GSE Activity Report

Tuesday, August 30, 2022

The No-Down Low-Down

Summary

BofA's new no-down payment mortgage is another innovative product in which banks use their balance sheets to address their CRA obligations by offering down payment assistance or, as here, flat out nothing down. The extent to which nonbanks can match these programs depends on the extent to which Fannie and Freddie are able and then willing to cross-subsidize the loans and then purchase them, surely a hot topic of debate between the nonbanks and the GSEs and FHFA.

Impact

Key to BofA's program are grants of $10,000 to $15,000 that create borrower equity. Without access to legal documentation, it is impossible to know if the bank or borrower has access to this equity in the event of an under-water sale, but the description of the funds as grants suggests not. If this is the case, then the down payments are not bank assets for purposes of regulatory-capital treatment, just foregone revenue.

Underwriting for these loans is said to depend on alternative credit-risk indicators such as rental payments and prior home-ownership counselling. BofA is at pains not only to say that these loans will bear no closing costs – another direct subsidy – but also no MI. Given this, it's unclear if Fannie and Freddie could purchase these loans in adherence to their charters.

If FHFA is willing to consider them not only a special-purpose credit program per the GSEs' equitable-finance plans – which it almost surely is – then the key is whether the down payment grant is another form of charter-eligible credit enhancement. The law says that these may be either recourse back to the lender or a loan participation; for a lower price house, either might work for BofA's grants if FHFA is willing to define these terms with considerable creativity.

Outlook

The BofA program is of course at least as much political as philanthropic. Mindful of the Wall Street Journal's blistering criticism of Fannie Mae's equitable-finance plan, BofA is at pains to make clear that first-time borrowers are eligible regardless of race or ethnicity if they live in a majority-minority census tract. This thus aids LMI communities, albeit at some risk of gentrification, without stirring up the reverse-discrimination hornet's nest.

BofA would surely not have launched this program without clearing it with the OCC. As with FHFA, the OCC is all-in on special-purpose credit programs. The MI-eligibility decision is FHFA's alone, but the

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fact that the OCC is willing to countenance a direct contribution to home purchase sets a precedent sure to put pressure on other banks and, thereby, on nonbanks already facing Democratic demands for CRA-like obligations.

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