

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 320

[Docket No. FR-4958-F-02]

RIN 2503-AA18

Government National Mortgage Association: Excess Yield Securities

AGENCY: Government National Mortgage Association, HUD.

ACTION: Final rule.

SUMMARY: The Government National Mortgage Association (Ginnie Mae) has developed a new program under which Ginnie Mae will guarantee securities backed by the excess servicing income relating to one or more mortgage pools or loan packages underlying previously issued Ginnie Mae mortgage-backed securities (Excess Yield Securities). This final rule clarifies the authority of Ginnie Mae to guarantee this new product and establishes a new regulation that defines Excess Yield Securities and sets out the Ginnie Mae guaranty. This final rule follows publication of a September 14, 2005, proposed rule and public comment period. After Ginnie Mae's careful consideration of the public comment received, the proposed rule is being adopted without change.

DATES: *Effective Date:* July 5, 2006.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Ledbetter, Director, Securities Policy and Research, Government National Mortgage Association, 451 Seventh Street, SW., Room B-133, Washington, DC 20410; telephone (202) 401-8970 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

In order to further its statutory mission of expanding affordable housing in America by linking domestic and global capital markets to the nation's housing markets, Ginnie Mae, operating under its current legal authority, proposed to implement an Excess Yield Securities program (Excess Yield Program) by providing its guaranty to interest-only securities backed by a portion of the servicing fee that is paid out of the monthly cash flows from government-insured or government-guaranteed mortgage loans backing previously issued Ginnie Mae-guaranteed mortgage-backed securities. The cash flows backing the Excess Yield

Securities would be that portion of a qualifying issuer's servicing cash flows with respect to the related mortgage pools or loan packages that is greater than the minimum amount of servicing required by Ginnie Mae. The Excess Yield Securities would be "based on and backed by a trust or pool composed of mortgages which are insured under the National Housing Act" and would therefore be eligible for guaranty as authorized by 12 U.S.C. 1721(g)(1), just as their related Ginnie Mae-guaranteed mortgage-backed securities are.

Under the program, servicing cash flows would be pooled and would back securities guaranteed by Ginnie Mae and upon which Ginnie Mae would charge a guaranty fee pursuant to 12 U.S.C. 1721(g)(1) and 24 CFR 320 of the implementing regulations. The guaranty fee would be no more than six basis points, as stipulated by 12 U.S.C. 1721(g)(3)(A). Although a guaranty fee has been assessed against related mortgage-backed securities previously guaranteed by Ginnie Mae, the servicing cash flows that serve as the collateral for these new securities have not backed securities upon which a fee has been assessed.

The Excess Yield Program was introduced as a proposed rule in order to provide an opportunity for public notice and comment before implementation of it as a new program. The proposed rule, published September 14, 2005 (70 FR 54449), sought to affirm Ginnie Mae's authority to guarantee Excess Yield Securities, to charge guaranty fees for such guarantees, and to revise Ginnie Mae's authorizing regulations to clarify their application to the Excess Yield Program.

The Excess Yield Program will allow qualifying Ginnie Mae issuers to reduce the amount of mortgage servicing rights on their balance sheets, which should reduce the amount of capital they are required to hold against that asset. The program will also reduce issuers' need to use costly hedging tools to hedge against fluctuations in the value of their mortgage-servicing rights. As a result of the program, the liquidity of mortgage-servicing rights for Ginnie Mae issuers will increase, resulting in lower costs to issuers and encouraging the origination of government-insured and government-guaranteed loans that back Ginnie Mae mortgage-backed securities. This program will directly benefit low- and moderate-income borrowers and further Ginnie Mae's mission.

Overall, the program will generate benefits for investors, lenders, issuers, low- and moderate-income borrowers, and Ginnie Mae. Ginnie Mae will establish appropriate safeguards to

mitigate risks involved. Such safeguards will include, among other factors, a review of issuer competence and financial condition prior to allowing issuers to participate in the program. Ongoing monitoring procedures will minimize operational risks. Investor participation will be limited to institutions that meet the requirements to be classified as accredited institutional investors, thus protecting less sophisticated investors from the risks associated with interest-only securities. Commitment and guaranty fees will generate revenue to pay the costs of the program.

The September 14, 2005, rule proposed to add a new section (§ 320.8) to HUD's regulations governing the guaranty of mortgage-backed securities. Section 320.8 included a definition of Excess Yield Securities and specified that Ginnie Mae will guarantee the timely payment of interest, as provided by the terms of the security.

See the preamble to the September 14, 2005, proposed rule for a description of the Excess Yield Program and related regulatory amendments.

II. This Final Rule

This final rule follows publication of the September 14, 2005, proposed rule, and takes into consideration the public comment received on the proposed rule. After careful review of the public comment, HUD has decided to adopt the September 14, 2005, rule as final without change.

III. Discussion of Public Comments on the September 14, 2005, Proposed Rule

The public comment period on the proposed rule closed on November 14, 2005. HUD received one public comment in response to the proposed rule. The comment was received from a subsidiary of a financial services retailer. This section of the preamble presents a summary of the significant issues raised by the public commenter on the September 14, 2005, proposed rule, and Ginnie Mae's response to these issues.

Comment: Support for the Excess Yield Program. The commenter wrote that the issuance of Excess Yield Securities will make Ginnie Mae securities more attractive in the marketplace, as well as make the underlying loans more affordable to borrowers applying for Federal Housing Administration (FHA)-insured and Veterans Administration (VA)-guaranteed loans.

HUD Response: HUD agrees with this comment.

Comment: The minimum service fee for Ginnie Mae I mortgage-backed

securities should be restructured in order to accommodate the Excess Yield Program. The commenter advocated expanding the program to include securities backed by excess servicing income earned from loans backing restructured Ginnie Mae I securities. The commenter wrote that this would create a more liquid market for Excess Yield Securities by increasing the potential market size, and generate more revenue for Ginnie Mae.

HUD Response: The Ginnie Mae I security, as currently structured, has no excess servicing because each loan backing a Ginnie Mae I security is required to have exactly 44 basis points of servicing. This requirement is communicated to, and understood by, investors, and is an important reason why the Ginnie Mae I security trades well in the secondary market. As a result, if Ginnie Mae were to restructure the Ginnie Mae I security to allow for the sale of a portion of that 44 basis points of servicing, the change could only apply prospectively, would require a change to the Bond Market Association's "good delivery guidelines" for trading in the TBA ("to be announced") market, and might cause a dislocation in the trading of the security. To avoid such dislocation, Ginnie Mae is currently contemplating allowing excess servicing only from Ginnie Mae II securities to back the Excess Yield Securities.

Comment: Ginnie Mae correctly assessed that the Excess Yield Program would directly benefit low- and moderate-income borrowers by lowering the costs of and encouraging the origination of government-backed loans. The commenter agreed with the assertion in the proposed rule that issuers would experience a reduction in the amount of capital needed to hold the mortgage-servicing asset and the cost to hedge it. The commenter also wrote that Excess Yield Securities would complement other efforts by Ginnie Mae to lower the cost of funds available to low- and moderate-income borrowers.

HUD Response: HUD agrees with this comment.

Comment: The Excess Yield guaranty fee should be significantly less than six basis points. The commenter wrote that for Ginnie Mae II pools issued since July 2003, the average amount of excess servicing produced monthly has ranged from approximately 15 to 25 basis points. The commenter reasoned that in relation to the "standard" six basis points Ginnie Mae guaranty fee that covers the full security coupon, the market clearing level for an Excess Yield Security guaranty fee should be significantly less than six basis points.

The commenter defined the market clearing level as the level of guaranty fee that induces participants to create Excess Yield Securities rather than retaining those cash flows.

HUD Response: Ginnie Mae will determine the appropriate guaranty fee to assess for its guaranty of Excess Yield Securities, based upon the risks to Ginnie Mae, and subject to the statutory limit of six basis points.

Comment: It would be beneficial to the marketplace for Ginnie Mae to communicate, as early as possible, the eligibility requirements for participation in the Excess Yield Program. The commenter wrote that a commitment to transparency would allow issuers to determine their eligibility and how to best conduct their issuance activities in the future.

HUD Response: Ginnie Mae is committed to being an open and transparent organization, and will provide clear guidance to the market prior to rolling out the Excess Yield Program.

IV. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This final rule does not impose any federal mandate on any state, local, or tribal government, or the private sector, within the meaning of UMRA.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary has reviewed this rule before publication and, by approving it, certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. The final rule affirms and clarifies the

authority of Ginnie Mae to guarantee a type of security it had not previously guaranteed and, as such, has no impact on entities in which the size of entities is a relevant consideration. Accordingly, the undersigned certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of Section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in Section 3(f) of the executive order (although not economically significant, as provided in Section 3(f)(1) of the executive order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 320

Mortgages, Securities.

■ Accordingly, HUD amends 24 CFR part 320 as follows:

PART 320—GUARANTY OF MORTGAGE-BACKED SECURITIES

■ 1. The authority citation for 24 CFR part 320 continues to read as follows:

Authority: 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 3535(d).

■ 2. Add § 320.8 to read as follows:

§ 320.8 Excess Yield Securities.

(a) *Definition.* Excess Yield Securities are securities backed by the excess servicing income relating to mortgages

underlying previously issued Ginnie Mae mortgage-backed securities.

(b) *GNMA guaranty*. The Association guarantees the timely payment of

interest as provided by the terms of the security.

Dated: May 23, 2006.

Michael J. Frenz,

Executive Vice President.

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