



August 7, 2007

Rules Docket Clerk
Office of General Counsel
Room 10276
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410-0500

Re: Comments in Response to Standards for Mortgagor's Investment in Mortgaged Property: Proposed Rule, 72 Federal Register 24 CFR PART 203 (May 11, 2007), Docket No. FR-5087-P-01.

Ladies and Gentlemen:

The Mortgage Bankers Association¹ (MBA) appreciates the opportunity to comment on the proposed rule, "Standards for Mortgagor's Investment in Mortgaged Property," published by the Department of Housing and Urban Development (HUD) on May 11, 2007,² to codify its standards governing a mortgagor's investment or downpayment in Federal Housing Administration (FHA) insured property regarding its practice of allowing gifts by family members and certain organizations.

Since its inception in 1997, seller funded downpayment assistance has provided an important tool for low-income, minority and first time homebuyers who may not otherwise have had the means necessary to put together a sufficient downpayment towards purchasing a home. At the same time, however, MBA is concerned by the performance of loans with seller funded downpayments and the effect these loans could have on FHA, other participants in the housing and housing finance industries, and on Ginnie Mae securities. MBA is appreciative of

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 500,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 3,000 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web Site: www.mortgagebankers.org.

² *Proposed Rule Standards for Mortgagor's Investment in Mortgaged Property*, 72 Federal Register 24 CFR PART 203 (May 11, 2007).

the opportunity to offer recommendations to enhance the quality of loans with seller funded down payment assistance, both for borrowers and FHA.

I. Introduction

In conjunction with this statement on the proposed rule, MBA would like to reiterate that legislation to modernize FHA remains the most effective way to reduce abuses in the program. Such legislation would empower the Secretary with the authority necessary to address the housing needs of the underserved and unserved by keeping pace with market changes and industry standards.

MBA believes that downpayment assistance plays an important role in supporting FHA's mission; indeed, it comprises approximately 50 percent of FHA's total volume. Seller funded downpayment assistance comprises over 30 percent of FHA's loan volume. While there appears to be much evidence that the seller funded downpayment assistance has been abused, it is unnecessary to fully eliminate the program in order to address concerns of abuse.

II. Summary of MBA's Comments

MBA appreciates and concurs with FHA's concern for the risk posed by seller funded downpayment assistance to homebuyers and to FHA's Mutual Mortgage Insurance Fund (MMIF). We do not believe in maintaining the status quo with respect to this program. However, MBA believes that prohibiting this source of downpayment assistance would prevent many potential homeowners from access to FHA financing. According to the two leading downpayment assistance providers, in testimony before the Subcommittee on Housing and Community Opportunity of the Financial Services Committee of the House of Representatives on June 22, 2007, to date, they have assisted nearly a half million low- and moderate-income homebuyers. The majority of these were first time homebuyers. 81 percent of these loans are still performing.³ Requiring more stringent controls would arguably reduce the percentage of loans that do not perform well while preserving the obvious benefits of the program.

MBA recommends the following course of action.

- Set a cap on seller funded downpayment assistance in conjunction with permissible seller contributions of the lesser amount of what is customary for the area or six percent. This will significantly mitigate the risk that total seller contributions will not exceed market norms and result in an inducement to purchase that has the propensity to inflate value in order to cover the seller's costs.

³ According to a HUD official at MBA's Government Housing Finance Conference in May, 2007.

- Define high risk loan characteristics and establish more stringent loan eligibility requirements by accounting for high-risk factors such as very high ratios, low or no reserves, or poor credit history, and in particular the layering of these risk factors. Until FHA can modify its systems to accommodate these additional underwriting criteria, FHA should provide lenders with direction as to which loans with very-high-risk characteristics should be earmarked for manual underwriting.
- Enhance valuation controls to reduce the likelihood of increased sales prices for loans with seller funded downpayment assistance by requiring appraisers to include a statement of consideration of all seller contributions including down payment assistance in their reports. In addition to standard appraisal requirements, require lenders to use automated valuation tools (AVMs) when available and appropriate or to perform desk reviews of appraisals when appropriate.
- Conduct additional research, particularly in regard to both the short term and long term risks to the MMIF, as the data presented thus far does not appear conclusive.

III. Recap of the Proposed Rule

The proposed rule expresses HUD's concern with the current practices of downpayment assistance providers in the mortgage transaction and is codifying its definition of permissible sources of gift funds for downpayment assistance and prohibited sources of gift funds.

In summary, the proposed rule:

1. Establishes as prohibited sources of downpayment assistance any party to the transaction that provides downpayment assistance on a *quid pro quo* basis, such as a charitable organization that provides downpayment assistance to the homebuyer and is then reimbursed by the seller dollar-for-dollar contingent upon the mortgage closing. This practice often results in an inflated sales price for the subject property to ensure that the seller's net proceeds at settlement are not diminished. This increase raises the homebuyer's financial obligation and increases the homebuyer's and FHA's risk.
2. Does not prevent sellers from contributing to charitable organizations, which are often sources of downpayment assistance. Furthermore, it does not prohibit contribution by builders or other sellers who offer customary cash incentives (e.g. closing costs) to homebuyers. It does not prohibit other assistance that results in a proportionate reduction to the mortgage.

3. Cites the May 2006 Internal Revenue Service (IRS) Revenue Ruling, which provides specifies that organizations that funnel downpayment assistance from sellers to buyers through circular-financing arrangements are not operating within the definition of section 501(c)(3) for charitable organizations.

IV. Background

A. Emergence and Growth of Downpayment Assistance

Over the past decade, house prices in the United States have almost doubled. This appreciation created barriers to homeownership for many Americans whose income did not kept pace with home prices. As such, the ability for lower income borrowers to save for a home had become nearly impossible. In response, various instruments emerged to assist low-income borrowers. One such instrument is seller funded downpayment assistance facilitated by nonprofit organizations.

Seller funded downpayment assistance was first conceived in 1997 in Sacramento, Calif. at the behest of a Sacramento City Councilman to assist low-income, mostly minority families without the means of a downpayment in purchasing foreclosed homes in a small development in South Sacramento.⁴ This method of assisting low-income families spread quickly throughout the country filling a gap in the mortgage finance arena for potential homeowners lacking the funds for downpayment. With this growth came the standardization of the seller funded Downpayment Assistance Program.

The growth of seller funded downpayment assistance has been nothing short of remarkable. Downpayment assistance loans rose from one percent of FHA's new loans in 1998 to an estimated 30 – 40 percent in 2006. The table below shows the number of loans insured during fiscal year 2006 per HUD's Performance and Accountability Report.⁵ The Report further estimates that approximately 79.3 percent of FHA's 2006 purchase money loans served first time home buyers and 31.7 percent of those first time homebuyers were minorities. The table below also depicts two estimates for FY2006 for FHA originations that used seller funded downpayment assistance : one at 30 percent⁶ and one at 40 percent⁷. Assuming a ratio equivalent to overall FY2006

⁴ Testimony of Scott C. Syphax, President and CEO, Nehemiah Corporation of California, before the Subcommittee on Housing and Community Opportunity of the Financial Services Committee of the House of Representatives (June 22, 2007).

⁵ *Performance and Accountability Report FY 2006*, United States Department of Housing and Urban Development.

⁶ Testimony of William B. Shear, Director, Financial Markets and Community Investment, GAO, before the Subcommittee on Housing and Community Opportunity, Committee on Financial Services, House of Representatives, (June 22, 2007).

FHA loan volume of first time homebuyers and minorities using seller-funded downpayment assistance, the impact of the program has been quite significant. Moreover, nonprofit organizations report that over 85⁸ percent are first-time homebuyers and as such an even greater percentage of these groups are served by these programs.

Table1: FHA--Seller Funded DPA Volume Scenarios

Category	FY 2006 Per HUD Annual Report	Estimated Seller-funded DPA loans	
% of FHA Volume Assumed DPA		30%	40%
Total number of FHA-insured mortgages	502,049	150,615	200,820
Total number of Purchase Money FHA-Insured Mortgages	313,938	94,181	125,575
Of them first time home buyers (79.3%)	248,953	74,686	99,581
Of them Minority households (31.7%)	78,918	23,675	31,567

As early as 2000, concern grew that these loans posed a significant risk to FHA's MMIF when FHA issued guidance (Mortgagee Letter 00-28) to lenders about the recognition and documentation of gifts, regardless of when the gift funds are made available to the homebuyer. In latter years, the Office of the Inspector General (OIG), FHA and the Government Accountability Office (GAO) each conducted or commissioned studies to understand better the process and impact of downpayment assistance programs. These studies focused on downpayment assistance in general and seller funded downpayment assistance in particular. Additionally, two professors from George Mason University's Center for Regional Analysis conducted a study,⁹ published in September 2006, criticizing the research methodologies and findings of the OIG and GAO studies.

B. Effectiveness of Downpayment Assistance

⁷ Testimony of Scott C. Syphax, President and CEO, Nehemiah Corporation of California, before the Subcommittee on Housing and Community Opportunity of the Financial Services Committee of the House of Representatives (June 22, 2007).

⁸ Testimony of Ann Ashburn, President, AmeriDream, Inc. before the Subcommittee on Housing and Community Opportunity of the Financial Services Committee of the House of Representatives (June 22, 2007).

⁹ Fowler and Fuller, *An Evaluation of Research on the Performance of Loans with Down Payment Assistance*, Center for Regional Analysis, George Mason University, Fairfax, Virginia (September 2006).

The OIG study¹⁰ in March of 2000 was based on a sample of loans from four cities with a large share of downpayment assistance loans, a relatively slow housing market and a relatively depressed economy. The study concluded that loans with downpayment assistance had higher default rates than loans without downpayment assistance and that loans with seller funded downpayment assistance performed less well than loans with other types of downpayment assistance. The sampling strategy with respect to size and geographic concentration used for the study limited its impact.

In 2002, the OIG conducted another study¹¹ using a larger sample; however the study's assessment of loan performance was limited due to the lack of accurate and complete information on the source of gift funds in HUD's database. In response, FHA analyzed a sample of 8,000 case files to determine what data on gift funds lenders captured at origination and the accuracy of that data. This analysis led to FHA's requirement that lenders identify at origination the source of downpayment gifts including those loans with seller funded downpayment assistance.

FHA commissioned a follow-up study¹² in 2004 covering eight Metropolitan Statistical Areas (MSAs) to assess the seller funded downpayment assistance process, the role of the various participants in the process, and the impact of the process on sales prices. This study concluded that when funds were provided by a downpayment assistance provider through a *quid pro quo* donation by the seller, sales prices were often inflated to compensate for the seller's gift and fees paid to the downpayment assistance provider. This study also found that downpayment assistance providers, lenders and FHA did not have sufficient risk-mitigating criteria in place to identify and protect against the highest risk loans. The study recommended that FHA implement several risk-mitigating techniques addressing both credit and valuation concerns.

GAO's examination of seller funded downpayment assistance¹³ in November 2005 confirmed the circular nature of these transactions and found that homes tended to be appraised and sold for about two to three percent more than comparable properties. The table below depicts that the difference in default rates between loans with seller funded versus non-seller funded downpayment assistance was statistically significant. However the difference in the claim rate, a more accurate indicator of risk to FHA's MMIF, of loans with seller funded downpayment assistance compared to those with assistance from other sources

¹⁰ Office of Inspector General, *Final Report of a Nationwide Audit: Down Payment Assistance Programs*. (March 2000).

¹¹ Office of Inspector General, *Follow Up of Down Payment Assistance Programs Operated by Nonprofit Entities*. (September 2002).

¹² Concentrance Consulting Group, Inc., *An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations*. (November 2004).

¹³ United States Government Accountability Office, *Mortgage Finance: Additional Action Needed to Manage Risks of FHA-Insured Loans with Down Payment Assistance*. (November 2005).

was statistically significant for the MSA sample but not statistically significant for the national sample.

Table 2: Results from GAO Report - 2005

	National Sample		MSA Sample	
	Default rate	Claims rate	Default rate	Claims rate
Seller Funded assistance	22 to 28%	6 to 18%	23 to 27%	14 to 17%
Other Assistance	11 to 16%	5 to 10%	11 to 15%	5 to 9%
No Assistance	8 to 12%	3 to 6%	8 to 11%	3 to 5%

GAO identified the existence but did not assess the full impact of the potential risk layering of other key indicators, such as credit character and capacity that may be associated with these loans. Given these limitations it is difficult to make definitive and broad programmatic conclusions about the combination of the drivers of claim rates and financial impact. Certainly, one cannot conclude that the existence of seller-funded downpayment assistance alone is the reason for the claim. This statement is supported by the fact that a large majority of the loans with seller-funded downpayment assistance are performing.

The GAO study did identify important risk variables, such as credit score and front-end ratios, as important predictors of loan performance and recommended that FHA set more stringent underwriting criteria based upon predictable risk factors for all loans with downpayment assistance and set even more stringent criteria for loans with seller funded downpayment assistance.


These recommendations were reinforced by several industry participants at the June 22, 2007, hearing before the Subcommittee on Housing and Community Opportunity on “Homeowner Downpayment Assistance Programs and Related Issues.” They testified that the proposed rule should be delayed until further study could confirm the extent and relationship among the predictors of poor loan performance and that FHA should implement measures that utilize these predictors to exclude the highest risk loans rather than simply excluding all loans with seller funded downpayment assistance.

Although HUD has not yet acted on specific recommendations regarding credit underwriting, it has issued several Mortgagee Letters which establish procedural, rather than rule-based, methods to mitigate risk. For example, ML 2005-02 requires the mortgagee to provide the appraiser with all financing data and sales concessions for the subject property granted by anyone associated with the transaction including downpayment assistance. Recent reports have recognized that sifting out the highest risk loans on the front end of the process would strengthen the downpayment assistance program and strengthen FHA’s risk profile. Industry participants and MBA have had several conversations with FHA requesting that FHA define and implement stronger underwriting controls.

C. Delinquencies Associated with Downpayment Assistance

High delinquency rates have led Congress and federal regulators to question subprime lending, especially the prudence of the underwriting practices employed by subprime lenders. In her recent testimony¹⁴ at the Subcommittee on Housing and Community Opportunity, Margaret Burns submitted that in fiscal year 2006, more than 50 percent of FHA's purchase mortgage business in Ohio and Indiana comprised borrowers with seller funded downpayment assistance. This data was submitted to support the proposed rule. In the table below, MBA statistics show that FHA delinquency rates are consistently lower than subprime rates. During the fourth quarter of 2006, FHA delinquency and foreclosure rates in those two states were lower than for subprime fixed-rate loans and significantly lower than subprime adjustable rate loan rates. It would also appear reasonable to say that FHA loans with downpayment assistance compare favorably in performance to subprime fixed and adjustable rate loans, at least in the states with the worst loan performance.

Table 3 Delinquency and Foreclosure Rates



2006 Q4 Mortgage Delinquencies By Loan Type

Subprime ARM		Subprime Fixed		FHA		Prime ARM		Prime Fixed	
<i>Highest Five:</i>									
Ohio	19.03	Ohio	13.05	Michigan	10.70	Ohio	3.89	Ohio	1.95
Michigan	17.70	Indiana	10.68	Ohio	9.43	Oklahoma	3.82	Indiana	1.76
Indiana	16.70	Michigan	10.60	Indiana	8.06	Indiana	3.74	Michigan	1.29
Iowa	15.21	South Carolina	9.17	South Carolina	7.73	Michigan	3.63	South Carolina	1.25
Kentucky	13.08	Pennsylvania	9.09	Georgia	7.51	Iowa	2.79	Kentucky	1.20
US Total	9.16		6.04		5.78		1.45		0.69
California	5.67		2.48		2.05		0.87		0.17
<i>Lowest Five:</i>									
Hawaii	4.74	Oregon	2.22	Idaho	2.15	Washington	0.59	Wyoming	0.21
Washington	4.49	Arizona	2.10	California	2.05	Oregon	0.57	Montana	0.19
Utah	4.08	Wyoming	2.10	Montana	1.85	Arizona	0.53	California	0.17
Oregon	3.78	Hawaii	1.91	Wyoming	1.52	Idaho	0.53	Hawaii	0.13
Arizona	3.08	Alaska	1.17	Alaska	1.37	Hawaii	0.49	North Dakota	0.11

Seriously Delinquent loans defined as 3 or more payments late plus loans in foreclosure
Excludes Louisiana and Mississippi

Like FHA, MBA is not comfortable with the status quo – both how loans with downpayment assistance are processed and how these loans are underwritten. Loans with downpayment assistance have played an important role in helping FHA achieve its mission of serving first time homebuyers and helping low-income and minority families achieve their piece of the American dream, but without change we agree that these loans could pose an unacceptable risk to the

¹⁴ Written Statement of Margaret Burns, Director, Office of Single Family Housing Program Development, Office of Housing, U.S. Department of Housing and Urban Development, before the Subcommittee on Housing and Community Opportunity of the Financial Services Committee of the House of Representatives (June 22, 2007).

insurance fund. However, it should be noted that the majority of homeowners with downpayment assistance have been, and still are, repaying their mortgage debt and contributing to the viability of their communities. Thus, the concerns that MBA members have for the extraordinary restrictions that would be imposed by this proposed rule are discussed below.

IV. MBA's Comments

1. Statement of MBA's Concerns

MBA is very concerned with the financial impact on low-income and first time homebuyers whose mortgage costs are inflated due to increased purchase prices through practices of "circular funding" of private downpayment assistance providers. Sales prices inflated beyond what the market can bear weaken rather than strengthen real estate markets. In addition, MBA is cognizant of and concerned by the risk to the FHA insurance fund due to high foreclosure rates and the foreclosure of homes with incurred debt obligations that exceed the market value for that home.

In fact, MBA has met with staff at FHA on numerous occasions to discuss our mutual concerns regarding downpayment assistance and during those discussions focused on various methods that FHA could employ to mitigate these risks. One measure that FHA has taken is to require that lenders include in the closing documents the Tax Identification Number (TIN) of any organization providing downpayment assistance. This requirement enables the monitoring of loan performance over time and in-depth analysis of the characteristics of loans that perform well versus those that do not. MBA applauds FHA for the steps it has taken to implement this enhancement, but more change is needed.

MBA believes the proposed rule raises a number of important issues that affect both potential homebuyers and various government programs' ability to serve the public. These issues, outlined below, must be carefully considered before moving forward.

- (1) The proposed rule, if implemented, will have a significant impact on homeownership for low-income, first time and minority homebuyers. Nearly 80 percent of FHA's purchase money mortgages in FY 2006 were to first time homebuyers. Nearly 32 percent of these homebuyers were minority and FHA estimates that at least 30 percent of their new business has seller funded downpayment assistance. MBA is concerned that by limiting the financing choices that these borrowers have, many will choose other options, such as subprime loans. Since delinquency and foreclosure rates for subprime loans, as seen in table 3 above, do not compare favorably to those of FHA, these choices are not optimal. We are concerned that the market segment most impacted by

this rule is composed of those borrowers least likely to understand the risks associated with various loan options.

- (2) The implementation of the proposed rule would have significant impact on FHA and the mortgage lending industry. This rule could reduce FHA's volume by 30 to 50 percent. Considering that its market share is lower than at any time in recent history – less than two percent – the impact to FHA could be quite serious. Repercussions of eliminating seller funded downpayment assistance would be felt by all of those focused on low- to moderate-income housing, including lenders, builders and other real estate professionals.
- (3) Regarding FHA's concern to the risk of the Mutual Mortgage Insurance Fund, HUD reported that in FY 2006 its reserve ratio was 6.82 percent, well surpassing its requirement of 2 percent and up from FY 2005 by .80 percent. The report further states that FHA was able to increase the capital ratio of its funds "through improved management of its portfolio, insurance premiums, and more stringent measures to ensure data integrity,"¹⁵ Recently however, various figures have been reported to Congress and to the public concerning the financial impact to FHA of continuing to accept seller funded downpayment assistance loans. For instance, in the GAO's testimony before the Subcommittee on Housing and Community Opportunity,¹⁶ William Shear stated that FHA estimated that continuing the single-family mortgage program without changes would require a subsidy or appropriations in 2008. At MBA's Government Housing Finance Conference in May, senior FHA staff cited that an examination of FHA's portfolio performance (i.e. claim rate) revealed that the MMIF would be depleted by 2015. Although these statements appear somewhat contradictory (perhaps, due to variations in their underlying assumptions, such as housing market changes, program improvements or overall economic conditions), this also raises the question of what financial impact significantly reduced volume will have on the insurance fund.
- (4) Further, MBA is concerned about the impact on Ginnie Mae. FHA volume comprises approximately two-thirds of Ginnie Mae's securitization business. Ginnie Mae estimates that the proposed rule could reduce their volume by a conservative estimate of at least 17 percent, which represents a significant reduction in production by around \$18.3 billion to \$22 billion annualized for 2007. Arthur Frank, Director

¹⁵ United States Department of Housing and Urban Development, *Performance and Accountability Report FY 2006*, page 52.

¹⁶ Statement of James A. Heist, Assistant Inspector General for Audit, Department of Housing and Urban Development, before the Subcommittee on Housing and Community Opportunity of the Financial Services Committee of the House of Representatives (June 22, 2007).

and Head of MBS Research at Deutsche Bank Securities, Inc. believes that such a large and rapid decrease in Ginnie Mae's volume has the potential to create significant liquidity issues for Ginnie Mae securities.

- (5) MBA believes that FHA also needs to clarify the proposed rule in regards to the, perhaps unintentional, exclusion of certain currently allowable sources of seller funded downpayment assistance, including nonprofit agencies involved in the purchase and rehabilitation of properties in support of community revitalization efforts and Native American tribes that purchase and subsequently resell tribal property, using the proceeds to fund downpayments.
- (6) Regarding the IRS's position on what constitutes a charitable organization under Section 501(c)(3), MBA defers to the IRS regarding its ruling of what constitutes a charitable organization. The focus of the proposed rule is not what does or does not constitute a charitable organization, but rather on the circular nature of the seller funded downpayment assistance transaction.

2. MBA's recommendations

MBA believes that the seller funded downpayment assistance program can be a viable program with appropriate risk mitigation techniques put in place. This is not a new concept. The 2005 GAO report and a 2004 report by Concentrance both made strong recommendations to apply enhanced risk mitigation techniques for loans with downpayment assistance. Many risk mitigating techniques for the "flexible downpayment" program currently under consideration by Congress would likely provide effective risk mitigation for the downpayment assistance program. MBA believes the following specific recommendations merit particular consideration.

- (1) **Set a cap on seller-funded downpayment assistance in conjunction with permissible seller contributions of the lesser of the amount that is customary for the area or 6 percent.**

FHA currently caps seller contributions at 6 percent and such a cap is customary for the industry. However, seller contributions to the transaction for downpayment assistance are in addition to other permissible contributions by the seller for settlement charges. These downpayment and settlement related contributions, when combined have the potential to be as high as 9 percent. Including downpayment assistance in the 6% cap will help to mitigate the risk that the total seller contribution will exceed market norms and result in an inducement to purchase that has the propensity to inflate value in order to cover the seller's costs.

- (2) **Define high-risk loan characteristics (e.g. very high ratios, low or no reserves, poor employment history, poor credit performance) with particular emphasis on the layering of such risks.**

FHA can, in turn, use these improved definitions to enhance underwriting criteria and borrower eligibility requirements accordingly. For instance, a borrower with poor credit and high ratios who requires downpayment assistance and whose housing expense will increase dramatically with the proposed mortgage would be considered an aggressive risk relative to a similar borrower profile where the proposed mortgage payment is more in alignment with the borrower's current housing expense. Understanding and adjusting risk management practices to consider the impact of layered risk will help to improve performance of loans with downpayment assistance. These types of enhancements to FHA's mortgage scorecard, TOTAL, are in alignment with changes necessary to accommodate programmatic features proposed in the pending legislation to modernize FHA and enable FHA to manage risk better in changing environments. The GAO testimony to the Subcommittee mentions that these enhancements to TOTAL are actually being addressed. Until TOTAL can be changed to accommodate these additional underwriting criteria, FHA should provide lenders with direction as to which loans with very-high-risk characteristics should be earmarked for manual underwriting.

- (3) **Enhance valuation controls to reduce the likelihood of increased sales prices for loans with seller funded downpayment assistance by requiring appraisers to include a statement in their appraisal reports attesting to the consideration of all seller contributions including downpayment assistance in their estimate of value.**

These controls should include automated valuation tools (AVMs) where available and appropriate to review the estimate of appraised value. AVMs can be used by FHA and lenders as an early warning tool to identify loans where the subject property value falls outside of a reasonable tolerance range as it relates to property values in the area. Desk reviews of appraisals on these loans could be used if AVMs are not available or are deemed inappropriate.

- (4) **Perform additional research to define more precisely those loan and borrower characteristics that constitute "good" risk versus those that do not.**

This research will enable FHA to publish more specific underwriting criteria for those loans with seller funded downpayment assistance and to monitor its portfolio accordingly. This seems a reasonable course of

action since approximately 80 percent of seller funded loans do perform. For example, the GAO testified at the June Housing and Community Opportunity Subcommittee hearing that FHA is testing additional predictive variables for inclusion in its mortgage scorecard, TOTAL. The question remains unanswered as to the improvement in delinquency and default rates if better performance predictors were used to underwrite those loans with downpayment assistance. MBA also believes that additional research regarding the state of the MMIF is necessary.

V. Conclusion

Again, MBA greatly appreciates the opportunity to comment on the Proposed Rule.

In summary, we urge the FHA to reconsider the Proposed Rule. Though it shares FHA's concern for the continued solvency of the MMIF, MBA believes that the administration of loans with seller funded downpayment assistance can be amended to continue helping underserved sectors of the population achieve homeownership without placing unnecessary risks on government resources. MBA believes this can be accomplished if FHA acts quickly to clearly define and implement long needed underwriting and valuation guidelines to mitigate the risk to the FHA insurance fund of loans with downpayment assistance and with seller funded downpayment assistance. We also believe that further research is needed to clarify the impact of various economic and programmatic scenarios on the viabilities of the MMIF.

For further information concerning these comments, please contact Corey Carlisle at ccarlisle@mortgagebankers.org and (202) 557-2860. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Robbins", with a large, stylized flourish at the end.

John M. Robbins, CMB
Chairman
Mortgage Bankers Association