

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 320 and 330

[Docket No. FR-4629-P-01]

RIN 2503-AA16

Government National Mortgage Association Mortgage-Backed Securities Program—Payments to Security Holders

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: The Government National Mortgage Association (the "Association" or "Ginnie Mae") is proposing regulations that will govern payments on Ginnie Mae I Modified Pass-Through Securities ("Ginnie Mae I MBS") registered in the name of a securities depository intermediary (a "Depository"). The proposed rule would require that payments on Ginnie Mae I MBS due to Depositories be made in immediately available funds and would supersede any current provisions allowing those payments to be made by check. Payments to other security holders may be made by check or other means provided the check is received by the security holder not later than the 15th day of each month. The regulation would also eliminate any requirement that a physical certificate representing a Ginnie Mae MBS be maintained by a Depository. For consistency, the regulation would also eliminate any requirement that a physical certificate representing a Ginnie Mae multiclass security be maintained by a Depository.

DATES: *Comments Due Date:* March 28, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Thomas R. Weakland, Vice President for Program Administration, Government National Mortgage Association, Department of Housing and Urban Development, Room 6204, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-2884. A telecommunications device for deaf persons (TTY) is available at (202) 708-

9300. (The telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

As stated in section 301 of the National Housing Act, Ginnie Mae's purpose is to "establish secondary market facilities for residential mortgages, to provide that the operations thereof shall be financed by private capital to the maximum extent feasible, and to authorize such facilities to—

- (1) provide stability in the secondary market for residential mortgages;
- (2) respond appropriately to the private capital market;
- (3) provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing;
- (4) promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing * * * ."

As of September 15, 2000, the principal amount of Ginnie Mae I MBS outstanding was approximately \$432 billion. Of this amount, approximately \$426 billion or 98.6% was registered in the name of The Depository Trust & Clearing Corporation ("DTCC") for the benefit of holders reflected on the books of DTCC.

Effective October 1, 1998, Section 15-2(A)(1) of the Ginnie Mae Mortgage-Backed Securities Guide has provided with respect to Ginnie Mae I MBS that issuers must remit all payments due to security holders such that security holders will receive their installments as follows:

- (1) *Payment by electronic transfer.* For all securities registered in the name of the designated nominee for the depository, with an issue date of October 1, 1998 or later, issuers are required to make payments by ACH transaction or by Fed wire. For securities registered in the name of the designated nominee for the Depository, with an issue date prior to October 1, 1998, Ginnie Mae strongly encourages issuers to pay the Depository by ACH transaction or by Fed wire. If an issuer elects to remit payments to the

Depository by ACH transaction or electronic transfer for securities with an issue date prior to October 1, 1998, it must continue to remit payments electronically while the securities are registered in the name of the Depository's nominee.

The electronic transfer must be completed by the 15th calendar day of the month if the 15th is a business day. If the 15th calendar day is not a business day, the transfer must be completed by 1:00 PM, Eastern Time on the first business day following the 15th calendar day of the month.

An issuer of securities that are not registered in the name of the Depository's nominee may make payments to a security holder by ACH transaction or fed wire, provided that it obtains the prior written approval of the security holder. If an issuer begins to make such payments by electronic transfer, it must continue to do so while the securities are registered in the name of that security holder.

- (2) *Payment by check.* If an issuer pays by check, the check must be received by the security holder not later than the 15th calendar day of each month.

II. This Proposed Rule

Most issuers of Ginnie Mae I MBS responded affirmatively to Ginnie Mae's encouragement that payments be made by electronic transfer when the payee was DTCC. As of September 15, 2000, (i) approximately 80% of all payments to DTCC on all Ginnie Mae I MBS were made by electronic transfer, (ii) approximately 71% of all payments to DTCC on Ginnie Mae I MBS issued before October 1, 1998, were made by electronic transfer, and (iii) 91% of issuers made all Ginnie Mae I MBS payments to DTCC by electronic transfer.

III. Reasons for Proposed Rule

A. Securities Held Through Intermediaries

Against this background, Ginnie Mae is proposing promulgation of a regulation requiring that all payments to be made on Ginnie Mae I MBS to a Depository be made electronically in immediately available funds. The reasons for the proposal are:

- (1) *Fungibility/Liquidity.* Ginnie Mae is charged with maintaining stability and liquidity in the secondary market for residential mortgage securities. Under existing program requirements, funds are transferred at different times on securities that should have the same payment characteristics. This is an unsatisfactory discrepancy when the

goal is uniformity for the purpose of enhancing fungibility and thereby liquidity of Ginnie Mae I MBS.

(2) *Access to Alternative Payment Systems.* Ginnie Mae has created uniformity where it would not otherwise exist through the establishment of a relationship with DTCC. As a consequence of Ginnie Mae's program requirements, it is more expensive to invest in Ginnie Mae securities than it need be, to the detriment of mortgagors, mortgagees and secondary market investors. The additional expense is ultimately reflected in the interest rate that is charged homeowners, therefore making homeownership less affordable.

Equally important, existing program requirements have impaired the ability of Ginnie Mae to consider alternative payment systems. In particular, in response to comments from capital markets investors, Ginnie Mae is considering utilizing the payment systems of the Federal Reserve Bank for payments on Ginnie Mae I MBS. Crediting payments through the Federal Reserve's systems would make the crediting process consistent with that for United States Treasury securities and for mortgage-backed securities issued by Fannie Mae and Freddie Mac. Ginnie Mae has also been advised that the use of Federal Reserve systems would enhance the market for Ginnie Mae I MBS in overseas capital markets. Because the Federal Reserve's systems do not accommodate payments made otherwise than electronically in immediately available funds, mandating electronic transfer is a prerequisite to the use of those payment options.

(3) *Credit/Stability.* Only when a check fails to clear is it known that funds were not available that the system assumes were available at the required time of payment. Requiring that all payments due on Ginnie Mae I MBS be made in immediately available funds better assures the certainty and integrity of the Ginnie Mae system and the timeliness of all required payments, because, among other things, Ginnie Mae appropriately does not default an issuer and make payment with its funds until there is actual evidence of an issuer default.

(4) *Efficiency.* Securities markets and securities payment systems are moving rapidly away from paper. A system that must accommodate paper is more costly than one that does not. This is evidenced by the fact that payments are made electronically on all Treasury Securities and the mortgage-backed securities issued by Fannie Mae and Freddie Mac. The Association in proposing these rules has considered

that in the past some issuers of Ginnie Mae I MBS have enjoyed a benefit from the inefficiency of the cash collection system. That benefit, however, has been at the expense of the efficiency of the secondary market for mortgage-backed securities. The proposed regulations address this arrangement and return the benefits to the homeowners.

Furthermore, since October 1, 1998, all payments on newly issued Ginnie Mae I MBS registered in the name of the Depository have been made electronically. Thus, Ginnie Mae issuers have systems in place to make payments electronically. Electronic payment is not only feasible, but also the most efficient means for effecting payments on Ginnie Mae I MBS.

B. Securities Not Registered in the Name of a Depository's Nominee

As noted above, only approximately 1.4% of outstanding Ginnie Mae I MBS are not registered in the name of the nominee of DTCC ("certificated MBS"). Ginnie Mae is considering whether (i) to require issuers to make payments on certificated MBS by wire transfer of immediately available funds, (ii) to deny investors in certificated MBS the right to receive payment by check, and (iii) whether holders of certificated MBS that elect to receive payments electronically may later elect to receive payments by check. Wire transfer for payments on certificated MBS would be consistent with the trend in the capital markets to paperless transactions, but Ginnie Mae is mindful that issuers and investors may appropriately desire payment by check for expense or other reasons. Accordingly, the Association is soliciting comments on the effect and desirability of mandating electronic payments on certificated MBS.

C. Physical Certificates

In accordance with modern practice and the desires of financial intermediaries with respect to the risk and expense of maintaining custody of actual physical certificates, the Association is proposing that on the effective date of the rule, ownership of Ginnie Mae MBS and Ginnie Mae multiclass securities registered in the name of a Depository will be conclusively established by registration of the Ginnie Mae MBS or Ginnie Mae multiclass security reflected on the books of the registrar of the Ginnie Mae MBS or Ginnie Mae multiclass security. Accordingly, it will no longer be necessary for a Depository to maintain custody of physical certificates representing ownership of Ginnie Mae MBS or Ginnie Mae multiclass securities.

D. Guaranty

The Ginnie Mae guarantee only goes to the registered holder of the Ginnie Mae security, and it is desirable to clarify that Ginnie Mae does not guarantee performance by a Depository in whose name the Ginnie Mae security is registered.

IV. Justification for Reduced Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule since most issuers are not affected and the rule does not implement changes that would be considered controversial by the general public. Given the narrow effect of the proposed rule and the fact that the shortened comment period will expedite implementation of a more efficient payment system, the Department believes that a 30-day public comment period is justified.

V. Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule addresses ministerial functions associated with the Ginnie Mae MBS program, such as the manner of dividend payments and the method used to document ownership of certificates. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

Environmental Impact

This proposed rule encompasses activities of the Government National Mortgage Association under Title III of the National Housing Act (12 U.S.C. 1716, et seq.). Therefore, in accordance with 24 CFR 50.19(c)(19) of HUD's regulations, this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from

publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Parts 320 and 330

Mortgages, Securities.

Accordingly, parts 320 and 330 of title 24 of the Code of Federal Regulations are proposed to be amended 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. Section 320.5 is amended by revising paragraph (g) and adding paragraphs (h), (i) and (j) to read as follows:

§ 320.5 Securities.

* * * * *

(g) *Registered Ownership.* On and after [the Effective Date of the Final Rule], ownership of securities registered in the name of a Depository shall be conclusively established by registration in the name of the Depository as owner on the Association's central registry and it shall be unnecessary for a Depository to maintain custody of any physical certificates evidencing such ownership.

(h) *Payments on Ginnie Mae I MBS.* On and after [the Effective Date of the Final Rule], issuers must remit all payments due to holders of Ginnie Mae I MBS such that holders will receive their installments as follows:

(1) *Payment to a Depository.* (i) For all securities registered in the name of a Depository or the designated nominee for a Depository, issuers are required to make payments in immediately

available funds by ACH transaction, Fed wire, or by such other method as directed and/or authorized by Ginnie Mae pursuant to the MBS Guide.

(ii) Payment must be made by the hour specified in the MBS Guide on the 15th calendar day of the month if the 15th is a business day. If the 15th calendar day is not a business day, the transfer must be made by the hour specified in the MBS Guide on the first business day following the 15th calendar day of the month.

(2) *Payments to other holders.* An issuer of Ginnie Mae I securities that are not registered in the name of a Depository or its nominee may make payments to a security holder by ACH transaction or Fed wire, provided that it obtains the prior written approval of the holder of the Ginnie Mae I MBS. If an issuer begins to make such payments by electronic transfer, it must continue to do so while the securities are registered in the name of that security holder. If an issuer makes payments on Ginnie Mae I MBS by check, the check must be received by the security holder not later than the 15th calendar day of each month.

(i) *Guaranty.* The Association's guaranty is a guaranty that payment will be made to the registered owner of securities as reflected in the Association's central registry. The Association makes no other guaranty, including any guaranty that a Depository will appropriately credit payments to beneficial owners of Ginnie Mae MBS. The Association's guarantee of securities payable to a Depository or its nominee becomes effective when the Depository or its nominee is registered as the registered owner of the securities on the Association's central registry.

(j) *Definition of Depository.* As used in this section, *Depository* means a clearing agency, bank or other institution that maintains systems by which ownership and transfer of interests in Ginnie Mae MBS are made through entries on the books of the institution.

PART 330—GUARANTY OF MULTICLASS SECURITIES

3. The authority citation for 24 CFR part 330 continues to read as follows:

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

4. Revise § 330.5 to read as follows:

§ 330.5 Definitions.

As used in this part, the following terms shall have the meanings indicated:

Consolidated securities. A series of multiclass securities, each class of

which provides for payments proportionate with payments on the underlying eligible collateral.

Depositor. The entity that deposits, or executes an agreement to deposit, as contained in the Multiclass Guide, eligible collateral into a trust in exchange for consolidated securities.

Depository. A clearing agency, bank or other institution that maintains systems by which ownership and transfer of interests in Ginnie Mae multiclass securities are made through entries on the books of the institution.

GNMA electronic bulletin board. An information distribution system established by the Association for the Multiclass Securities program.

GNMA MBS certificates. The guaranteed mortgage backed securities issued under part 320 of this chapter.

Government mortgages. Mortgages that are eligible under section 306(g) (12 U.S.C. 1721(g)) for inclusion in GNMA mortgage-backed securities pools.

Multiclass Registrar. The institution that is specified by the Association as the registrar of the related class and series of multiclass securities.

Participant. For structured securities, the sponsor, co-sponsor, trustee, trust counsel, and accounting firm. For consolidated securities, the depositor. Other entities may be designated as participants in the Multiclass Guide.

Sponsor. With respect to structured securities, the entity that establishes the required trust executing the trust agreement and depositing the eligible collateral in the trust in exchange for the structured securities.

Structured securities. Securities of a series at least one class of which provides for payments of principal or interest disproportionately from payments on the underlying eligible collateral.

5. Revise § 330.30 to read as follows:

§ 330.30 GNMA guaranty.

(a) *Securities held by Depositories.* On and after [the Effective Date of the Final Rule], ownership of multiclass securities registered in the name of a Depository shall be conclusively established by registration in the name of the Depository as owner on the books and records of the Multiclass Registrar, and it shall be unnecessary for a Depository to maintain custody of any physical certificates evidencing such ownership.

(b) *Guaranty.* The Association's guaranty is a guaranty that payment will be made to the registered owner of securities as reflected on the books and records of the Multiclass Registrar.

(1) The Association makes no other guaranty, including any guaranty that a

Depository will appropriately credit payments to beneficial owners of GNMA multiclass securities. The Association's guarantee of securities payable to a Depository or its nominee becomes effective when the Depository or its nominee is registered as the registered

owner of the securities on the books and records of the Multiclass Registrar.

(2) The Association guarantees the timely payment of principal and interest as provided by the terms of the multiclass security. The Association's

guaranty is backed by the full faith and credit of the United States.

Dated: February 15, 2001.

Mel Martinez,
Secretary.

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