NAR Issue Brief
Down Payment Assistance for FHA-insured loans

The Housing and Economic Recovery Act and Down Payment Assistance

On July 30, 2008, The Housing and Economic Recovery Act (HERA) was signed into law. The legislation includes several initiatives to modernize the Federal Housing Administration (FHA). Section 2113 prohibits the seller, or any other person or entity that financially benefits from the transaction, from providing down payment assistance to a buyer for an FHA-insured loan. This includes third party entities that are reimbursed directly or indirectly by anyone that financially benefits from the transaction.

The provision was added to HERA due to growing concerns by the Department of Housing and Urban Development (HUD) that seller-funded down payment assistance was negatively impacting the performance of FHA-insured loans. In 2007, the Government Accountability Office (GAO) conducted a study that found FHA-insured loans with seller funded down-payment assistance to have higher delinquency and insurance claim rates than similar loans with greater owner investment.

Funds Provided by Federal, State or Local Governments, their Agencies or Instrumentalities

In response to the new law, HUD issued an interpretive rule to clarify the new restrictions on sources of homebuyer funds. There was some confusion about the eligibility of state and local governments and their agencies' or instrumentalities' homeownership programs. HUD determined that HERA does not exclude down payment assistance provided directly by federal, state, or local governments, or their agencies or instrumentalities, as part of their homeownership programs. Examples of programs include the Federal Emergency Management Agency (FEMA) post-natural disaster housing assistance programs, secured or unsecured disaster relief loans administered by the Small Business Association (SBA) as well as the Federal Home Loan Bank's (FHLB) Affordable Housing Program (AHP) Homeownership Set-Aside Grant Program. HUD issued Mortgagee Letter 2013-14 that explains the documentation required by mortgagees if a homebuyer chooses to use one of these homeownership programs.

Acceptable Source of Gift Funds

While buyers are not allowed to accept seller-funded down payment assistance for FHA-insured loans, they may accept gift funds from other sources. For funds to be considered a gift, there must be no expected or implied repayment of the funds. The donor can be: the borrower's relative, the borrower's employer or labor union, a close friend with a clearly documented interest in the borrower, a charitable organization, a governmental agency or public entity that has a program providing homeownership assistance to low- and moderate income families, or first-time homebuyers.

Employer Programs as Acceptable Sources of Down Payment Funds

Employer-Assisted Housing (EAH) grants and loans are also acceptable sources of down payment assistance for FHA-insured loans. Employers may also guarantee to purchase the borrower's previous residence as a result of relocation.

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Seller Concessions

Seller concessions are also allowed for FHA-insured mortgages as outlined in Mortgagee Letter 2008-23. A seller concession is money that the seller pays back to the buyer to help with their closing costs, such as title services, credit reports, or flood certification, among others. FHA currently permits seller concessions up to 6 percent of the purchase price of the home. Seller concessions of up to 6 percent are considered offsets to closing costs, rather than inducements to purchase.

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