

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 320

[Docket No. FR-4958-P-01; HUD-2005-0018]

RIN 2503-AA18

**Government National Mortgage
Association: Excess Yield Securities**

AGENCY: Government National Mortgage Association, HUD.

ACTION: Proposed rule.

SUMMARY: The Government National Mortgage Association (Ginnie Mae) is developing 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 proposed rule would clarify the authority of Ginnie Mae to guarantee this new product and would provide Ginnie Mae the opportunity to consider public comment before implementing the program.

DATES: *Comment Due Date:* November 14, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: <http://www.regulations.gov>; or
- The HUD electronic Web site at: <http://www.epa.gov/feddocket>. Follow the link entitled View Open HUD Dockets. Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above Addresses. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at <http://www.epa.gov/feddocket>.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Ledbetter, Director, Securities Policy and Research, Government National Mortgage Association, 550 Twelfth Street, SW., Third Floor, Washington, DC 20024; 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:

Description of Program

In furthering 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, is planning 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 guaranteed mortgage loans backing previously issued Ginnie Mae guaranteed mortgage-backed securities (MBS). As currently contemplated, 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 therefore eligible for guaranty as authorized by 12 U.S.C. 1721(g)(1)(ii), just as their related Ginnie Mae-guaranteed MBS are.

Ginnie Mae expects that the 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 required by 12 U.S.C. 1721(g)(3)(A). Although a guaranty fee has been assessed against the related MBS previously guaranteed, 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 purpose of this rule is to affirm Ginnie Mae's authority to guarantee Excess Yield Securities, to charge guaranty fees for such guarantee, and to revise Ginnie Mae's authorizing regulations to clarify their application to the Excess Yield Program. Because Ginnie Mae has not previously

guaranteed servicing cash flows, and charged a fee for such guarantee, Ginnie Mae is providing an opportunity for prior public notice and comment before program implementation.

Purpose of 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 will in turn reduce the amount of capital they are required to hold against that asset. It will also reduce their need to use costly hedging tools to hedge against fluctuations in the value of their mortgage servicing rights. By increasing the liquidity of mortgage servicing rights for Ginnie Mae issuers, the Excess Yield Program should lower the costs of, and encourage the origination of, government-insured and guaranteed loans that back Ginnie Mae MBS. This will directly benefit low- and moderate-income borrowers and further Ginnie Mae's mission.

Authority To Charge Commitment and Guaranty Fees

The structure of the transaction would generate new fee revenue to Ginnie Mae from the payment of commitment fees and guaranty fees, collected at the issuance of the Excess Yield Securities. A guaranty fee would be charged pursuant to 12 U.S.C. 1721(g)(1) and would be limited to six basis points as restricted by 12 U.S.C. 1721(g)(3)(A). Ginnie Mae believes that the Excess Yield Securities will increase the availability and decrease the cost of funds for homeowners by reducing costs to lenders.

Program Administration

The program would provide a variety of safeguards to minimize the risk to the Federal government, as well as to investors. Additional risk to taxpayers would be minimal because the excess yield securities guaranteed by Ginnie Mae would be backed by the excess servicing cash flows, which are part of the interest payments on the underlying federally insured or guaranteed mortgages that are not already passed through as payments to investors in existing Ginnie Mae MBS. In addition, participants in Ginnie Mae's Excess Yield Program would be carefully selected through a review process that includes strict eligibility requirements based upon issuer competence and financial condition. The operational risks associated with the new product would be mitigated by ongoing monitoring procedures. Investors eligible to purchase this product would be limited, by virtue of the minimum

investment amount, to those institutions that meet the requirements to be classified as accredited institutional investors, thus protecting small investors from the increased risks associated with interest-only securities.

Ginnie Mae issuers will be responsible for making timely payments on the Excess Yield Securities to investors who own the excess-yield securities, regardless of whether such payments are received from the mortgage borrowers. To the extent that a Ginnie Mae issuer defaults on its payment obligations on the Excess Yield Securities, Ginnie Mae would provide timely payment to the investors. Issuers of Excess Yield Securities would be subject to extinguishment of their rights to participate in Ginnie Mae's programs under certain circumstances, including a failure to pay investors. Ginnie Mae anticipates that program participants shall pay transaction fees, including trustee, accountant, legal, and other fees. Excess Yield Securities will help to modernize Ginnie Mae's program.

To affirm and clarify Ginnie Mae's authority to take such action, this rule proposes to add a new § 320.8 to HUD's regulations governing the guaranty of MBS to include an explicit reference to the cash flows from eligible mortgages as backing a guaranteed security. New § 320.8 would define Excess Yield Securities as securities backed by the excess servicing income relating to mortgages underlying previously issued Ginnie Mae MBS. The proposed new regulatory section would specify that Ginnie Mae will guarantee the timely payment of interest as provided by the terms of the security.

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 proposed 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 proposed 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 proposed 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 proposed 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. 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 less burdensome alternatives to this rule that will meet HUD's program responsibilities.

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 proposes to amend 24 CFR part 320 to read 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: August 16, 2005.

Michael J. Frenz,

Executive Vice President.

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