



**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 330**

**[Docket No. FR-6112-IA-01]**

**Government National Mortgage Association:  
Loan Seasoning for Ginnie Mae Mortgage-Backed Securities – Interpretive Rule**

**AGENCY:** Office of General Counsel, HUD.

**ACTION:** Interpretive rule.

**SUMMARY:** HUD is issuing this interpretive rule to clarify the scope of the provision of the recently enacted Economic Growth, Regulatory Relief, and Consumer Protection Act (Act) that prohibits the Government National Mortgage Association (Ginnie Mae) from guaranteeing the timely payment of principal and interest on a security that is “backed by a mortgage” that fails to meet certain “seasoning” requirements. With this new amendment, questions have arisen as to the effect of this provision on Ginnie Mae’s ability to guarantee Multiclass Securities where the trust assets consist of direct or indirect interests in certificates, previously lawfully guaranteed by Ginnie Mae, but with underlying mortgage loans that may not be in compliance with the seasoning requirements. This rule provides HUD’s interpretation that the statutory provision does not prohibit Ginnie Mae from making guarantees in this context. Although interpretive rules are exempt from public comment under the Administrative Procedure Act, HUD nevertheless invites public comment on the interpretation provided in this rule.

**DATES:** Effective date: This interpretive rule is effective June 29, 2018, and is applicable beginning June 25, 2018.

Comment due date: **[Insert 30 days from the date of publication in the Federal Register]**

**ADDRESSES:** Interested persons are invited to submit comments regarding this interpretive rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Simpson, Associate General Counsel for Finance and Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 8150, Washington, DC 20410; telephone number 202-402-2036. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Established by the Federal National Mortgage Association Charter Act (Ginnie Mae Charter),<sup>1</sup> Ginnie Mae guarantees investors the timely payment of principal and interest on single class mortgage-backed securities (MBS) issued by private lenders and others that are backed by pools of mortgage loans insured or guaranteed by the U.S. Department of Housing and Urban Development, Federal Housing Administration (FHA), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture, Rural Development (RD), and U.S. Department of Housing and Urban Development, Office of Public and Indian Housing (PIH). The Ginnie Mae guaranty, backed by the full faith and credit of the United States Government, which Ginnie Mae

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<sup>1</sup> 12 U.S.C. 1716 *et seq.*

places on MBS lowers the cost of, and maintains the supply of, mortgage financing for such government-backed loans. The authority for these guaranties is found in section 306(g)(1) of the Ginnie Mae Charter.<sup>2</sup> As stated in Ginnie Mae's All Participants Memorandum 18-04, any Ginnie Mae MBS with an issuance date of May 2018 or earlier is not affected by the Act. Further, any refinanced VA mortgage loan that does not meet the seasoning requirement contained in the Act, that was not backing a Ginnie Mae MBS prior to May 24, 2018, is ineligible to serve as MBS collateral.

The "Multiclass Securities Program" is a vehicle that further increases the liquidity of Ginnie Mae MBS and attracts new sources of capital for federally insured or guaranteed loans. Ginnie Mae Multiclass Securities are collateralized by trust assets that consist of direct or indirect interest in certificates with underlying FHA, VA, RD, and PIH mortgage loans (i.e., MBS or previously issued Multiclass Securities). Ginnie Mae Multiclass Securities direct principal and interest payments from the underlying MBS or previously-issued Multiclass Securities to classes (known as tranches) with different principal balances, interest rates, average lives, prepayment characteristics, and final maturities. This enables investors with different investment horizons, risk-reward preferences, and asset-liability management requirements to purchase mortgage securities that are tailored to their needs. The authority for this program is also found in section 306(g)(1) of the Ginnie Mae Charter.

On May 24, 2018, President Trump signed into law the Act.<sup>3</sup> Title III of the Act contains several legislative protections for veterans, consumers and homeowners, including section 309, which largely incorporated the "Protecting Veterans from Predatory Lending Act of 2018."

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<sup>2</sup> 12 U.S.C. 1721(g)(1).

<sup>3</sup> Public Law 115-174.

Section 309(b) of the Act amended section 306(g)(1) of the Ginnie Mae Charter<sup>4</sup> to add the following sentence: “The Association may not guarantee the timely payment of principal and interest on a security that is backed by a mortgage insured or guaranteed under chapter 37 of title 38, United States Code,<sup>5</sup>] and that was refinanced until the later of the date that is 210 days after the date on which the first monthly payment is made on the mortgage being refinanced and the date on which 6 full monthly payments have been made on the mortgage being refinanced.”

This seasoning requirement was designed to deter lenders from encouraging veterans to refinance their VA mortgage loans often and repeatedly. This practice of “churning” led to faster prepayment speeds on the mortgages underlying Ginnie Mae MBS and Multiclass Securities, making these securities less valuable to investors. Increased prepayment speeds means that the underlying loans, and therefore a portion of the related securities, do not stay outstanding, at the agreed upon interest rates, as long as expected. This uncertainty adversely affects the investor expectations, resulting in low prices on the securities and therefore higher coupon rates for MBS and Multiclass Securities. The value to investors of the predictability of Ginnie Mae MBS and Multiclass Securities as opposed to alternatives is one reason, however, that interest rates on mortgage loans insured or guaranteed by VA, FHA, RD and PIH are kept at relatively low interest rates. Accordingly, “churning” was seen as detrimental to veterans not only because those who refinanced often did not realize that the overall refinance costs could outweigh the short-term benefits, but also because overall mortgage rates were higher than they would otherwise be in part because of the adverse impact, in the view of the investors, of higher prepayment speeds on the VA mortgage loans backing the Ginnie Mae MBS and Multiclass Securities.

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<sup>4</sup> 12 U.S.C. 1721(g)(1).

<sup>5</sup> 38 U.S.C. chapter 37 governs VA loans.

## II. This Interpretive Rule

It is HUD's interpretation that as of the enactment of the Act, any VA refinanced mortgage loan that does not meet the seasoning requirements contained in section 309(b) of the Act is ineligible to serve as collateral for Ginnie Mae MBS. Ginnie Mae MBS guaranteed before the enactment of the Act, that contain VA refinanced mortgage loans that do not meet the seasoning requirements contained in the Act, are unaffected by the Act. For Multiclass Securities, the Act does not prohibit Ginnie Mae from guaranteeing Multiclass Securities where the trust assets consist of direct or indirect interests in Ginnie Mae guaranteed certificates with underlying VA mortgage loans that may not comply with the statutory seasoning requirement. As discussed more fully below, this reading of section 309(b) is supported by a close reading of the relevant statutory language. Further, and as discussed below, a contrary interpretation of section 309(b) of the Act would defeat the provision's purposes of restricting VA loan churning and protecting veterans.

### A. Statutory Text

HUD's interpretation is supported by a close reading of the statutory text of the Ginnie Mae Charter, section 309(b) of the Act, and section 309 more broadly.

The language of section 309(b) of the Act differs in significant respect from the long-standing language in the Ginnie Mae Charter. Section 306(g)(1) of the Ginnie Mae Charter refers to the securities that Ginnie Mae is authorized to guarantee as those "backed by a trust or pool composed of mortgages," language that has long been understood by Congress and HUD to encompass both MBS and Multiclass Securities. See Letter from Nelson Diaz to Dwight P. Robinson (June 27, 1994). However, the language added by section 309(b) of the Act does not use similarly broad language—it refers only to those securities that are "backed by a mortgage."

It is a well-settled principle of statutory interpretation that “the use of different words within the same statutory context strongly suggests that different meanings were intended.”<sup>6</sup> In addition, “a statute should be constructed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.”<sup>7</sup> Under these principles, Congress’s decision to use only the words “backed by a mortgage,” as compared to “backed by a trust or pool composed of mortgages,” should be given meaning.

To give meaning to the narrower language in section 309(b) of the Act, that provision should be read to reference a narrower class of securities (MBS) than all of the securities long understood to be covered by the broader language of section 306(g) of the Ginnie Mae Charter (both MBS and Multiclass Securities). Had Congress intended section 309(b) of the Act to encompass Multiclass Securities as well as MBS, it would have employed the broader language known to encompass both types of securities—*i.e.*, “backed by a trust or pool composed of mortgages.” Instead, Congress used only the words “backed by a mortgage.” HUD believes that the best way to give that distinction meaning, as required under the case law, is to read the narrower phrase to encompass only those securities that are backed directly by mortgages (*i.e.*, MBS) as opposed to securities that are backed directly by a trust of securities that are ultimately backed by mortgages (*i.e.*, Multiclass Securities).

This reading is supported by nearby statutory language in section 306(g)(3) of the Ginnie Mae Charter. As the Supreme Court has explained, “[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that

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<sup>6</sup> *United States v. Maria*, 186 F.3d 65, 71 (2d Cir. 1999) (citing *Crockett Telephone Co. v. F.C.C.*, 963 F.2d 1564, 1570 (D.C. Cir. 1992) and other cases); *see also* A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012) (“[W]here the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea.”).

<sup>7</sup> *Marx v. General Revenue Corp.*, 568 U.S. 371, 392-93 (2013).

language is used, and the broader context of the statute as a whole.”<sup>8</sup> The language of section 306(g)(3) of the Ginnie Mae Charter refers differently to MBS and to Multiclass Securities in a way that supports reading section 309(b) of the Act to apply only to MBS. In sections 306(g)(3)(A) and (B) of the Ginnie Mae Charter, Congress describes MBS as “securities or notes based on or backed by mortgages.” In contrast, in section 306(g)(3)(E) of the Ginnie Mae Charter, Congress refers distinctly to Multiclass Securities as being “backed by a trust or pool of securities or notes guaranteed by [Ginnie Mae].” Put more simply, section 306(g)(3) of the Ginnie Mae Charter describes MBS as securities backed by mortgages and describes Multiclass Securities differently as securities backed by a trust or pool of securities or notes, even though Multiclass Securities ultimately also are backed by mortgages. The narrow language of section 309(b) of the Act — “a security backed by a mortgage” — appears intended to track the description of MBS in section 306(g)(3)(A) and (B) of the Ginnie Mae Charter and not to include Multiclass Securities as described in section 306(g)(3)(E) of the Ginnie Mae Charter.

In addition, this interpretation of section 309(b) of the Act is supported by a holistic reading of section 309. Other provisions in this section refer explicitly to MBS, but none refers to Multiclass Securities. In section 309(c) of the Act, for example, the statute imposes reporting requirements on Ginnie Mae to allow it to monitor the effectiveness of the Act in regards to MBS, but the provision does not reference Multiclass Securities. This strongly implies that MBS were the only securities targeted by Congress in section 309 of the Act, and that section 309(b) of the Act therefore does not apply to Multiclass Securities.

Lastly, this reading is supported by the heading of section 309(b) of the Act—“Loan Seasoning for Ginnie Mae Mortgage-Backed Securities.” The heading refers only to MBS and makes no reference to Multiclass Securities. The Supreme Court has said that “the title of a

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<sup>8</sup> Robinson v. Shell Oil Co., 519 U.S. 337, 341, 117 S. Ct. 843, 846 (1997).

statute or section can aid in resolving ambiguity in the legislation's text.”<sup>9</sup> Thus, to the extent section 309(b) of the Act is ambiguous, its heading clarifies its limited application to MBS only.

#### B. Inconsistency with Purpose of Statute

HUD's interpretation of section 309(b) of the Act is also consistent with the purposes of both section 309 of the Act and the Ginnie Mae Charter. A contrary reading would prohibit Ginnie Mae from guaranteeing all new Multiclass Securities ultimately backed by any prohibited mortgage, including Multiclass Securities composed solely of securities lawfully guaranteed prior to enactment of the Act. Prohibiting Ginnie Mae from guaranteeing such securities would harm, not help, veterans and would therefore contravene the purposes of section 309 of the Act and the Ginnie Mae Charter.

1. Anti-Churning. As noted, section 309 of the Act was intended to protect both veterans and investors by discouraging the unfair lending practice of “churning.” By prohibiting Ginnie Mae from guaranteeing MBS containing any loans refinanced in violation of the seasoning requirements, the Act decreases the marketability of these loans and thereby motivates lenders to avoid such practices in the future. By contrast, prohibiting Ginnie Mae's ability to guarantee Multiclass Securities containing MBS that were guaranteed by Ginnie Mae prior to the Act becoming law can have no impact on lender behavior. The lender cannot change the circumstances surrounding the production of a loan securitized and sold prior to the enactment of the Act. Further, it may be unknowable whether the previously guaranteed MBS or previously issued Multiclass Security would comply with section 309(b) of the Act because assuring and tracking compliance with the seasoning requirements in the Act were not requirements for Ginnie Mae securities prior to the Act's enactment. To interpret the prohibition of section 309(b) of the Act to include Multiclass Securities, therefore, is to sanction a measure that does not

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<sup>9</sup> INS v National Center for Immigrants Rights Inc., 502 U.S. 183 (1991).

advance the legislative aim of decreasing the financial motives of lenders to engage in the predatory practices at issue.

2. Protection of Veterans. Interpreting section 309(b) of the Act to prohibit the guarantee of Multiclass Securities composed of trust assets that consist of direct or indirect interests in certificates with underlying VA mortgage loans that were guaranteed prior to the enactment of the statute would also have a negative impact on the liquidity of the Multiclass Securities market, driving up VA mortgage rates and restricting the availability of the VA mortgage loans to the very veterans that the statute was intended to protect.

The Act enacted several legislative changes, including section 309, that were aimed at protecting veterans from predatory lending practices in connection with refinancing activity and preserving the relatively low rates created by Ginnie Mae guarantees without the adverse impact of high prepayment speeds.<sup>10</sup> The broader purpose of these provisions is to benefit veterans by providing them with affordable housing. Indeed, section 309(b) of the Act is titled “Protecting Veterans from Predatory Lending.” This is also one of the purposes of the Ginnie Mae Charter, which was amended by section 309(b) of the Act.

Under settled precedent, Section 309(b) of the Act cannot be construed in a way that would frustrate the purposes of either Section 309 of the Act or the Ginnie Mae Charter. The Supreme Court has instructed that courts “cannot interpret federal statutes to negate their own stated purposes.”<sup>11</sup> Moreover, a statutory provision that may seem “ambiguous in isolation is

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<sup>10</sup> See e.g., section 302 (limits, and establishes a dispute process and verification procedures with respect to, the inclusion of a veteran’s medical debt in a consumer credit report); section 313 (makes permanent the one-year grace period during which a servicemember is protected from foreclosure after leaving military service))

<sup>11</sup> New York State Dept. of Social Servs. v. Dublino, 413 U.S. 405, 419-420 (1973).

often clarified by the remainder of the statutory scheme...because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.”<sup>12</sup>

But to conclude that section 309(b) of the Act precludes the guarantee of Multiclass Securities collateralized by MBS and Multiclass Securities previously and lawfully issued by Ginnie Mae also would frustrate the purpose of these statutes. Precluding existing MBS and Multiclass Securities---where it is now difficult, if not practically impossible, to assess compliance with Section 309(b) of the Act would potentially “orphan” billions of dollars worth of outstanding Ginnie Mae securities that were validly guaranteed under prior law. This is because they never could be incorporated into Multiclass Securities after the enactment of the Act. This would frustrate the reasonable expectations of Ginnie Mae investors who purchased Ginnie Mae MBS at prices that explicitly contemplated their ultimate inclusion in Multiclass Securities. Because these securities would then decrease in value, the end result would be increased interest rates for veterans. Given that this would harm, rather than help, veterans, it is difficult to imagine that Congress intended to cause significant disruption to the Multiclass Securities program beyond what was needed to stop the undesirable lending practices on a prospective basis. Further, restricting the inclusion of existing MBS and previously issued Multiclass Securities as eligible collateral would not decrease the amount of risk to Ginnie Mae and the investors since the certificates are already

#### **HUD Conclusion**

For the reasons described above, it is HUD’s interpretation that as of the enactment of the Act, any VA refinanced mortgage loan that does not meet the seasoning requirements contained

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<sup>12</sup> United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 371 (1988).

in section 309(b) the Act is ineligible to serve as collateral for Ginnie Mae MBS. Ginnie Mae MBS guaranteed before the enactment of the Act, that contain VA refinanced mortgage loans that do not meet the seasoning requirements contained in the Act, are unaffected by the Act. For Multiclass Securities, the Act permits Ginnie Mae to guarantee Multiclass Securities even where the trust assets consist of direct or indirect interest in certificates guaranteed by Ginnie Mae without regard to whether the underlying VA mortgage loans are in compliance with the seasoning requirements in section 309(b) of the Act.

#### **IV. Solicitation of Comment**

This interpretive rule represents HUD's interpretation of section 309(b) of the Act and, as such, is exempt from the notice and comment requirements of the Administrative Procedure Act.<sup>13</sup> Nevertheless, HUD is interested in receiving feedback from the public on this interpretation, specifically with respect to clarity and scope.

Dated: June 25, 2018

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J. Paul Compton, Jr., General Counsel

**[FR-6112-IA-01]**

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<sup>13</sup> See, 5 U.S.C. 553(b)(3)(A).

[FR Doc. 2018-14354 Filed: 6/29/2018 11:15 am; Publication Date: 7/3/2018]