

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**
**Government National Mortgage
Association**
**24 CFR Parts 300, 310, 320, 330, 340,
350, 360, 370, 380, 390, and 395**
[Docket No. FR-2908-F-02]
RIN: 2503-AA07
**GNMA—Streamlining Existing
Regulations and Implementation of
Issuer Eligibility and Integrity Reforms**
AGENCY: Government National Mortgage
Association, HUD.

ACTION: Final rule.

SUMMARY: The Government National Mortgage Association (the "Association" or "GNMA") is revising its regulations to remove references to terminated programs, place proper emphasis on the Association's current programs, remove obsolete references and simplify the language of all remaining sections.

In addition, this publication implements a revision to the regulations that prescribe the standards by which issuers are approved to participate in the Association's Mortgage-Backed Securities (MBS) program, and by which approved issuers maintain their approval status, which was initiated by a proposed rule published in 1993.

EFFECTIVE DATE: September 13, 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.)

SUPPLEMENTARY INFORMATION:
I. Background
A. Streamlining Existing Regulations

By the direction of the President, the Association performed a page-by-page review of its existing regulations to eliminate or revise those regulations that are outdated or otherwise in need of reform. The Association is revising the entirety of the GNMA rules, which are found in the 300 series in title 24 of the Code of Federal Regulations. This rule removes outdated parts and sections of parts to trim the Association's regulations to only those necessary to operate current programs. Other than as noted below, substantive changes are not intended by virtue of the revisions included herein.

The former 24 CFR parts 320, 330, 340, 350, 360 and 370 have been eliminated, because the programs formerly regulated under those sections have been abolished. The former 24 CFR part 380, Fiduciary Activities, has been moved to 24 CFR part 340. The former 24 CFR part 390, Guaranty of Mortgage-Backed Securities, has been moved to 24 CFR part 320, to reflect its status as the most active of the Association's programs. The former Part 395, Guaranty of Multiclass Securities, has been moved to Part 330 to reflect its status as a program that flows directly from the mortgage-backed securities program. The Bylaws of the Association are no longer published as an appendix to 24 CFR part 310, but will be kept current in the Office of the President of the Association and may be published in the GNMA I Mortgage-Backed Securities Guide and the GNMA II Mortgage-Backed Securities Guide (collectively, the "GNMA Guides").

With respect to these streamlining changes, the publication of a final rule without previous solicitation of public comment is justified, in accordance with 24 CFR part 10, because solicitation of public comment is unnecessary and would be contrary to the public interest. The types of changes being made are not controversial or substantive. It is in the public interest to have succinct regulations that reflect only the provisions needed to operate current programs. Therefore, solicitation of public comment before adoption of these changes is unnecessary, and the associated delay in effectiveness would be contrary to the public interest.

1. Part 300
Section 300.1

The reference to regional offices has been removed. All of the Association's business is conducted out of one office.

Section 300.3

The references to the Association purchasing, servicing and selling mortgages has been removed. The Association no longer conducts this business. A reference is added clarifying that the Association is commonly referred to as Ginnie Mae or GNMA.

Section 300.9

All references to carrying on the Association's business through the Federal National Mortgage Association (Fannie Mae) have been removed. None of the Association's business is carried out by Fannie Mae.

Section 300.11

This section has been added to notify the public of the authority of the officers

of the Association. This authority is set forth in the Bylaws of the Association, which were formerly published as an appendix to the regulations. This appendix is being removed, necessitating the addition of this section.

**Section 300.13 (formerly Section
300.11)**

This section has been streamlined by removing the laundry list of actions that may be undertaken by an attorney-in-fact for the Association. The section as rewritten provides that the Association may appoint attorneys-in-fact by publication in the **Federal Register** or by written document executed by the President of the Association and that such attorney-in-fact shall have the power outlined in the publication or appointment.

**Section 300.17 (formerly Section
390.60)**

This section has been moved from the former Subpart E, Miscellaneous Provisions, to Subpart A, General Provisions, in order to provide a better organizational structure to the regulations. It has also been revised to clarify that audits and examinations may be performed by designees of the Association.

2. Part 310

The Bylaws of the Association, formerly an appendix to Part 310, have been removed. The Bylaws will be maintained in the Office of the President of the Association and may be published in the GNMA I Mortgage-Backed Securities Guide and the GNMA II Mortgage-Backed Securities Guide.

3. Former Parts 320, 330, 340 and 350

These parts have been eliminated because the authority for the Association's Special Assistance Functions (implemented by Subchapter B of Chapter III, Special Assistance Functions, containing these parts) was repealed by section 483(a) of Pub. L. 98-181, approved November 30, 1983, 97 Stat. 1240.

4. Parts 360 and 370

These parts (contained in Subchapter C of Chapter III, Management and Liquidating Functions) have been eliminated because the Association no longer performs Management and Liquidating Functions.

5. Part 320 (formerly Part 390)

The former part 390 has been moved to this part to reflect its status as the most active of the Association's programs.

Sections 320.1, 320.5 and 320.13 (formerly Sections 390.1, 390.5 and 390.13)

These sections have been amended to remove reference to "straight pass through" securities, which are no longer guaranteed by the Association.

Section 320.15 (formerly Section 390.15)

This section has been amended to remove reference to "straight pass through" securities, which are no longer guaranteed by the Association. This section also has been amended to remove the specific procedures followed by the Association upon the declaration of a default. To the extent necessary, these procedures are outlined in the Guides and/or the guaranty agreement with the issuer.

6. Part 330 (formerly part 395)

The former part 395, Multiclass Securities, has been moved to part 330, following part 320 dealing with the mortgage-backed securities program, to reflect its status as a program that flows directly from the mortgage-backed securities program. Some language has been removed because it is duplicative of language in Parts 300 and 320.

B. Issuer Eligibility and Integrity Reforms

On December 9, 1993 (58 FR 64713), the Department published a proposed rule to reform the Association's issuer eligibility and integrity requirements for new issuer approval and maintenance of approved issuer status. A total of nine comments were received. The commenters included one approved issuer, one mortgage company, one federal savings bank, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the Office of the Comptroller of the Currency (OCC), the Independent Bankers Association of America and the Mortgage Bankers Association of America.

The commenters expressed general support for the Department's objectives of strengthening the issuer requirements. The commenters were especially supportive of the closer alignment of the Association's rules with those of Fannie Mae and Freddie Mac, and they expressed a desire for GNMA to continue in that direction. Some commenters opposed parts of the proposed rule, and some provided specific suggestions for changes. On the basis of these comments and further development of the concepts set forth in the proposed rule, the Department has made changes to the rule. These

Changes are discussed in the following sections of this preamble.

1. Section 320.3 (formerly Section 390.3) Eligible Issuers

There were four commenters on the paragraph dealing with Fannie Mae and Freddie Mac approval (former Section 390.3(a)(2)), including Freddie Mac. Currently, Fannie Mae approval is required for program entry for single family issuers. This section proposed to include Freddie Mac approved seller/servicers as applicants and to limit the Fannie Mae/Freddie Mac approval requirement to single family issuer applicants. While all comments on the proposed language were favorable, certain changes have been made as a result of the Association's own continued analysis of this section. The Association has decided to open its mortgage-backed securities program to issuers without Fannie Mae or Freddie Mac approval. Under the final rule, the Association will consider all applicants, although Fannie Mae and/or Freddie Mac approved applicants will be given special consideration in the approval process. Applicants with neither Fannie Mae nor Freddie Mac approval will be subject to a more stringent set of requirements to provide additional assurances that they are capable of performing the responsibilities of an issuer. These requirements will be set out in the applicable Guides.

The phrase limiting the applicability of this section to single family issuers has been dropped, since an alternative is now being provided to the Fannie Mae/Freddie Mac approval requirement. After an issuer is accepted into the MBS program, loss of either Fannie Mae or Freddie Mac approval continues to remain a basis for issuer default even in cases where the issuer qualified for program entry without Fannie Mae or Freddie Mac approval. In summary, as a result of further analysis, this section is being republished to reflect that (1) this section is applicable to all issuer types, and (2) Association approval is an acceptable alternative to Fannie Mae/Freddie Mac approval. [Note: The "or the Association" language in the original regulations referred to the Tandem program which has been terminated.]

There were two commenters on the paragraph dealing with capacity to issue and service (former Section 390.3(a)(3)). One comment agreed with the changes. The other commenter wants to expand the scope of the rule to allow the sale of servicing on pooled loans without requiring a change of issuer. The commenter stated that this would eliminate the mortgage assignment costs

currently incurred when servicing is sold and the issuer is substituted. Issuers may presently (1) service their pools themselves, (2) obtain subservicers for their pools, while remaining the issuer of record with full responsibility for those pools, (3) act as a subservicer for another issuer's pools, or (4) transfer issuer responsibility (and servicing) to another issuer. The Association believes these options give issuers the flexibility to manage their business while providing the Association with an adequate level of risk protection. The purpose of this section of the rule is to formally recognize that an issuer may choose to act as an issuer of pools or servicer or both. The Association is not prepared to make a major scope change to the rule to permit the sale of servicing without a change in issuer. Therefore the servicing language is not being changed. This section of the rule, however, is being republished with a minor change to clarify that the experience of the management of an issuer is a criterion for issuer eligibility.

There were three commenters on increasing the single family base net worth requirement to \$250,000. One commenter stated that the increase would be too costly for small lenders, while the other two commenters, both trade associations, agreed with the increase. One of these trade associations requested that GNMA consider special net worth requirements for small and minority lenders, and the other stated that the \$250,000 level would "increase the safety of the program yet not prohibit smaller institutions from participating."

There were two commenters on the requirement to index base Net Worth for inflation (former Section 390.3). One commenter generally agreed with the indexing. The other commenter questioned the need for indexing. It believes that the incremental component of net worth already takes inflationary concerns into account, and that smaller issuers may be adversely affected. It also requested that if indexing is implemented, that the Association (1) phase-in indexing over a minimum of 6 months, (2) reconsider whether the consumer price index (CPI) is the appropriate index, (3) allow decreases for inflation as long as the new value is not below \$250,000, and (4) place an annual cap on the potential increase.

The Association agrees that there are numerous factors to be considered in determining how the net worth element is implemented, and the impact on smaller issuers is certainly an important consideration. Since economic factors

influencing appropriate net worth requirements change regularly, the Association has determined that in the spirit of streamlining its regulations and to provide as much flexibility as possible to the issuer qualification process, net worth requirements will not be published as regulations, but will be published in the GNMA Guides.

2. Former Section 390.12

There was one comment on the provisions concerning control changes (formerly § 390.12(c)), which was in agreement with the language. While the only comment was favorable, upon the Association's own internal analysis of this section, it was decided that both the time requirement pertaining to the notification of change and the definition of what constitutes a change in control be placed in the applicable Guides, rather than in the regulations. Therefore, this section is being republished with changes to (1) remove the 30 day requirement, and (2) remove the Generally Accepted Accounting Practices (GAAP) definition.

There were five commenters on the provisions concerning cross-default agreements (formerly § 390.12(d)). One commenter agreed with the language. Another commenter expressed concern that the agreement may not be consistent with the requirements of some Federal regulators. In addition, this commenter requested that (1) the general terms of the agreement be open to public comment, and (2) both entry into and enforcement of a cross-default agreement be waived when it can be proved that related companies have been operated independently in a safe and sound manner such that there is no attempt to defraud the Association. The other three commenters were the FDIC, OTS, and OCC. FDIC and OTS also included an attachment with their comments from the Federal Reserve Board. All of these Federal agencies believe that cross-default agreements may not be consistent with section 23A of the Federal Reserve Act which contains limitations and collateralization requirements on guaranties between depository institutions and affiliates.

Based on meetings and discussions with the four Federal regulators, the Association has modified the rule language to allow for an exemption from the cross-default agreement when an issuer can provide an acceptable legal opinion that demonstrates that the agreement would be prohibited by the issuer's Federal regulator. While Section 23A was considered in the Association's analysis, the primary reason for the exemption is that the Association's

experience to date has demonstrated that regulated issuers present less of a default risk than non-regulated issuers. Furthermore, based on additional analysis, this section has been revised to remove the GAAP (Generally Accepted Accounting Principles) definition of related issuers (detailed guidance will be provided in the Guides), and to provide for the option of default rather than the obligation to default. In summary, this section is being republished with changes to (1) provide a possible exemption for certain classes of Federally regulated issuers, (2) remove the GAAP definition, and (3) provide for the option of default.

3. Section 320.10 Classified Balance Sheet

There was one comment on this section, which was in agreement with the proposed language. This section is being republished without any changes.

4. Section 320.12 Integrity

There were two comments on the provisions concerning key personnel (§ 320.12(a)), and both were in agreement with the proposed language. This section is being republished with a minor change to clarify that local agencies are included with Federal, state, and government-related entities in respect to required disclosures of key personnel backgrounds.

There were four comments on the provisions concerning status with other agencies (section 320.12(b)). Two of the comments were in agreement with the proposed language. The commenters with concerns were the FDIC and OCC. These federal agencies stated that certain disclosures may be prohibited under their respective regulations. The FDIC also expressed concern that if issuers were to disclose FDIC actions, the agency's ability to promote safety may be impaired. The Association believes that notice of agency actions will enhance its ability to monitor issuers, and that cooperation between Federal agencies is necessary to properly protect the Government's interest. However, the Association believes that it should not compel issuers to make disclosures that are specifically prohibited by other agencies. Therefore, this section is being republished with a change to reflect that disclosures that are specifically prohibited by agencies are exempted from this section. Furthermore, the section is also being amended to clarify that state and local mortgage and regulatory agencies are included as covered parties requiring issuer disclosure of material status changes.

II. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. The eligibility and performance requirements of this rule are consistent with requirements already established by other government agencies for lender eligibility. Accordingly, the economic impact of this rule would be minimal, and it is expected to affect small and large entities equally.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in connection with the development of the proposed rule. The Finding of No Significant Impact remains applicable to this final rule, and is available for public inspection and copying Monday through Friday, 7:30 a.m. until 5:30 p.m. in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Agenda

The issuer eligibility and integrity reforms portion of this rule was listed as sequence number 1501 in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23396) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule is limited to streamlining existing regulations and imposing additional eligibility and integrity requirements on private lenders. No programmatic or policy changes result from its promulgation which would affect existing relationship between the Federal government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive

Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies relate to family concerns, will result from promulgation of this rule.

List of Subjects

24 CFR Part 300

Lawyers, Organization and functions (Government agencies).

24 CFR Part 310

Organization and functions (Government agencies).

24 CFR Parts 320, 330, 340, 350, and 370

Mortgages.

24 CFR Part 360

Mortgages, Trusts and trustees.

24 CFR Part 380

Mortgages, Trusts and trustees.

24 CFR Part 390

Mortgages, Securities.

Accordingly, Chapter III of Title 24 of the Code of Federal Regulations is amended as follows:

1. The subchapter designations and headings are removed from the chapter.
2. Part 300 is revised in its entirety, to read as follows:

PART 300—GENERAL

- Sec.
- 300.1 Scope of chapter.
 - 300.3 Description.
 - 300.5 Creation and status.
 - 300.7 Area of operations.
 - 300.9 Office.
 - 300.11 Authority of officers.
 - 300.13 Power of attorney.
 - 300.15 Exceptions.
 - 300.17 Audits and reports.

Authority: 12 U.S.C. 1723a, unless otherwise noted, and 42 U.S.C. 3535(d).

§ 300.1 Scope of chapter.

This chapter consists of general information and does not purport to set forth all of the procedures and requirements that apply to the operations of the Association. Complete specific information as to any aspect of such operations may be obtained from the office listed in § 300.9.

§ 300.3 Description.

The Government National Mortgage Association (hereinafter in this chapter called the Association) furnishes fiduciary services to itself and other

departments and agencies of the Government, and guarantees privately issued securities backed by trusts or pools of mortgages or loans which are insured or guaranteed by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA) or the Farmers Home Administration (FmHA). In the course of its business, the Association is commonly referred to as Ginnie Mae or GNMA.

§ 300.5 Creation and status.

The Association is a Government corporation in the Department of Housing and Urban Development. It is derived from the Federal National Mortgage Association, which was partitioned by the Congress into two corporations effective September 1, 1968, one of which is the Association. The operations of the Association are conducted under its statutory charter contained in title III of the National Housing Act, 12 U.S.C. 1716, *et seq.*

§ 300.7 Area of operations.

The Association is authorized to conduct its business in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

§ 300.9 Office.

The Association directs its operations from its office located at 451 Seventh Street, SW., Washington DC 20410.

§ 300.11 Authority of officers.

The President, each Vice President, and each Assistant Vice President of the Association are severally expressly empowered in the name of the Association to sign all contracts and other documents, instruments, and writings which call for execution by the Association in the conduct of its business and affairs, and to encumber, mortgage, pledge, convey or otherwise alien any property which the Association may own or in which it may have an estate, right, title or interest. In addition, the President, each Vice President, each Assistant Vice President, the Secretary of the Association, each Assistant Secretary, the Treasurer and the Controller shall have the authority as may be provided in the Bylaws of the Association or as may be delegated to them in a manner not inconsistent with the Bylaws.

§ 300.13 Power of attorney.

In order to efficiently carry out the purposes of the Association, the Association may appoint any person its true and lawful attorney-in-fact by publication in the **Federal Register** or

by appointment from the President of the Association in writing. Any such attorney-in-fact shall have the power outlined in the publication or appointment.

§ 300.15 Exceptions.

In the conduct of its affairs, in individual cases or classes of cases, the Association reserves the right, consistent with law, without prior notice and at any time, to alter or waive any of the requirements contained in this chapter or elsewhere or to impose other and additional requirements; it further reserves the right, without prior notice and at any time, to amend or rescind any or all of the material set forth herein.

§ 300.17 Audits and reports.

The Association and its designees may at any reasonable time audit the books and examine the records of any issuer, mortgage servicer, trustee, agent or other person bearing on compliance with the requirements of the Association's programs, and the Association may require reasonable and necessary reports from such persons.

3. Part 310 consisting of § 310.1 is revised in its entirety, to read as follows:

PART 310—BYLAWS OF THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

Authority: 12 U.S.C. 1723 and 42 U.S.C. 3535(d).

§ 310.1 Bylaws of the Association.

The bylaws of the Association shall be duly adopted by the Secretary of Housing and Urban Development pursuant to section 308 of the National Housing Act (12 U.S.C. 1723) and shall govern the performance of the powers and duties granted to or imposed upon the Association by law.

4. Part 320 is revised in its entirety, to read as follows:

PART 320—GUARANTY OF MORTGAGE-BACKED SECURITIES

Subpart A—Pass-Through Type Securities

- Sec.
- 320.1 General.
 - 320.3 Eligible issuers of securities.
 - 320.5 Securities.
 - 320.7 Mortgages.
 - 320.9 Pool administration.
 - 320.10 Financial reporting.
 - 320.11 Insurance coverage.
 - 320.12 Integrity.
 - 320.13 Guaranty.
 - 320.15 Default.
 - 320.17 Fees.

Subpart B—Bond-Type Securities

- 320.21 General.
- 320.23 Eligible issuers.

320.25 Securities.
 320.27 Mortgages.
 320.29 Guaranty.
 320.31 Default.
 320.33 Fees.

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

Subpart A—Pass-Through Type Securities

§ 320.1 General.

The Association is authorized by section 306(g) of the National Housing Act (12 U.S.C. 1721(g)) 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 which are insured or guaranteed by FHA, FmHA or VA. The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States. This subpart is limited to "modified pass-through" securities, and 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 Association's Mortgage-Backed Securities Guides (MBS Guides) and contracts entered into by the parties.

§ 320.3 Eligible issuers of securities.

(a) *Eligibility requirements.* A mortgage lender, including an instrumentality of a State or local government, to be eligible to issue or service mortgage-backed securities guaranteed by the Association must satisfy all of the following standards:

(1) Be in good standing as a mortgagee approved by the FHA;

(2) Be in good standing as a mortgage seller or servicer approved by the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Association. Loss of either FNMA approval or FHLMC approval may cause the issuer to become ineligible to issue and service the Association's mortgage-backed securities and constitute a default under the applicable guaranty or contractual agreement whether or not the issuer qualified for new issuer approval on the basis of FNMA or FHLMC approval;

(3) Have management with adequate experience, and access to adequate facilities to issue or service mortgage-backed securities, as determined by the Association;

(4) Maintain the applicable minimum net worth discussed in paragraph (c) of this section; and

(5) Meet the requirements, conditions, and limitations prescribed by the Association in this part or the applicable MBS Guides.

(b) *Time of eligibility.* The Association shall not commit to guarantee, or guarantee any issue of mortgage-backed securities unless the mortgage lender requesting such commitment or guaranty qualifies as an eligible issuer both at the time of commitment approval and at the time of the issuance of the guaranty.

(c) *Net worth requirements.* Issuers shall maintain at all times a net worth acceptable to the Association of not less than the applicable minimum amount. The applicable minimum amount shall be published in the MBS Guides.

(d) *Disqualification.* A mortgage lender shall not qualify as an eligible issuer at any time in which:

(1) The lending policies of the issuer permit any discrimination based on race, religion, color, national origin, age, or sex of a borrower; or

(2) The issuer is not in compliance with any rules, regulations, or orders issued under title VI of the Civil Rights Act of 1964; Executive Order 11063, Equal Opportunity in Housing, November 20, 1962; Executive Order 11246, Equal Employment Opportunity, issued on September 24, 1965 and amended on October 13, 1967; title VII of the Civil Rights Act of 1968; title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988; or by the FHA or VA.

(e) *Ethics and standards.* A mortgage lender shall qualify as an eligible issuer only so long as it conducts its business operations in accordance with accepted mortgage banking practices, ethics, and standards, as determined by the Association, and maintains its books and records in accordance with generally accepted accounting principles.

(f) *Change in control.* Issuers shall notify the Association of any change in issuer control. A change in control occurs whenever a new party obtains significant influence over an issuer, as defined by the Association. In a merger where the surviving party is not the approved issuer and in a consolidation, the surviving party must apply formally for approval as a new issuer prior to the merger or consolidation taking place. In other business combinations, such as a stock sale of an existing issuer, which result in a change in control of issuer, the issuer shall demonstrate that it continues to meet all issuer eligibility requirements prior to the business combination being finalized.

(g) *Cross-Default.* Related issuers, as defined by the Association, shall execute a cross-default agreement, in a form prescribed by the Association, that authorizes the default of one or more related issuers in the event of a default by any one of the related issuers. Issuers may be granted an exemption from this section, provided that they submit a legal opinion, acceptable to the Association, which demonstrates that the execution of a cross-default agreement would be prohibited by the issuer's Federal regulator.

(h) *Failure to comply.* In the event that an issuer subsequently fails to comply with any of the requirements prescribed in this part or the applicable MBS Guide, as determined by the Association, the Association may, among other things, withhold further commitments to guarantee securities until such time as the Association is satisfied that the issuer has resumed business operations in compliance with such requirements.

(Approved by the Office of Management and Budget under control numbers 2503-0003, 2503-0004, 2503-0006, 2503-0007, and 2503-0026)

§ 320.5 Securities.

(a) *Instruments.* Securities issued pursuant to the provisions of this subpart must be modified pass-through securities, that provide for payment, whether or not collected, of both specified principal installments and interest on the unpaid principal balance, with all prepayments and other unscheduled recoveries of principal being passed through to the holder. In the case of delinquent mortgages in a pool backing modified pass-through securities, the issuer is required to make advances if necessary to maintain the specified schedule of interest and principal payments to the holders, or at its option, at any time 90 days or more after default of any such mortgage, the issuer may repurchase such mortgage for an amount equal to the unpaid principal balance of the mortgage. The securities must specify the dates by which payments are to be made to the holders thereof, and must indicate the accounting period for collections on the pool's mortgages relating to each such payment, and the securities must also specify a date on which the entire principal will have been paid or will be payable.

(b) *Issue amount.* Each issue of guaranteed securities must be in a minimum face amount as specified in the applicable MBS Guide. The total face amount of any issue of securities cannot exceed the aggregate unpaid principal balances of the mortgages in

the pool. The Association may provide for issuers to submit packages of mortgages that may be consolidated, with other packages of similar types of mortgages, into multiple issuer pools.

(c) *Face amount of securities.* The face amount of any security cannot be less than \$25,000.

(d) *Transferability.* Securities are transferable, but the share of the proceeds collected on account of the pool of mortgages is payable only to the registered holder of a security according to the policies established by the Association.

§ 320.7 Mortgages.

Each issue of guaranteed securities must be backed by a separate pool of mortgages which meet the requirements of the applicable MBS Guide.

§ 320.9 Pool administration.

The Association will only guarantee securities if the issuer executes a guaranty agreement or contractual agreement in the form prescribed by the Association. Pool administration requirements are set forth in such agreements or the applicable MBS Guide.

(Approved by the Office of Management and Budget under control numbers 2503-0003, 2503-0004, 2503-0006, 2503-0007, and 2503-0026)

§ 320.10 Financial reporting.

Issuers shall submit to the Association audited annual financial statements within 90 days of their fiscal year end. All financial statements with a fiscal year end date on or after [one year after the effective date of this rule] shall include a classified balance sheet and a statement of operations and cash flows, prepared in accordance with the standards for financial audits of the U.S. General Accounting Office's *Government Auditing Standards*, issued by the Comptroller General of the United States. The balance sheet shall show the division of total assets into current, noncurrent and fixed assets and the division of total liabilities into current and long-term liabilities.

§ 320.11 Insurance coverage.

The issuer shall maintain, for the benefit of the Association, insurance, errors and omissions, fidelity bond and other coverage as required by the Association and set forth in the appropriate MBS Guide.

§ 320.12 Integrity.

(a) *Background.* Issuers shall disclose the background of all individuals serving on their Board of Directors and all individuals acting as authorized signatories. The disclosures shall

include any prior convictions, fines or other adverse actions against these individuals by a Federal, state or local agency, or a government-related entity where the action is related to the responsibilities that are commensurate with those of the financial services industry. The term government-related entity includes, but is not limited to, FHA, VA, FmHA, FNMA, FHLMC, Office of Thrift Supervision, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and National Credit Union Administration.

(b) *Change in status.* Issuers shall disclose material changes in their status with other government-related entities and regulatory agencies, or state or local agencies with similar authority, within 5 business days of their occurrence. The disclosures shall include, but not be limited to, voluntary and non-voluntary terminations, defaults, fines, and material non-compliance with agency rules and policies. Disclosures that are specifically prohibited by an agency are exempted from this section.

§ 320.13 Guaranty.

The Association guarantees the timely payment, whether or not collected, of the interest on the outstanding balance and the specified principal installments, as undertaken in the Association's guaranty appearing on the face of the security. The Association's guaranty is backed by the full faith and credit of the United States.

§ 320.15 Default.

(a) *Issuer default.* Any failure or inability of the issuer to make payments as due as well as such other events as may be identified by the Association and included in the applicable guaranty agreement, contractual agreement or MBS Guide, shall constitute a default of the issuer.

(b) *Action upon default.* Upon any default by the issuer, the Association may:

- (1) Institute a claim against the issuer's insurance, bond or other coverage, as specified in § 320.11;
- (2) Pursuant to section 306(g) of the National Housing Act (12 U.S.C. 1721(g)), extinguish all the right, title, or other interest of the issuer in the pooled mortgages; and
- (3) Exercise such other rights and remedies as it may have.

§ 320.17 Fees.

The Association may impose application fees, guaranty fees, securities transfer fees and other fees.

Subpart B—Bond-Type Securities

§ 320.21 General.

In addition to the "pass-through" securities dealt with in subpart A of this part, the Association is authorized by section 306(g) of the National Housing Act, 12 U.S.C. 1721(g), upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on "bond-type" securities which are based on and backed by a trust or pool composed of mortgages which are insured or guaranteed by FHA, FmHA or the VA. The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States. This subpart deals with such "bond-type" securities and 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 the Bond-Type Securities Guide (the "Bond Guide").

§ 320.23 Eligible issuers.

Any corporation, trust, partnership, or other entity with a net worth acceptable to the Association as set forth in the Bond Guide, which has the capability to assemble acceptable and eligible mortgages in sufficient quantity to support required minimum issuances of securities and which meets such other requirements as are set forth in the Bond Guide, may be approved to issue and service bond-type securities guaranteed by the Association. Further, the Association reserves the right to limit the number of issuers in the interest of conducting an orderly market of securities of this type.

§ 320.25 Securities.

(a) *Instruments.* Securities to be issued pursuant to the provisions of this subpart B may be in registered or bearer form. Each security shall have terms acceptable to the Association as provided in the Bond Guide.

(b) *Issue amount.* Each issue of guaranteed securities must be in a minimum face amount as specified in the Bond Guide. The total face amount of any issue of securities cannot exceed the aggregate unpaid principal balances of the mortgages in the pool.

(c) *Face amount of securities.* The face amount of any security cannot be less than \$25,000.

(d) *Transferability.* Bearer securities are freely transferrable. Registered securities are transferable only on the books of an agent, as shall be agreed upon by the Association and the issuer.

(e) *Treasury approval.* Issues of \$100 million or larger will be subject to approval of the Secretary of the Treasury.

§ 320.27 Mortgages.

Guaranteed securities issued under these provisions must be based on and backed by mortgages pooled under trust arrangements satisfactory to the Association. Such mortgages must meet the requirements of the Bond Guide.

§ 320.29 Guaranty.

With respect to bond-type securities, the Association will guarantee the timely payment of principal of and interest on such securities, subject to the terms and conditions of the securities. The Association's guaranty is backed by the full faith and credit of the United States.

§ 320.31 Default.

Upon default of the issuer, the Association has the right, pursuant to section 306(g) of the National Housing Act (12 U.S.C. 1721(g)), to take title to the mortgages and other assets that are subject to the trust arrangements, and to proceed against other assets of the issuer to the extent necessary to satisfy its own claims and the rights of the holders of securities then outstanding. Such action by the Association shall be taken subject to an accounting to the issuer.

§ 320.33 Fees.

The Association may impose application and guaranty fees, which may vary with relation to the size or risk of the guaranty transaction undertaken.

5. Part 330 is revised in its entirety, to read as follows:

PART 330—GUARANTY OF MULTICLASS SECURITIES

- Sec.
- 330.1 Scope of part.
- 330.5 Definitions.
- 330.10 Eligible collateral.
- 330.15 Participation requirements.
- 330.20 Eligible participants.
- 330.25 Fees.
- 330.30 GNMA guaranty.
- 330.35 Investors.
- 330.40 Consultation.
- 330.45 Limitation on GNMA liability.
- 330.50 Administration of multiclass securities.
- 330.55 Basis for removal from participation.
- 330.60 Removal procedure.

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

§ 330.1 Scope of part.

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 (Multiclass Guide).

§ 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.

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.

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 Multiclass 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.

§ 330.10 Eligible collateral.

The Association, 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 the Association. Categories of these GNMA MBS certificates, government mortgages, consolidated securities, and other securities as approved by the Association become eligible collateral when they are published as eligible collateral in the Multiclass Guide or on the GNMA electronic bulletin board. Eligible collateral may differ for various

Association guaranteed multiclass securities.

§ 330.15 Participation requirements.

To participate in the 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 Multiclass Guide.

(b) *Compliance with Multiclass Guide.* By completing a multiclass securities transaction, a participant is deemed to have represented and warranted to the Association that it has complied with, and that it agrees to comply with, the Multiclass Guide in effect as of the date that the Association's guaranty is placed on the securities.

(c) *Material changes in status.* A participant must report, as required in the Multiclass Guide, material adverse changes in status including voluntary and non-voluntary termination, 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.

(Approved by the Office of Management and Budget under control number 2503-0030)

§ 330.20 Eligible participants.

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

(a) *Structured securities.*—(1)

Description. The Association guarantees the payment of principal and interest on structured securities issued by trusts organized by sponsors in accordance with procedures established and approved by the Association. 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 by the Association;

(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 FNMA or FHLMC, or have demonstrated to the Association'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 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 the Association's satisfaction its ability to indemnify the Association for a breach of this representation;

(F) Comply with the Association'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 Multiclass Guide; and

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

(ii) *Co-sponsors.* A Co-sponsor must submit to the Association an application and a certification, as set forth in the Multiclass 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 the Association using such procedures as the Association 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 Association guaranteed multiclass security, as set forth in the Multiclass 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 Association guaranteed multiclass securities.* The Association will set forth the requirements for the guaranty by the Association of other types of multiclass securities, and the eligibility requirements for the appropriate participants, in the Multiclass Guide or on the GNMA electronic bulletin board.

§ 330.25 Fees.

The Association, in its discretion, through publication in the Multiclass 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 the Association's discretion, depending upon, but not limited to, such factors as size, collateral characteristics, expense or risk of the guaranty transaction undertaken.

§ 330.30 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.

§ 330.35 Investors.

Association 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.

§ 330.40 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.

§ 330.45 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.

§ 330.50 Administration of multiclass securities.

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

§ 330.55 Basis for removal from participation.

A participant may be removed from the Multiclass Securities program if the Association, 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 Multiclass 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 the Association determines necessary to protect the safety and soundness of the Multiclass Securities program, as set out in the Multiclass Guide.

§ 330.60 Removal procedure.

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

(b) If a participant is suspended from the Multiclass Securities program, the Association 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.

6. Part 340 is revised in its entirety, to read as follows:

PART 340—FIDUCIARY ACTIVITIES

Sec.

340.1 General.

340.3 Appropriations.

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

§ 340.1 General.

The Association is authorized by section 302(c) of the National Housing Act (12 U.S.C. 1717(c)) to create, accept, execute, and administer trusts and other fiduciary undertakings appropriate for financing purposes. Under this authority, the Association is authorized to acquire and otherwise deal in any mortgages or other types of obligations in which any department or agency of the United States listed in section 302(c)(2) of such Act may have a financial interest. Under its fiduciary powers, the Association may create, accept, and administer trusts consisting of interests in mortgages and obligations, sell to private investors

certificates of beneficial interest, or participations, in the mortgages or obligations or in the interest and principal payments derived therefrom, and provide for payment of interest and principal and for retirement of the participations. The Association, in its ordinary corporate capacity as contrasted to its fiduciary capacity, is expressly authorized to guarantee the participations.

§ 340.3 Appropriations.

There is authority for Congress to appropriate such sums as may be necessary to enable the trustor of any trust (as described in § 340.1) to pay to

the Association, as trustee, any insufficiency in aggregate receipts from the obligations subject to the trust to provide for the timely payment by the trustee of all interest or principal on the beneficial interests or participations related to such trust.

PART 350—[REMOVED]

7. Part 350 is removed.

PART 360—[REMOVED]

8. Part 360 is removed.

PART 370—[REMOVED]

9. Part 370 is removed.

PART 380—[REMOVED]

10. Part 380 is removed.

PART 390—[REMOVED]

11. Part 390 is removed.

PART 395—[REMOVED]

12. Part 395 is removed.

Dated: August 2, 1995.

Dwight P. Robinson,

President, Government National Mortgage Association.

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