

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Government National Mortgage
Association**

24 CFR Parts 390 and 395

[Docket No. R-95-1698; FR-3554-F-01]

**Government National Mortgage
Association Guaranteed Multiclass
Securities**

AGENCY: Government National Mortgage Association, HUD.

ACTION: Final rule.

SUMMARY: This final rule codifies the provisions of two Notices published in the **Federal Register** on May 26, 1994 and September 30, 1994, as authorized by Congress. Both Notices provided for a comment period. The September 30 Notice responded to comments on the May 26 Notice. This rule provides guidance to entities wishing to participate in the GNMA guaranteed multiclass securities program and describes certain other aspects of the program.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Guy S. Wilson, Vice President, Government National Mortgage Association, Room 6151, 451 Seventh Street SW., Washington, DC 20410-9000, telephone (202) 401-8970. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-3649. (These telephone numbers are not toll-free.) Copies of this rule will be made available on tape or large print for those with impaired vision that request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3004 of the Omnibus Budget Reconciliation Act of 1993 provides for initial implementation of the Government National Mortgage Association (the "Association" or "GNMA") guaranteed multiclass securities program by a Notice published in the **Federal Register**, effective upon publication, by adding section 306(g)(3)(E)(ii) to the National Housing Act (12 U.S.C. 1721(g)(3)(E)(ii)). The implementation Notice for the initial stage of this program, which provided for participation by a limited number of entities, was published on May 26, 1994 (59 FR 27290) ("May 26 Notice"). A supplemental Notice was published on September 30, 1994 (59 FR 50148) ("September 30 Notice") to implement the full participation stage.

Under section 306(g)(3)(E)(ii), GNMA is required to publish a final rule not later than 12 months after publication of the initial notice, which is May 26, 1995. GNMA has developed the multiclass securities program, and is now ready to publish the final rule.

II. Program Revisions for Final Rule

The Department has decided to make one program revision in this rule to the provisions of the September 30 Notice. For structured securities, GNMA has decided to require applications from Sponsors and Co-sponsors, but not from other participants.

The Sponsor selects the other participants (trust counsel, accounting firms). The Sponsor selects a trustee from institutions approved by GNMA. However, the participants selected by the Sponsor must comply with GNMA program requirements, such as those described in §§ 395.15 and 395.20.

III. Comments and Responses

No comments were received on the September 30 Notice.

IV. Findings and Certifications

A. Environmental Review

A Finding of No Significant Impact with respect to the environment was made when the May 26 Notice was published, in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The changes made in the September 30 Notice and in this final rule do not affect the validity of that Finding. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

B. Regulatory Review

The material in this rule has been reviewed by OMB under Executive Order 12866 as a significant regulatory action. Any changes made as a result of that review are clearly identified in the docket file for this rule, which is available for public inspection in the Office of HUD's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political

subdivisions), or on the distribution of power and responsibilities among the various levels of government. This rule only affects participants and investors in the GNMA guaranteed single and multiclass securities industry. States and their political subdivisions would not be affected.

D. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being because it only affects participants and investors in GNMA guaranteed single and multiclass securities.

E. Impact on Small Entities

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

F. Regulatory Agenda

This rule was listed as item number 1858 under GNMA in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57666), under Executive Order 12866 and the Regulatory Flexibility Act.

G. Catalog

There is no catalog of Federal Domestic Assistance number for the program affected by this rule.

List of Subjects

24 CFR Part 390

Mortgages, Securities.

24 CFR Part 395

Mortgages, Securities.

Accordingly and under the authority of 42 U.S.C. 3535(d), Chapter III, Government National Mortgage Association, of Title 24 of the Code of Federal Regulations, is amended as follows:

1. A new subchapter D is added to chapter III as set forth below.

2. In Chapter III, part 390 is transferred from subchapter C to the newly established subchapter D.

3. A new part 395, consisting of §§ 395.1 through 395.60, is added to subchapter D to read as follows:

SUBCHAPTER D—GUARANTEE OF MORTGAGE-BACKED AND MULTICLASS SECURITIES

PART 395—MULTICLASS SECURITIES

Sec.

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

§ 395.1 Scope of part.

The Government National Mortgage Association is authorized by section 306(g) of the National Housing Act, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on securities that are based on and backed by a trust or pool composed of mortgages that are eligible under section 306(g). The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States. This part is limited to multiclass securities. It does not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the contracts entered into by the parties and by the GNMA Multiclass Securities Guide. Further information and copies of the Guide may be obtained from the Government National Mortgage Association, 451 Seventh Street, S.W., Washington, D.C. 20410.

§ 395.5 Definitions.

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

Association. The Government National Mortgage Association.

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 GNMA Multiclass Securities Guide, eligible collateral into a trust in exchange for consolidated securities.

GNMA. Government National Mortgage Association.

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

GNMA MBS certificates. The GNMA guaranteed mortgage-backed securities issued under part 390.

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

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

Sponsor. With respect to structured securities, the entity that establishes the required trust by 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.

§ 395.10 Eligible collateral.

GNMA, in its discretion, shall determine what collateral is eligible for inclusion in the Multiclass Securities program. Eligible collateral may include GNMA MBS certificates, government mortgages, consolidated securities, and other securities approved by GNMA. Categories of these GNMA MBS certificates, government mortgages, consolidated securities, and other securities as approved by GNMA become eligible collateral when they are published as eligible collateral in the GNMA Multiclass Securities Guide or on the GNMA electronic bulletin board. Eligibility of collateral previously designated as eligible may be withdrawn by publication in the GNMA Multiclass Securities Guide or on the GNMA electronic bulletin board. Eligible collateral may differ for various GNMA guaranteed multiclass securities.

§ 395.15 Participation requirements.

To participate in the GNMA Multiclass Securities program, a participant must meet the following criteria:

(a) *Certification.* A participant must submit such certifications and other documents as are required by the GNMA Multiclass Securities Guide.

(b) *Compliance with GNMA Multiclass Securities Guide.* By completing a multiclass securities transaction, a participant is deemed to have represented and warranted to

GNMA that it has complied with, and that it agrees to comply with, the GNMA Multiclass Securities Guide in effect as of the date that GNMA's guaranty is placed on the securities.

(c) *Material changes in status.* A participant must report, as required in the GNMA Multiclass Securities Guide, material adverse changes in status including voluntary and non-voluntary terminations, defaults, fines and findings of material non-conformance with rules and policies of state and federal agencies and federal government sponsored enterprises.

(d) *Integrity.* The participant must conduct its business operations in accordance with industry practices, ethics and standards, and maintain its books and records in an appropriate manner, as determined by the Association.

§ 395.20 Eligible participants.

In addition to requirements set forth in this part, a participant must meet the following requirements.

(a) *Structured securities—(1)*

Description. GNMA guarantees the payment of principal and interest on structured securities issued by trusts organized by sponsors in accordance with procedures established and approved by GNMA. The structured securities are backed by eligible collateral, as described in this part, held by the trustee.

(2) *Eligibility requirements for participants—(i) Sponsors.* A sponsor must:

(A) Apply and be approved;

(B) Demonstrate to the satisfaction of the Association its capacity to accumulate the eligible collateral, as described in this part, needed for a proposed structured securities issuance;

(C) Be in good standing with and either have been responsible for at least one structured securities transaction with the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, or have demonstrated to GNMA's satisfaction its capability to act as sponsor of GNMA guaranteed structured securities;

(D) Have the minimum required amount, as set forth in the Multiclass Securities Guide, in shareholders' equity or partners' capital, evidenced by the sponsor's audited financial statements, which must have been issued within the preceding 12-month period;

(E) Represent the structural integrity of the issuance under all cash flow scenarios and demonstrate to GNMA's satisfaction its ability to indemnify GNMA for a breach of this representation;

(F) Comply with GNMA's policies regarding participation by minority and/or women-owned businesses and take appropriate measures to assure compliance by the other participants as specified in the GNMA Multiclass Securities Guide; and

(G) Provide GNMA with the opinions of trust counsel and accounting firms which are acceptable to GNMA and on which GNMA may rely.

(ii) *Co-sponsors.* A Co-sponsor must submit an application and a certification, as set forth in the GNMA Multiclass Securities Guide, as to its status as a minority and/or women-owned business.

(iii) *Trustees.* A trustee is selected by the Sponsor from institutions approved by GNMA using such procedures as GNMA deems appropriate.

(b) *Consolidated securities*—(1) *Description.* A depositor delivers, or executes an agreement to deliver, eligible collateral to a trust in exchange for a single GNMA guaranteed multiclass security, as set forth in the GNMA Multiclass Securities Guide.

(2) *Eligibility requirements for participant.* A Depositor must certify that:

(i) It is an "accredited investor" within the meaning of 17 CFR 230.501(a)(1), (a)(3) or (a)(7);

(ii) It has authority to deliver, and will deliver, the collateral to the trustee and that the collateral is free and clear of all liens and encumbrances; and

(iii) The information set forth by the depositor regarding the eligible collateral is true and correct.

(c) *Other types of GNMA guaranteed multiclass securities.* GNMA will set forth the requirements for the guaranty by GNMA of other types of multiclass securities, and the eligibility requirements for the appropriate participants, in the GNMA Multiclass Securities Guide or on the GNMA electronic bulletin board.

§ 395.25 Fees.

The Association, in its discretion, through publication in the GNMA Multiclass Securities Guide or on the

GNMA electronic bulletin board, may impose fees for application, guaranty, transfer, change from book entry to certificated form, or other related fees. Fees may vary, at GNMA's discretion, depending upon, but not limited to, such factors as size, collateral characteristics, expense or risk of the guaranty transaction undertaken.

§ 395.30 GNMA guaranty.

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.

§ 395.35 Investors.

GNMA guaranteed multiclass securities may not be suitable investments for all investors. No investor should purchase securities of any class unless the investor understands, and is able to bear, the prepayment, yield, liquidity and market risks associated with the class. The Association assumes no obligation or liability to any person with regard to determining the suitability of such securities for such investor.

§ 395.40 Consultation.

The Association may consult with persons or entities in such manner as the Association deems appropriate to ensure the efficient commencement and operation of the Multiclass Securities program.

§ 395.45 Limitation on GNMA liability.

Except for its guaranty, the Association undertakes no obligation and assumes no liability to any person with regard to or on account of the existence or operation of this part or the conduct of any participants in the Multiclass Securities program.

§ 395.50 Administration of multiclass securities.

The GNMA guaranteed multiclass securities will be administered in accordance with GNMA requirements described in the GNMA Multiclass Securities Guide.

§ 395.55 Basis for removal from participation.

A participant may be removed from the Multiclass Securities program if GNMA, in its discretion, determines that any of the following exists or has occurred:

(a) The participant, at any time, fails to meet any condition for eligibility;

(b) The participant fails to comply with any provision of the GNMA Multiclass Securities Guide or this part;

(c) The participant is unable or fails to truthfully, correctly or fully submit such certifications as are required; and

(d) Such further reasons as GNMA determines necessary to protect the safety and soundness of the Multiclass Securities program, as set out in the GNMA Multiclass Securities Guide.

§ 395.60 Removal procedure.

(a) A participant may be suspended from participation in the Multiclass Securities program upon written notice from GNMA, which shall include the reasons for the suspension. The participant shall have the opportunity to submit a written presentation to the President of GNMA, or designee, in support of its reinstatement, subject to such limitations as GNMA in its discretion may impose as to length, time for submission, or otherwise. A determination by the President of GNMA, or designee, shall exhaust the participant's administrative remedies.

(b) If a participant is suspended from the Multiclass Securities program, GNMA shall have no obligation to complete a pending transaction involving the participant.

(c) After a participant has been removed from the Multiclass Securities program, the participant may request reinstatement. Approval of the reinstatement is at the sole discretion of the Association.

Dated: January 19, 1995.

Dwight P. Robinson,

President.

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