would result in about $65 million in additional offsetting collections (a credit against discretionary spending) over the 2009–2013 period, assuming appropriation action to establish a dollar limitation for the GNMA securities program.

Flexible risk-based pricing and payment incentives

The bill also would authorize a program for FHA that would permit risk-based pricing for certain borrowers. Under this provision, FHA could charge risk-based premiums to borrowers who have FICO scores of less than 600. This legislation also would require FHA to refund either all or a portion of the higher fees resulting from the borrower being subject to risk-based pricing if the borrower makes at least five years of timely mortgage payments. Such refunds would be made at the time the loan is paid off in full. (H.R. 6694 also would permit FHA to issue refunds to borrowers after three years of timely mortgage payments.)

Because of the one-year moratorium on risk-based pricing imposed by HERA, CBO has evaluated the cost of enacting this provision in 2009 with the assumption that FHA would charge the same premiums for every borrower within each product category in 2009. Based on information from FHA, CBO estimates that the average subsidy rate for single-family borrowers with low credit scores would be near zero under current law in 2009. It is unclear how FHA would implement risk-based pricing under this bill, and there are many options for doing so. However, because the average subsidy rate for the program in 2009 is estimated to be near zero, CBO expects that FHA would not exercise the authority provided in this legislation to charge higher rates for certain borrowers. Consequently, absent the higher premium charges, FHA would not provide any premium refunds. As a result, we estimate that this provision would have no budgetary effect in 2009.

In subsequent years, CBO expects that FHA would implement risk-based pricing under current law for all types of borrowers with the intent to realize an average subsidy rate that is near zero. CBO does not expect that FHA would charge borrowers added premiums

to account for the cost of potential premium refunds to borrowers after three-to-five years. Under that assumption, the requirement to provide refunds to certain borrowers would increase the initial subsidy costs of the loan guarantees.

CBO estimates that the borrowers of about $5 billion in FHA-guaranteed mortgages made annually would eventually be eligible for refunds under this provision. This estimate of loan volume assumes that FHA would initially insure about $15 billion in loans with FICO scores of at least 600. Furthermore, CBO assumes that of this $15 billion in loan guarantees, about 65 percent would not be eligible for refunds because we expect that after five years the borrower would have defaulted, prepaid the mortgage, or have been late on payments.

The cost of refunds would depend on the premiums set by FHA. The agency has not yet set premiums for 2010, but based on information from FHA, CBO estimates that the refund provision would increase subsidy costs for the affected loan guarantees by an average of 0.25 percent. Under the Federal Credit Reform Act, such costs require the appropriation of funds. By applying this average cost to the potential volume of loan guarantees that would be eligible for refunds, CBO estimates that appropriations of about $13 million would be required annually over the 2010–2013 period.

Intergovernmental and Private-Sector Impact: H.R. 6694 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Susanne S. Mehlman; Impact on state, local, and tribal governments: Elizabeth Cove; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 6694 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Includes the short title of the bill, the "FHA Seller-Financed Downpayment Reform and Risk-Based Pricing Authorization Act of 2008."

Section 2. FHA seller-financed downpayment program

Provides an exception to the prohibition in the recently enacted "Housing and Economic Recovery Act" (P.L. 110–289) against the use of direct or indirect assistance from the seller of the property being financed to meet the 3.5 percent cash down payment requirement for FHA loans.

Permits all borrowers with a credit score equivalent to a FICO score of at least 680 to utilize such assistance in conjunction with FHA loans. Permits borrowers with a credit score equivalent to between 620 and 679 to utilize such assistance, except that (a) FHA is required to set premiums at levels necessary, but no higher than is needed, to avoid the need for a credit subsidy appropriation, (b) annual premiums for borrowers between 640 and 679 be in an amount up to 1.25 percent, and (c) there is no cap on annual premiums which may be charged for borrowers between 620 and 639.

Also gives FHA authority in FY 2010 and subsequent years to permit borrowers with a credit score equivalent to a FICO score of less than 620, but only if the Secretary certifies that the loans can be insured without the need for a credit subsidy appropriation, with authority for higher premium levels and authority for such other requirements as FHA may impose as are necessary to meet this certification requirement.

Any entity participating in a program that provides downpayment assistance for a mortgage under this section must offer to make prepurchase counseling available to all program participants, and must make such counseling available if requested by the borrower. In addition, any private nonprofit organization participating in such a program must implement a conflict of interest policy that prohibits directors, officers, employees, and immediate family members from receiving financial benefits from any entity providing the program with goods and services other than the homeownership assistance program entity or its affiliates.

Gives HUD authority to impose civil money penalties to any person who either does, or tries to, compensate, instruct, induce, coerce, or intimidate any person conducting an appraisal of a loan financed with seller-financed assistance for the purpose of causing the appraised value to be based on any other factor than the independent judgment of such person in accordance with applicable professional standards.

Section 3. Authorization for risk-based pricing

Eliminates the one year moratorium, effective October 1, 2008, that was included in the "Housing and Economic Recovery Act of 2008" (P.L. 110–289) prohibiting HUD from carrying out any risk-based pricing based on a borrower's credit score. In its place creates a permanent policy which permits risk-based pricing based on credit scores for borrowers with a credit score equivalent to a FICO score of less than 600 and prohibits such risk-based pricing for borrowers with a credit score equivalent to a FICO score of 600 or more. Establishes considerations and procedures to be used in establishing the premium structure under such authority.

Requires FHA to refund either all or a portion of the higher fees resulting from the borrower being subject to risk-based pricing if such borrower makes at least five years of on-time mortgage payments, with such refund to be made at the time the loan is paid off in full. Also gives FHA discretion to apply such refunds to borrowers that make at least three years of on-time payments.

Gives FHA the option of charging up to a .75 percent annual fee for borrowers subject to risk-based pricing, but only if the upfront fee does not exceed 2.25 percent and such borrower would otherwise have been charged an upfront fee in excess of 2.25 percent.

Clarifies that FHA may charge risk-based premiums based on the credit risk of the mortgage itself being insured, including premium differentials based on the loan to value, based on whether the loan is a fixed rate or variable rate loan, and based on whether the loan is for a condominium or for some other property interest.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 203 OF THE NATIONAL HOUSING ACT

INSURANCE OF MORTGAGES

SEC. 203. (a) * * *

(b) To be eligible for insurance under this section a mortgage shall comply with the following:

(1) * * *

* * * * * * *

(9) CASH INVESTMENT REQUIREMENT.—

(A) * * *

* * * * * * *

(C) PROHIBITED SOURCES.—**[**In no case shall the funds required by subparagraph (A)**]** *Except in the case of a mortgage described in subparagraph (D), the funds required by subparagraph (A) shall not* consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale:

(i) * * *

* * * * * * *

(D) EXCEPTIONS TO PROHIBITED SOURCES.—A mortgage described in this subparagraph is any of the following mortgages:

(i) A mortgage under which the mortgagor has a credit score equivalent to a FICO score of 680 or greater.

(ii) A mortgage under which—

(I) the mortgagor has a credit score equivalent to a FICO score of at least 620 but less than 680; and

(II) mortgage insurance premiums charged are established—

(aa) at levels necessary, but no higher than needed, to allow such class of loans to be insured without resulting in a need for an appropriation for a credit subsidy, which may exceed the maximum amount permitted under section 203(c)(2)(B);

(bb) in the case of the single premium collected at the time of insurance, in an amount not exceeding 3.0 percent of the amount of the original principal obligation of the mortgage; and

(cc) in the case of the annual premium for a mortgage under which the mortgagor has a credit score equivalent to a FICO score of at least 640 but less than 680, in an amount not exceeding 1.25 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected at the time of insurance and without taking into account delinquent payments or prepayments).

(iii) For mortgages insured in fiscal year 2010 or thereafter, a mortgage under which the mortgagor has a credit score equivalent to a FICO score of 619 or less, but only if the Secretary certifies that such loans can be insured without resulting in a need for an appropriation for a credit subsidy. For such mortgages, the Secretary may charge premiums at levels authorized under items (bb) and (cc) of clause (ii)(II) and may establish a credit or FICO score limitation or impose such other requirements as are necessary to meet the conditions for certification under this clause.

(E) REQUIREMENTS FOR DOWNPAYMENT ASSISTANCE ENTITIES.—Any entity participating in a program that provides downpayment assistance for a mortgage described in subparagraph (D) pursuant to the exception under subparagraph (C), which programs shall include programs of governmental agencies and private nonprofit organizations, shall, before the closing for the loan involved in the mortgage in connection with which such assistance is provided—

(i) offer to make available, to the mortgagor, counseling regarding the responsibilities and financial management involved in homeownership;

(ii) if such offer is accepted by the mortgagor, make such counseling available for the mortgagor; and

(iii) in the case of any such entity that is a private nonprofit organization, implement a conflict of interest policy that prohibits directors, officers, employees, and immediate family members from receiving financial benefits from any entity that is providing the program with goods or services other than the homeownership assistance program entity itself or its wholly owned affiliate.

(F) CIVIL MONEY PENALTIES FOR IMPROPERLY INFLUENCING APPRAISALS.—The Secretary may impose a civil money penalty, in the same manner and to the same extent as for a violation under section 536, for compensating, instructing, inducing, coercing, or intimidating any person who conducts an appraisal of the property to be subject to a mortgage described in subparagraph (D) and under which any part of the funds required by subparagraph (A) are provided to a party described in subparagraph (C), or attempting to compensate, instruct, induce, coerce, or intimidate such a person, for the purpose of causing the appraised value assigned to the property under the appraisal to be based on any other factor other than the independent judgment of such person exercised in accordance with applicable professional standards.

* * * * * * *

(c)(1) * * *

* * * * * * *

(3) LIMITATIONS ON RISK-BASED PRICING.—Except as provided in paragraph (4), the Secretary of Housing and Urban Development shall not take any action on or after October 1, 2008, to implement or carry out—

(A) risk-based premiums, which are designed for mortgage lenders to offer borrowers an FHA-insured product that provides a range of mortgage insurance premium pricing, based on the risk that the insurance contract represents, as set forth in the Notice published in the Federal Register on May 13, 2008 (Vol. 73, No. 93, Pages 27703 through 27711) (effective July 14, 2008); or

(B) any other risk-based premium product related to the insurance of any mortgage on a single family residence under this title, where the premium price for such new product is based in whole or in part on a borrower's Decision Credit Score, as that term is defined in the Notice referred to in subparagraph (A), or any successor thereto.

(4) FLEXIBLE RISK-BASED PREMIUMS.—Notwithstanding paragraph (3) of this subsection and section 2133 of the FHA Modernization Act of 2008 (Public Law 110–289):

(A) AUTHORITY.—In the case only of a mortgage under which the mortgagor has a credit score equivalent to a FICO score of less than 600, the Secretary may establish a

mortgage insurance premium structure involving a single premium payment collected prior to the insurance of the mortgage or annual payments (which may be collected on a periodic basis), or both, under which the rate of premiums for such a mortgage may vary according to the credit risk associated with the mortgagor and the rate of any annual premium for such a mortgage may vary according to such credit risk during the mortgage term as long as the basis for determining the variable rate is established before the execution of the mortgage. The Secretary may change a premium structure established under this subparagraph but only to the extent that such change is not applied to any mortgage already executed.

(B) ESTABLISHMENT AND ALTERATION OF PREMIUM STRUCTURE.—A premium structure shall be established or changed under subparagraph (A) only by providing notice to mortgagees and to the Congress, at least 30 days before the premium structure is established or changed.

(C) ANNUAL REPORT REGARDING PREMIUMS.—The Secretary shall submit a report to the Congress annually setting forth the rate structures and rates established and altered pursuant to this paragraph during the preceding 12-month period and describing how such rates were determined.

(D) CONSIDERATIONS FOR PREMIUM STRUCTURE.—When establishing and collecting premiums for mortgages insured under a premium structure established under this paragraph, the Secretary shall consider the following:

(i) The effect of the proposed premiums or structure on the Secretary's ability to meet the operational goals of the Mutual Mortgage Insurance Fund as provided in section 202(a).

(ii) Underwriting variables.

(iii) The extent to which new pricing under the proposed premiums or structure has potential for acceptance in the private market.

(iv) The administrative capability of the Secretary to administer the proposed premiums or structure.

(v) The effect of the proposed premiums or structure on the Secretary's ability to maintain the availability of mortgage credit and provide stability to mortgage markets.

(E) AUTHORITY TO BASE PREMIUM PRICES ON PRODUCT RISK.—

(i) AUTHORITY.—In establishing premium rates under this title, the Secretary may provide for variations in such rates according to the credit risk associated with the type of mortgage product that is being insured under this title, which may include providing that premium rates differ between fixed-rate mortgages and adjustable-rate mortgages insured pursuant to section 251, between mortgages for condominiums and mortgages for other interests in properties, between mortgages having different ratios of the principal obligation under the mortgage to the appraised value of

the property, and between such other products as the Secretary considers appropriate.

(F) PAYMENT INCENTIVES.—

(i) AUTHORITY.—With respect to mortgages for which insured the Secretary is authorized to establish a premium structure under this paragraph, the Secretary shall provide that the payment incentive under subparagraph (ii) applies upon the expiration of the 5-year period beginning upon the time of insurance of such a mortgage, and the Secretary may provide that the payment incentive under clause (ii) applies upon the expiration of the 3-year period beginning upon the time of insurance of such a mortgage. The Secretary may limit such discretionary authority to mortgages prepaid or paid in full during the 2-year period beginning 3 years after the time of insurance of such a mortgage.

(ii) PAYMENT INCENTIVE.—In the case of any mortgage to which the payment incentive under this subparagraph applies, if, during the period referred to in clause (i), all mortgage payments, including insurance premiums, for such mortgage have been paid on a timely basis, upon the expiration of such period the Secretary shall refund to the mortgagor, upon payment in full of the obligation of the mortgage, all or a portion of—

(I) the amount by which the single premium payment for such mortgage collected at the time of insurance exceeded the amount of the single premium payment chargeable under paragraph (2) at the time of insurance for a mortgage of the same product type having the same terms, but for which the mortgagor has a credit score equivalent to a FICO score of 600 or more; and

(II) in the case only of mortgages for which annual premiums are established and collected under subparagraph (G), the amount by which the cumulative amount of annual premiums paid exceeded the amount of the maximum annual premium that otherwise may be established and collected notwithstanding such subparagraph.

(G) OPTION FOR HIGHER ANNUAL PREMIUM IN LIEU OF HIGHER UP-FRONT PREMIUM.—In the case only of mortgages for which the Secretary is authorized to establish a premium structure under this paragraph, notwithstanding paragraph (2)(B) of this subsection, the Secretary may establish and collect, for a period not exceeding the first 5 years of the term of the mortgage, annual premium payments in an amount not exceeding 0.75 percent of the remaining insured principal balance of the mortgage (excluding the portion of the remaining balance attributable to the premium collected under paragraph (2)(A) and without taking into account delinquent payments or prepayments), except that—

(i) the Secretary may utilize such authority only for such classes of mortgagors that the Secretary deter-

mines would otherwise be subject to a single premium payment collected at the time of insurance exceeding 2.25 percent of the amount of the original insured principal obligation of the mortgage; and

(ii) for such mortgages, the Secretary may not establish or collect a single premium payment collected at the time of insurance exceeding 2.25 percent of such original insured principal obligation.

* * * * * * *

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."[1] 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.[2]

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

[1] See *Federal Register*, September 14, 1999, "Sources of Homeowner Downpayment; Proposed Rule" page 49956–49958.

[2] 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.

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