MERS®

Date: March 8, 2017

Memorandum to: Members of the Uniform Law Conference Drafting Committee for an Electronic Registry for Residential Mortgage Notes

From: Bill Beckmann, President and CEO of MERSCORP Holdings, Inc. and Mortgage Electronic Registration Systems, Inc. ("MERS")

Re: Committee Meeting on March 17 & 18, 2017

We would like to thank the members for providing us with the opportunity to address the committee about the concept of an electronic registry for residential mortgage notes.

As some members of the committee know, MERSCORP Holdings owns and operates two registries for the residential mortgage industry:

- The MERS® System: a national electronic database that tracks changes in mortgage servicing rights and beneficial ownership interests in loans secured by residential real estate. At closing, the borrower and lender agree to name MERS as mortgagee on the mortgage or beneficiary on a deed of trust. The lender then records the mortgage or deed of trust in the public land records and registers the information about the loan on the MERS® System. The MERS® System is not a legal system of record, nor a replacement for perfecting the priority of a mortgage lien in the public land records. No interests are transferred on the system; they are only tracked. Currently, 75% of newly originated mortgage loans are registered on the MERS® System.

- The MERS® eRegistry: the legal system of record for identifying the Controller (holder) and Location (custodian) for the authoritative copy of a registered transferable record as defined under ESIGN and UETA ("eNote"). Currently, 100% of newly originated mortgage loans sold in the secondary market using transferable records ("eNotes") are registered on the MERS® eRegistry.

To provide additional information about these registries, attached are four brochures: MERS® System, MERS® Quick Facts, MERS® Myth v. Facts and MERS® eRegistry.

Also attached is our comment letter to the staff of the Federal Reserve Bank of New York, dated May 9, 2016, wherein we conveyed our thoughts about the value proposition of a national mortgage note registry; there are several non-legal policy issues that we believe the members of this drafting committee should consider:

- The "systemic weaknesses" referenced in the FRBNY draft, which their proposed repository seeks to address, have been ameliorated to a significant degree in recent years through legislation, regulation and private market solutions. In fact, the MERS® System already offers a solution to the "transparency" issue by providing free access (through a toll free telephone number or the internet) to the general public to identify the current servicer for loans registered on the MERS® System, and the identity of the owner of the loan to the homeowner. For eNotes, the MERS® eRegistry provides the definitive party entitled to enforce the obligation; i.e., the party shown as the Controller in the registry is by definition the party entitled to enforce the eNote.

- The current financial structure anticipated in the draft does not require the operator of the repository to have any "skin in the game," thus ensuring that all the funds allocated are likely to be spent, which then leaves the taxpayers at risk for covering losses should the repository not gain traction.

- Since participation in the repository is voluntary, uptake will likely be very much a cost/benefit determination on the part of users. If the perceived benefits are too low and the costs too high, participation could be negatively affected and the repository could find itself in financial trouble quite rapidly.

Today, the industry's electronic mortgage solution is based on compliance with the Electronic Signatures in Global and National Commence Act ("ESIGN") and the Uniform Electronic Transaction Act ("UETA") using the concept of a registry. The industry has spent considerable time and effort on developing standards and applications that fit into the ESIGN/UETA legal frame work, which would need to be changed to meet the repository standards. Most important to the industry is the ability to extract data from the electronic record, so the repository would have to develop and adopt new system rules to insure that goal can be accomplished.

Another item that may be of interest to the committee is the acquisition of a majority equity interest in MERSCORP Holdings by Intercontinental Exchange (NYSE:ICE), which closed on June 30, 2016. ICE operates the leading network of global futures, equity and equity options exchanges, as well as global clearing and data services across financial and commodity markets, including the New York Stock Exchange. This investment leverages the strengths of these two organizations to the benefit of the U.S. residential mortgage finance market.

MERS®

www.mersinc.org

WHO ARE WE?

Today's financial services industry depends on technological innovations to provide its customers with access to information, increased efficiency and reduced processing costs. MERSCORP Holdings, Inc. owns and operates the MERS® System, a national electronic registry system that tracks the changes in servicing rights and beneficial ownership interests in mortgage loans that are registered on the System.

MERSCORP Holdings is the parent company of Mortgage Electronic Registration Systems, Inc. (MERS).

The MERS® System is the only national database that provides free public access to servicer information for registered home mortgages, complementing public land recording systems. Homeowners have free access to investor information for their mortgages, and the MERS® System is also used by local governments around the nation to identify parties responsible for maintaining vacant properties and addressing code violations.

MERS and the MERS® System were created by the mortgage banking industry to streamline the mortgage process by using electronic commerce. Those that benefit from the use of MERS include mortgage originators, servicers, warehouse lenders, wholesale lenders, retail lenders, document custodians, settlement agents, title companies, insurers, investors, county recorders and consumers.

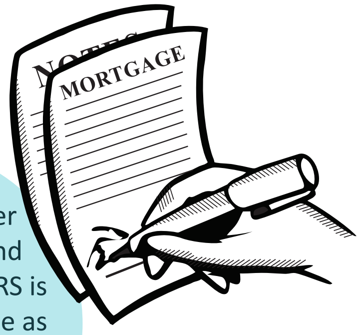
MERS acts as mortgagee* in the county land records for the lender and servicer. Future assignments of any loan -- where MERS is the mortgagee -- registered on the MERS® System are not necessary because MERS remains the mortgagee no matter how many times servicing is traded. MERS as original mortgagee (MOM) loans are approved by Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration and the U.S. Department of Veterans Affairs, the Delaware State Housing Authority, the California, Massachusetts and Utah Housing Finance Agencies, as well as all of the major Wall Street rating agencies.

**As used herein, "mortgagee" includes a mortgagee, beneficiary under a deed of trust, grantee under a security deed or other secured party.*

BENEFITS WITH MERS AND THE MERS® SYSTEM

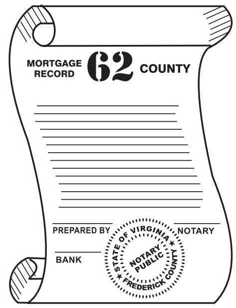
- Reduces cost of homeownership.
- Eliminates breaks in the chain of title.
- Hard dollar savings on each loan for homeowners and lenders.
- Identity of servicer and investor available for free to homeowners via phone or Internet.
- Used by lenders to find undisclosed liens.
- Used by governments and code enforcement officers to find companies responsible for maintaining vacant and abandoned properties.
- Simplifies lien releases when a lender goes out of business.
- Increases efficiency in sale of loans and servicing transfers in secondary market.
- Uses the Mortgage Identification Number (MIN) assigned to each loan for tracking throughout the life of a loan.

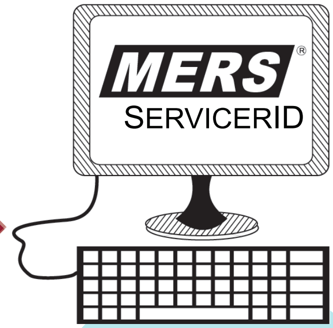
How MERS Works



At closing, borrower signs a mortgage and promissory note. MERS is appointed "mortgagee as nominee" for the lender and its successors and assigns in the mortgage.

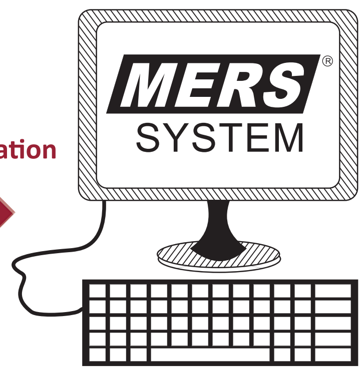
Lender records the mortgage in the county land record in MERS' name.



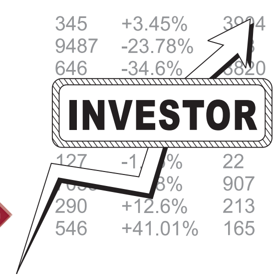


Borrower looks up servicer and investor info at mers-servicerid.org.

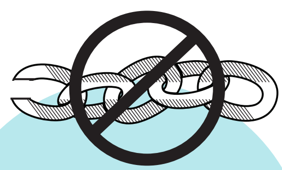
Lender registers loan information on the MERS® System.



Lender sells the note; the MERS® System is updated for investor changes.

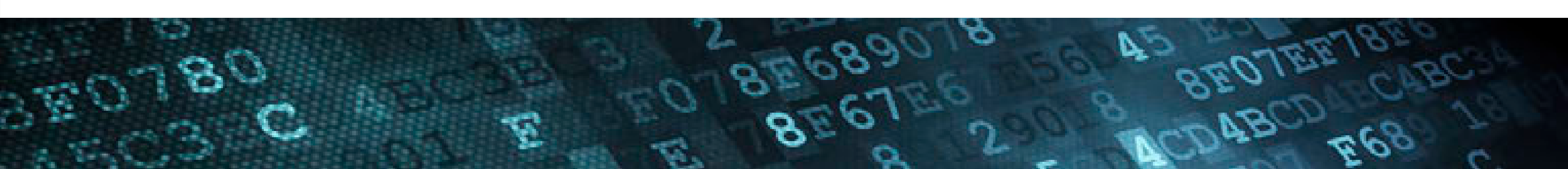


*Lender sells servicing; the MERS® System is updated for servicer changes.



*No breaks in chain of title when transfers occur because the lien remains in MERS' name.

*If a loan's servicing is sold to an organization that is not a MERS® System Member, the mortgage loan must be assigned out of MERS' name.



MERS® System FAQs

Q. What is MERSCORP Holdings, Inc.?

A. MERSCORP Holdings, Inc. is a privately-held corporation that owns and manages the MERS® System and all other MERS® products. It is a member-based organization consisting of thousands of lenders, servicers, subservicers, investors and government institutions.

Q. What is MERS?

A. Mortgage Electronic Registration Systems, Inc. (MERS) is a wholly-owned subsidiary of MERSCORP Holdings, and its sole purpose is to serve as mortgagee in the land records for loans registered on the MERS® System. MERS is the nominee for the lender and subsequent buyers ("beneficial owners") of a mortgage loan and serves as a common agent for the mortgage industry.

Q. What is the MERS® System?

A. The MERS® System is a national electronic database that tracks changes in mortgage servicing rights and beneficial ownership interests in loans secured by residential real estate. Over two-thirds of all newly originated residential loans in the United States are registered on the MERS® System.

Q. How does MERS benefit borrowers?

A. MERS as original mortgagee eliminates breaks in the chain of title, resulting in less work and lower fees paid by the lender—fees that would ultimately be passed down to the homeowner. MERSCORP Holdings, Inc. provides access to MERS® ServicerID free of charge to homeowners, county officials, and regulatory officials (subject to privacy restrictions). The MERS® System is also used by local governments around the nation to identify parties responsible for maintaining vacant properties and addressing code violations.

Q. Can homeowners use the MERS® System to determine who their servicer or investor is?

A. Homeowners can access contact information on the servicer and investor of their mortgage loans registered on the MERS® System at www.mersinc.org or toll-free at (888) 679-6377. Transfer of ownership of the promissory note is not a recordable transaction. However, the Truth In Lending Act (TILA) requires that borrowers be notified of ownership changes. Real Estate Settlement Procedures Act (RESPA) regulations also provide for notice of servicing changes.

Q. Do the nationally recognized rating agencies permit the use of MERS as Mortgagee?

A. Yes. All of the major rating agencies (Standard and Poor's, Moody's and Fitch) permit the use of MERS as mortgagee for mortgage loans included in mortgage-backed securities transactions without any additional credit support.

Q. Can MERS operate in all 50 states?

A. Yes. MERS can operate in all 50 states either as a mortgagee, beneficiary, or nominee of the beneficiary.

Q. Are there any benefits to title companies?

A. For loans registered on the MERS® System, title companies have a single, electronic source for identifying the current servicer of a loan to obtain payoff quotes and verify that payoff funds have been received, simplifying the entire titlework process.

MERS® ServicerID
www.mers-servicerid.org

QUICK FACTS

FEBRUARY 2017

An introduction to the MERS® System, Merscorp Holdings, Inc., and Mortgage Electronic Registration Systems, Inc.

What is MERSCORP Holdings?
MERSCORP Holdings, Inc. is a privately held corporation that owns and manages the MERS® System and all other MERS® products. There are more than 5,000 lenders, servicers, subservicers, investors and government institutions who are MERS® System members.

What is MERS?
Mortgage Electronic Registration Systems, Inc. (MERS) is a wholly-owned subsidiary of MERSCORP Holdings, and its sole purpose is to serve as mortgagee in the land records for mortgages registered on the MERS® System. MERS is a nominee for the lender and subsequent buyers ("beneficial owners") of a mortgage loan and serves as a common agent for the mortgage industry.

What is the MERS® System?
The MERS® System is a national electronic database that tracks changes in mortgage servicing rights and beneficial ownership interests in loans secured by residential real estate. More than two-thirds of all newly originated residential loans in the United States are registered on the MERS® System.

Are MERS loans recorded in the public land records?
All mortgages (or deeds of trust) registered on the MERS® System are recorded in the public land records, and MERS remains the lien holder in the land records whenever transfers of the promissory note or servicing rights take place between MERS® System Members. The MERS® System is not a legal system of record nor a replacement for the public land records. No legal interests are transferred on the system; they're only tracked.

How does MERS become a mortgagee?
There are two ways. At closing, the borrower and lender both agree to standard language in the security instrument making MERS the original mortgagee, with the right to act on behalf of the lender. The standard language is approved and used by Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration (FHA) and the Veterans Administration (VA). If MERS was not recorded as the original mortgagee on the security instrument, a lender can assign the mortgage to MERS after closing.

What does "MERS as original mortgagee" mean to borrowers?
When borrowers sign the mortgage security instrument at closing, they agree to standard language that grants and conveys legal title of the mortgage to MERS as mortgagee, giving the company the right to act on behalf of the current and subsequent owner of the loan. However, MERS does not make decisions regarding the borrower's mortgage; it acts only on the instructions of the owner of the loan or its servicer.

Does MERS collect mortgage payments from borrowers?
MERS doesn't handle mortgage servicing. The mortgage lender, or another mortgage servicing company, collects payments from borrowers and manages their loans. Borrowers who have questions about their loans, or who need help with foreclosure prevention, should contact the company where they send their payments. Since 2011, all mortgage loans going to foreclosure must be assigned from MERS and recorded in the servicer's name before foreclosure is initiated.

What does MERS do for lenders?
As the mortgagee of record, MERS provides service of process on legal documents and receives legal notices and other mail regarding the mortgaged properties. MERS, through its service provider, MERSCORP Holdings, Inc., sorts, scans and transmits documents electronically to the appropriate MERS® System Member for each loan. Because MERS is a common

COMPANY STATISTICS

WHAT: The MERS® System, MERSCORP Holdings, Inc. and Mortgage Electronic Registration Systems, Inc. (MERS).

WHO: For a complete list of shareholders, visit our website at www.mersinc.org.

WHEN: Established in Oct. 1995 in Delaware. The MERS® System began registering and tracking mortgage loans in 1997.

WHERE: MERSCORP Holdings, Inc. and MERS are headquartered in Reston, Va.

WHY: The concept of the MERS® System was created in the 1990s, in response to changes in the mortgage finance industry, to streamline the mortgage process by using e-commerce to replace paperwork.

MEMBERSHIP: More than 5,000 lenders, vendors and government entities.

agent for MERS® System Members, the need for recording an assignment of the mortgage is eliminated when transfers in the ownership of the promissory note or servicing rights occur between MERS® System Members. The mortgage lien remains with MERS as the mortgagee, thereby eliminating work and cost. The MERS® System also provides information on undisclosed liens, which reduces fraud.

Does MERS have the documents for loans registered on the system?
MERS is not a document custodian and doesn't hold promissory notes or mortgage documents on behalf of the lender, servicer or investor.

How does MERS benefit borrowers?
MERS as original mortgagee eliminates breaks in the chain of title, resulting in less work and lower fees paid by the lender—fees that would ultimately be passed down to the homeowner. MERSCORP Holdings, Inc. provides access to MERS® ServicerID free of charge to homeowners, county officials, and regulatory officials (subject to privacy restrictions). The MERS® System is also used by local governments around the nation to identify parties responsible for maintaining vacant properties and addressing code violations.

How do homeowners know who their servicer or investor is?
Homeowners can access contact information on the servicer and investor of their mortgage loans registered on the MERS® System at www.mersinc.org or toll-free at (888) 679-6377. Transfer of ownership of the promissory note is not a recordable transaction. However, the Truth In Lending Act (TILA) requires that borrowers be notified of ownership changes. Real Estate Settlement Procedures Act (RESPA) regulations also provide for notice of servicing changes.

GLOSSARY

Beneficiary: The person/company for whose benefit a deed of trust is given.

Closing: The act of transferring ownership of a property from seller to buyer in accordance with a sales contract.

Deed of Trust: A document used in many states in lieu of a mortgage. Legal title to the property is vested in one or more trustees to secure the repayment of the loan.

Mortgage: A written security instrument by which a borrower gives the lender a lien on real estate as security for the repayment of a loan.

Mortgagee: The person or entity who holds a lien on real estate securing the repayment of the loan, or the mortgage lender or lender's nominee.

Nominee: One who, in a limited capacity, is authorized to act for or represent another.

Promissory Note: A document that acknowledges a debt and outlines a borrower's promise to pay the specified sum to the lender under specified terms. It is a negotiable instrument and changes in its ownership are not recordable events.

Servicing: Often performed for a fee after loans are sold to investors; includes billing, collecting payments, filing reports, managing tax and insurance escrow accounts, and default follow-up for mortgages.

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MERS®

QUICK FACTS
FEBRUARY 2017

MYTHS vs. FACTS:
The MERS® System, Merscorp Holdings, Inc., and Mortgage Electronic Registration Systems, Inc.

MYTH #1: MERS has failed to record transfers of mortgage loans in the public land records.

FACT: At closing, the lender and borrower agree to appoint Mortgage Electronic Registration Systems, Inc. (MERS) as the mortgagee on the mortgage or deed of trust. This means that when a MERS® System member sells the loan to another MERS® System member, legal title to the mortgage remains with MERS and the need for an assignment is eliminated.

MYTH #2: MERS hides the chain of title so that borrowers can no longer see who owns their loans.

FACT: The public land records exist so that third parties are on notice that there is a lien on a property. MERS makes it easy for the borrowers to identify the servicer and owner of a loan that's been registered on the MERS® System (see Myth #3 below).

MYTH #3: MERS makes it harder for borrowers to identify the servicer and owner of their mortgage loans.

FACT: MERS actually makes this EASIER. We have a toll-free number (888-679-6377) and website (www.mers-servicerid.org) that the public can access to find the current servicer—and where borrowers can find the owner—of a loan registered on the MERS® System. The MERS® System is the only national database with this information free and available to the public.

In addition, under federal law, borrowers are entitled to receive notification when the ownership of their loan changes. Servicers are also required under the Truth In Lending Act to respond to written borrower inquiries as to the ownership of their loans.

MYTH #4: Mortgages with MERS as the mortgagee were not recorded in the public land records and MERS has created an alternate recording system that's private and proprietary.

FACT: The MERS® System Rules require that all mortgages with MERS as the mortgagee be recorded in the public land records and all required fees were paid. The MERS® System is not a legal system of record nor a replacement for the public land records. MERS' objective is not to replace county recorders; in fact we rely on the public land records to facilitate our business.

MYTH #5: Since MERS is not the lender, it does not have the right or "standing" to foreclose.

FACT: Because MERS is the mortgagee and common agent for all loans on the MERS® System, MERS has the right to act on behalf of the lender, which translates to our ability to foreclose on a borrower. Courts in all 50 states have upheld our role in this regard. However, we have changed our business process and no longer engage in foreclosures.

BENEFITS WITH MERS®

Reduces cost of homeownership.

- Eliminates breaks in the chain of title
- Hard dollar savings on each loan for homeowners and lenders

Provides transparency.

- Identity of servicer and investor available for FREE to homeowners via phone or Internet
- Used by lenders to find undisclosed liens

Used by governments and code enforcement officers to find companies responsible for maintaining vacant and abandoned properties.

Simplifies lien releases when a lender goes out of business.

Increases efficiency in sale of loans and servicing transfers in secondary market.

Mortgage Identification Number (MIN) is assigned to each loan, used for tracking.

MYTH #6: MERS caused securitization.

FACT: Securitization began in the 1980s, before the company was founded. The MERS® System was launched in 1997 in response to the challenges created by growth in mortgage origination and securitization in the 1990s.

MYTH #7: MERS stores mortgage documents that were previously kept by the servicer or investor.

FACT: MERS doesn't hold any documents on behalf of the servicer or investor. Just as it was prior to MERS, the recorded mortgage or deed of trust is typically held by the servicer, and the note is typically held by the custodian designated by the investor.

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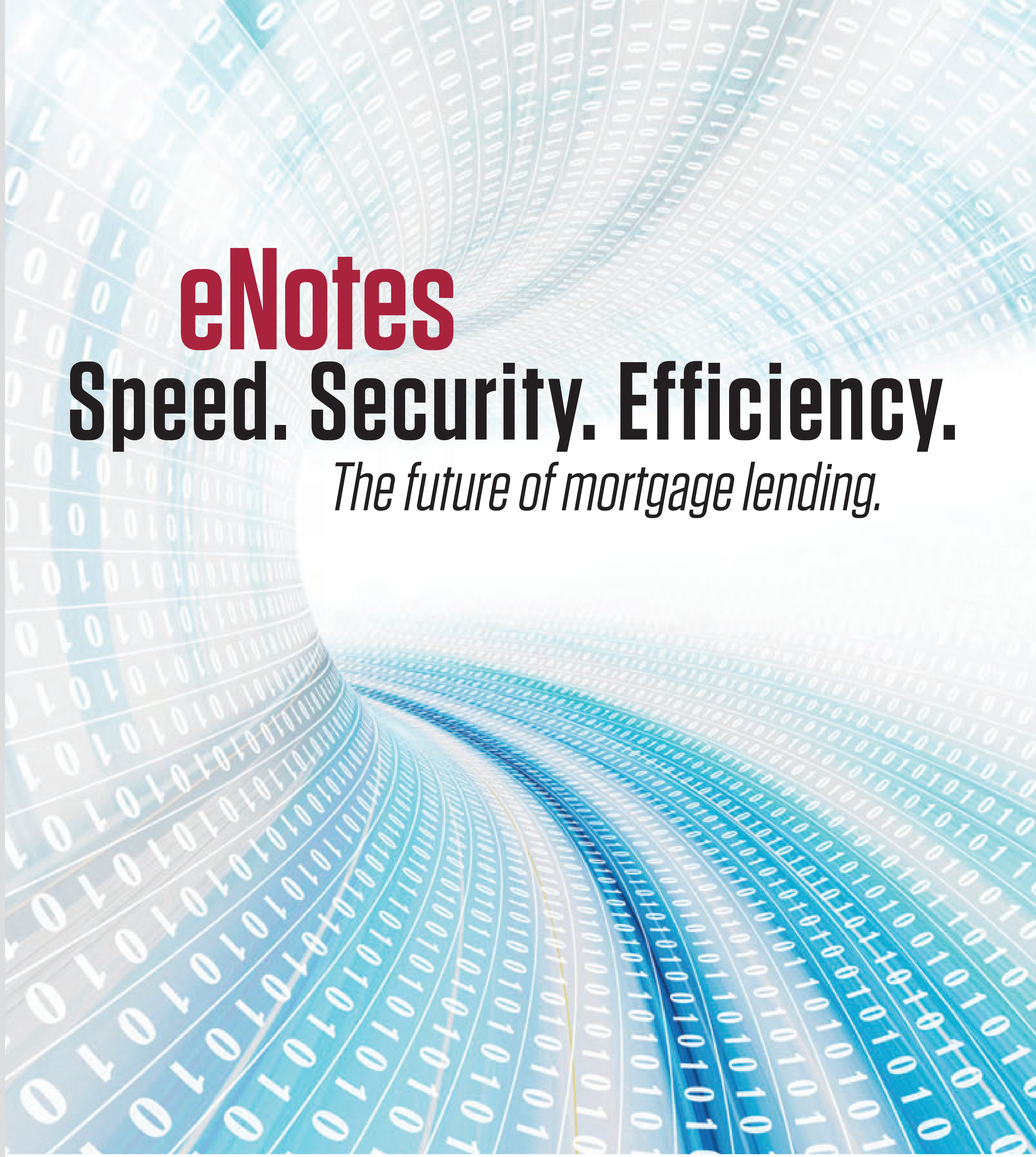
MERS®



MERS® eRegistry

eNotes complete eMortgages.

www.mersinc.org

What does MERS® eRegistry do for you?

LENDERS

- Streamlines the closing experience
- Strengthens collateral security

SETTLEMENT AGENTS

- Improves quality control and productivity
- Mitigates document fraud

WAREHOUSE LENDERS

- Improves control of collateral
- Reduces exposure to double-pledging

DOCUMENT CUSTODIANS

- Provides for more efficient and accurate note custodian processes
- Allows for automated note certification

SERVICERS

- Assists in automating post-closing audit of eNote servicing data
- Eliminates lost notes

INVESTORS

- Enables faster and more efficient delivery to the secondary market
- Improves quality control and assists in fraud detection
- Enhances liquidity

Why eNotes?

IMAGINE A MORTGAGE PROCESS THAT IS FAST, EFFICIENT AND SECURE.

Think about technological innovations, from a clunky telephone tethered to the wall that morphed into an untethered mobile device or a pad of paper that morphed into an electronic tablet.

Technological advancements shape the way you and your customers conduct business every day. Your customers make deposits into a bank account by simply taking a photo of a check and sending it using a mobile app. In addition, they receive direct deposits, shop online and even pay bills online. Mortgage industry players have already launched an e-Closing pilot program. These e-commerce innovations save time and money for all parties.

The traditional mortgage process is lagging behind. There is still a mortgage, a note and stacks of disclosures at the closing table, lots of papers to sign and tape flags to designate where a signature is needed. It doesn't have to be this way … eNotes help transform the paper-intensive closing of a mortgage loan into a digital transaction.

WHAT ARE THE BENEFITS OF AN eNOTE?

- Reduces risk and saves money by eliminating the cost associated with lost or missing notes.
- Ensures accuracy of note data and eliminates re-keying time and errors.
- Delivers operating efficiencies by improving pipeline management and the use of capital.

MERSCORP Holdings, Inc. supports industry standards

- **Mortgage Identification Number (or MIN):** a unique 18-digit tracking number that is added to the security instrument and electronic promissory note at the time of origination.
- **MISMO XML data standards:** greatly reduce the time and effort required for business partners to create new data interfaces with each other.
- **Organization ID number (or Org ID):** a 7-digit number assigned by MERSCORP Holdings that uniquely identifies MERS® System Members.

Now is your chance to experience new world innovation in the mortgage industry – get started now.

How does the MERS® eRegistry work?

Borrower uses an electronic signature to execute the eNote at closing. The eNote contains both the MIN and language referencing the use of the MERS® eRegistry (the eNote clause).

1 Immediately after closing, a Lender registers the eNote on the MERS® eRegistry. The registration record shows the lender as the Controller (Holder) and the Location (Custodian) of the eNote, and Servicer (if applicable).

2 When the eNote is transferred, a Lender (the initial Controller) initiates a transfer of control transaction to the new Controller.

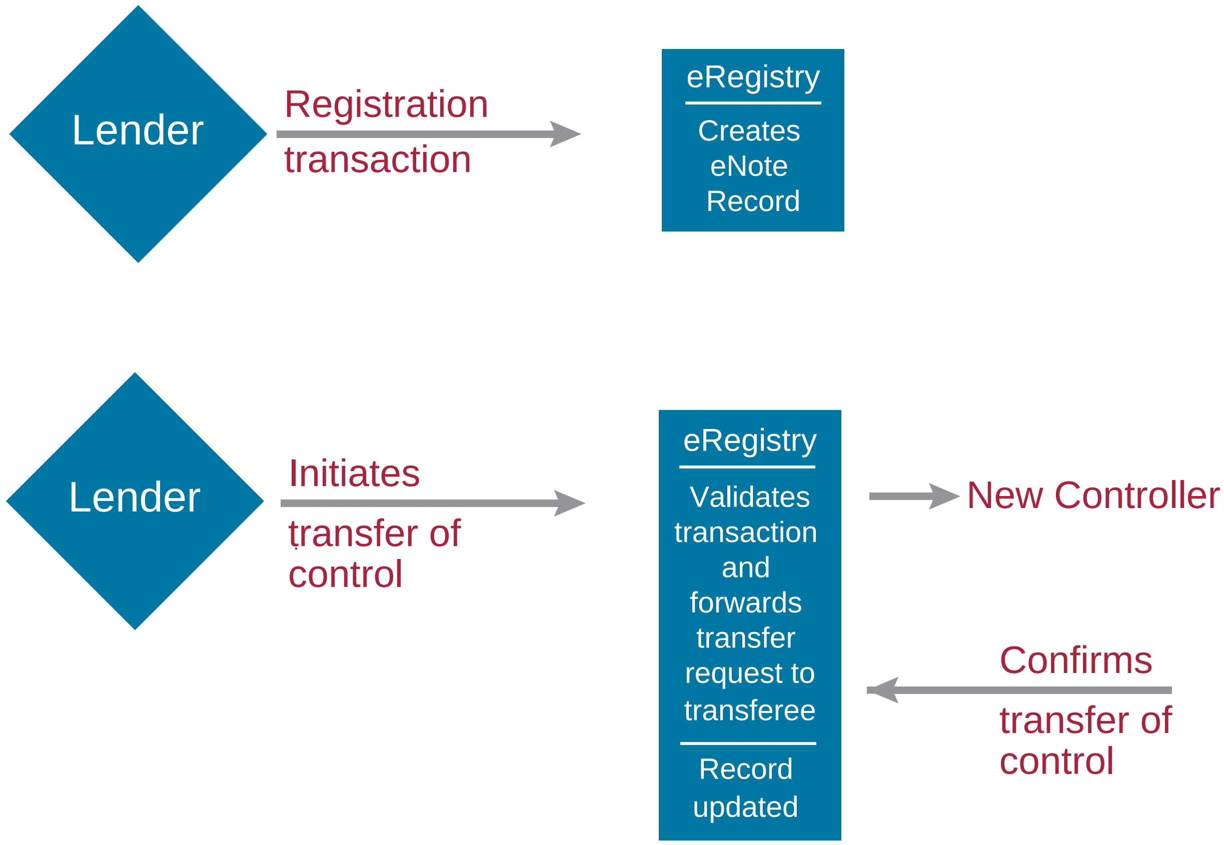
If the Custodian of the authoritative copy of the eNote changes, there needs to be a transfer of Location to the new Custodian.

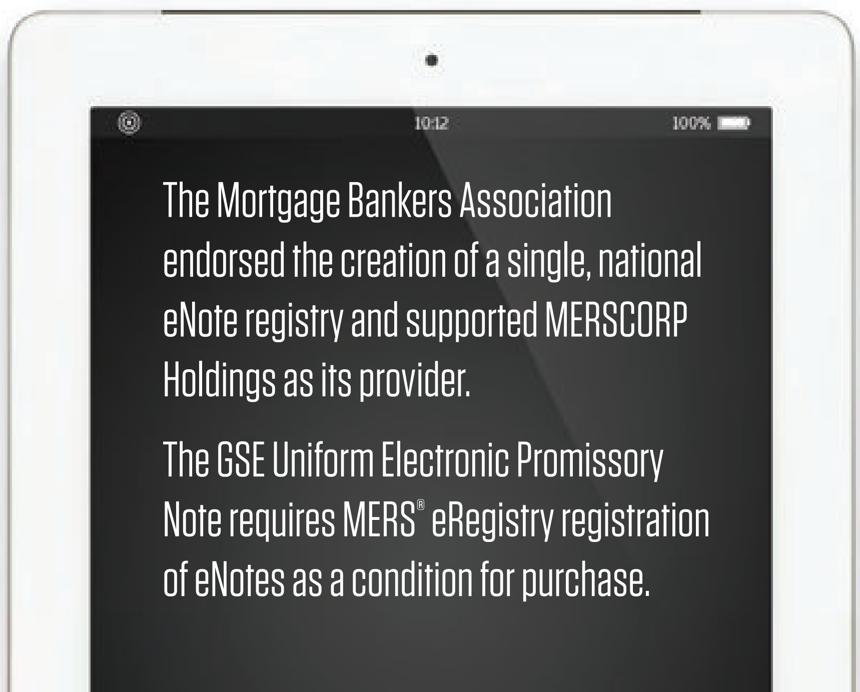
The largest investors require the use of MERS® eDelivery (secure electronic transfer) in this process.

3 The new Controller confirms the transfer request(s). The MERS® eRegistry now shows the new Controller (and Location, if applicable).

The current Controller, or its Servicer, is responsible for reporting servicing events (e.g., payoffs) to the MERS® eRegistry.

Registration and Transfer Process





What is the MERS® eRegistry?

The MERS® eRegistry is the system of record that identifies who is in control of the eNote. Also, it points to the Custodian of the authoritative copy of the eNote, which is stored in their secure electronic vault.

The MERS® eRegistry is essential in the eMortgage world. Today, dozens of lenders are closing eNotes and the transfers of the eNotes in the secondary market are reflected on the MERS® eRegistry – more than 300,000 eNotes have been registered.

The MERS® eRegistry is one of multiple functions utilized by Participants to satisfy the control requirement of Section 201(c) of the E-SIGN Act and Section 16(c) of the UETA with respect to a transferrable record (“eNote”). Its role is to be the authorized source to identify the party that has Control of the eNote and the Location (i.e., the party that maintains the Authoritative Copy of the eNote). Each Participant is responsible for determining that all the functions, including the MERS® eRegistry as set forth herein, utilized by the Participant and its service provider(s) constitute a system that satisfies the control requirements of Section 201(c) of the E-SIGN Act and Section 16(c) of the UETA. Under the terms and conditions of the GSE Uniform Electronic Promissory Note, all transfers of the eNote are required to be registered on the MERS® eRegistry.

WHAT DOES THE MERS® eREGISTRY DO?

When a lender registers an eNote on the MERS® eRegistry, the registration process:

1. Validates the MIN – Mortgage Identification Number (the unique identification number for a registered eNote)

2. Validates the identity of a lender

3. Uniquely identifies the eNote’s current Controller and Location of the Authoritative Copy

4. Confirms the registration is complete

5. Sends a confirmation to a lender

6. Stores key information to readily identify the loan

7. Stores the unique tamper-evident digital signature (hash value) of the eNote

8. Prevents duplicate registrations

What is MERS® eDelivery?

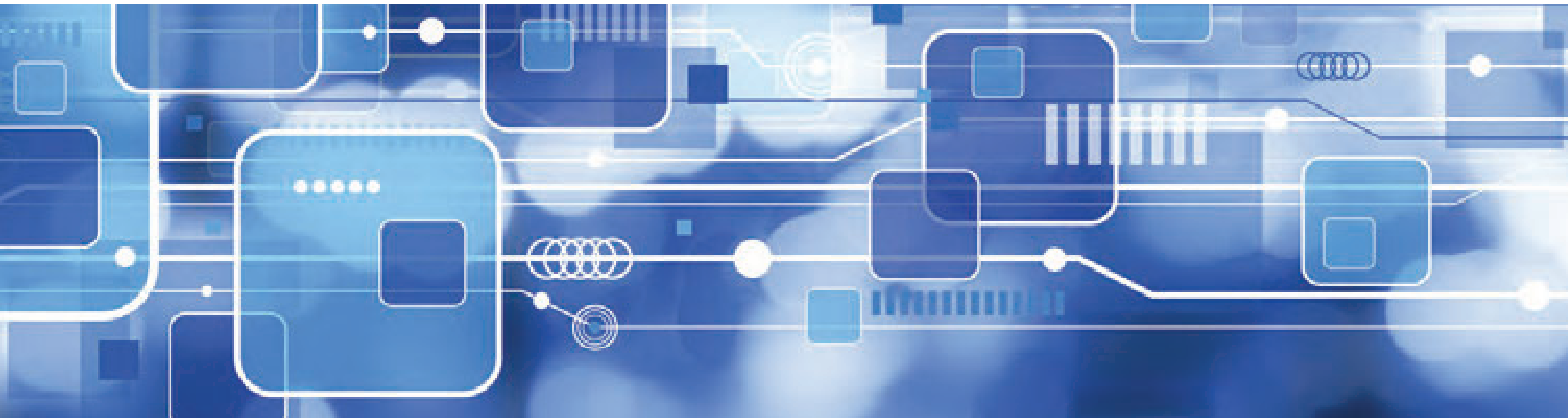
MERS® eDelivery provides a secure method for distributing eMortgage packages from one MERS® eRegistry Participant to another, using the existing MERS® eRegistry infrastructure and security requirements.

Participants can leverage MERS® eRegistry to send and receive electronic documents with any other Participant, at minimal cost. MERS® eDelivery only delivers the packages; it does not open or access the packages in any way.

WHAT DOES MERS® eDELIVERY DO?

When a MERS® eRegistry Participant transfers electronic documents using MERS® eDelivery, the process:

- Validates the identity of the sender and the recipient
- Confirms the receipt of electronic documents by the recipient
- Allows the recipient to notify the sender after the recipient opens the eDelivery package
- Maintains an audit trail of all deliveries



New World/New Language

Paper World	Electronic World
Negotiable Instrument	Transferable Record (“eNote”)
Original Note	Authoritative Copy of eNote
Possession	Control
Holder	Controller
Custodian	Location (electronic vault)
Endorsement & Delivery	Transfer of Control
Chain of Endorsements and Delivery	Transferable Record Audit Trail
Wet Signature	Electronic Signature

MERSCORP Holdings, Inc. Support

Business Integration Managers: Assist MERS® System Members in integrating MERS® eRegistry in their business and technical environment.

Website (https://members.mersinc.org): Convenient online source for everything MERS®.

User Conference: Annual conference for new and experienced MERS® System Members and MERS® eRegistry users that provides educational information on legal, regulatory and system enhancement topics.

Help Desk: Answers systems, procedural and technical questions for active MERS® System Members.

Regional Sales Directors: Available nationwide for on-site sales and visits for MERS® System Members and their clients. Call 800-646-MERS (6377) for more information.

MERSCORP eCommerce Department (ecommercedept@mersinc.org): Contact the MERS eCommerce Department to learn more about MERS eRegistry.

Call us today to talk about resources, education and information to help you get started with eNotes!

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MERS® eRegistry FAQs

Q. What is the MERS® eRegistry?

A. It is the authorized registry that identifies the current Controller (holder) and Location (custodian) of the Authoritative Copy of an eNote. The Controller of an eNote has the equivalent rights as that of a "Holder in Due Course" of a paper negotiable promissory note. The MERS® eRegistry is the mortgage industry's "system of record" for holders of eNotes.

A national eNote registry is part of the industry's response to develop systems that can rely upon the Uniform Electronic Transactions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (E-SIGN) to establish legal effectiveness of electronic notes for mortgage loans.

The MERS® eRegistry is one of multiple functions utilized by Participants to satisfy the control requirement of Section 201(c) of the E-SIGN Act and Section 16(c) of the UETA with respect to a transferrable record ("eNote"). Its role is to be the authorized source to identify the party that has Control of the eNote and the Location (i.e., the party that maintains the Authoritative Copy of the eNote). Each Participant is responsible for determining that all the functions, including the MERS® eRegistry as set forth herein, utilized by the Participant and its service provider(s) constitute a system that satisfies the control requirements of Section 201(c) of the E-SIGN Act and Section 16(c) of the UETA. Under the terms and conditions of the GSE Uniform Electronic Promissory Note, all transfers of the eNote are required to be registered on the MERS® eRegistry.

Q. Do buyers of eNotes require the use of the MERS® eRegistry?

A. Yes. GSE Uniform Electronic Promissory Note requires the use of the MERS® eRegistry for eNotes that they purchase. Furthermore, GSE buyers also require the use of MERS® eDelivery.

Q. Does the MERS® eRegistry store eNotes?

A. No. Organizations that are in the business of providing eVaulting services can store eNotes on behalf of the Controller.

Q. Since the MERS® eRegistry is the "system of record" for participants that control eNotes, does MERS® eRegistry handle the disbursement of closing funds?

A. No. Closing funds are disbursed as they would be with the closing of a paper note.

Q. How did the MERS® eRegistry get started?

A. Key players from all sectors of the mortgage industry (lenders, servicers, investors and vendors) came together under the auspices of the Mortgage Bankers Association to develop requirements for a National eNote Registry, which were published in 2003. After that, MERSCORP Holdings developed and launched the MERS® eRegistry in 2004 based on these requirements.

The Mortgage Bankers Association sanctioned the creation of a single, national electronic note (eNote) registry system and key industry players have supported MERS as the provider of the system.

Q. Why eNotes? What is the benefit?

A. A promissory note in electronic form and registered with the MERS® eRegistry is eligible for sale to any Participant in the MERS® eRegistry. Due to the lower costs of handling and greater access to information, loans represented by eNotes can be more valuable to investors than the equivalent loans using paper notes. Lenders can reduce costs with eNotes by streamlining the post-closing and certification process, eliminating transportation costs and reducing costs associated with lost, destroyed and missing paper notes.

Q. If I want to originate eNotes, what do I need to do?

A. There are two scenarios for originators of eNotes to interact with the MERS® eRegistry, one is direct, and the other is through a trading partner.

In the first scenario, you close loans with eNotes that contain the eNote clause and a Mortgage Identification Number (MIN), and register them on the MERS® eRegistry.

This requires you, or your vendor, to have

- connectivity with the MERS® eRegistery (via VPN)
- the ability to create the XML transactions required by the MERS® eRegistry
- the ability to sign those transactions with a digital certificate

In the second scenario, you close loans on eNotes that contain the eNote clause and a MIN, and immediately sell them to an investor who will do the registrations for you. This is called a Broker/Delegatee relationship. MERS will set up your profile (as the Broker) on the MERS® eRegistry so that it allows another party (your Delegatee) to name you as the initial Controller and then do a transfer of control to itself.

Whichever scenario you choose, or role you play (lender, broker, investor) we will help you integrate and set up procedures and do any necessary transaction testing.

Q. Does my current MERS Membership allow me to start this process?

A. Yes, but you must also sign the MERS® eRegistry Addendum. If you are not currently a MERS member, you must sign the MERS Membership agreement and the Addendum.

Q. What does MERS charge for using the MERS® eRegistry?

A. There is no additional membership fee for signing the Addendum if you are already a MERS member. There are transaction fees. Please reference the MERS Pricing Schedule for current pricing.

Q: Does MERS® eDelivery replace the need for an electronic document management system and an eVault?

A. No. MERS® eDelivery securely delivers documents in any electronic format (SmartDoc, PDF, TIFF, etc.). It does not validate or store electronic documents.

Q. Where do I get more information?

A. Call the MERS Customer Division at 800-646-6377, send your inquiry to ecommercedept@mersinc.org, or visit the MERS web site at: www.members.mersinc.org.

MERS® eRegistry

MERS® eDelivery

May 9, 2016

Ms. Stephanie Heller
Deputy General Counsel & Senior Vice President
Federal Reserve Bank of New York
33 Liberty Street
New York NY 10045

Re: Proposed National Mortgage Note Repository Act-draft dated March 11, 2015

Dear Stephanie:

We appreciate the opportunity to comment on the proposal to create a national mortgage note repository and thank you for including us in the process. We hope you will continue to do so in the future as these efforts advance.

Clearly, a lot of hard work has gone into bringing the proposal to this level of specificity. We think that the proposal has matured to a point that it would be fruitful to step back from the consideration of legal details and think through the likely economics of repository participation.

The proposal envisions the Congress advancing $150 million to build the repository. These capital costs would then be recouped through fees imposed on users over a ten to fifteen year period. This fund-and-pay-back approach has implications for the success of the repository. Over the first decade or so of its existence, the fee structure for those using the repository would have to cover operating costs plus the return of capital to the Treasury. Since participation in the repository is voluntary, uptake will likely be very much a cost/ benefit determination on the part of users. If the perceived benefits are too low and the costs too high, participation could be negatively affected and the repository could find itself in financial trouble quite rapidly.

This possible scenario is perhaps why the proposal allows the regulator to extend the ten year window by as much as five years. This provision not only takes away the revenue neutrality of the proposal (which could become a political problem), but it suggests a concern that the envisioned registry may not be economically self-sustaining. Since the current financial structure anticipated in the draft does not require the operator of the registry to have any "skin in the game," this ensures that all the funds allocated are likely to be spent, which then leaves the taxpayers at risk for covering losses should the repository not gain traction.

These concerns are warranted in our opinion. The "Findings and Purposes" section of the draft articulates why the repository is necessary, but the mortgage industry reflected in that section is not the mortgage industry of today. The "systemic weaknesses" referenced in that section, which the proposed repository seeks to address, have been ameliorated to a significant degree in recent years through legislation and regulation, as well as by market participants. For example, since 2009, Federal law already requires disclosure to homeowners about the owners of their loan.1 The MERS@ System also provides free access (through a toll free telephone number or the Internet via its website) to the general public to identify the current servicer for loans registered on the MERS® System, and the identity of the owner of the loan to the homeowner.

There are other ways in which today's environment is not the same as yesterday, specifically, loan volume2 and the fact that non-agency securitization in the residential mortgage industry is a fraction of what it used to be. These are the two drivers of user participation. While it is possible that some investors might register their existing portfolios, without a regulatory mandate, the cost of registering loans with demonstrated performance likely outweighs the benefits of proving that the investor can enforce a very small percentage of the portfolio that will ultimately be placed into foreclosure. With existing loans, investors may be inclined to only register their loans with the repository when they go into default.

So, the central repository economic questions are: (1) What level of participation is required to break even, and (2) Is that level of participation realistic, especially if current market conditions become the new normal? In order to answer these questions, it would be helpful if the scope of the working group could be expanded to include more participants with operational and technical expertise. Moreover, at some point, a proper financial analysis of the proposal should be undertaken. It is not clear to us (at least), how anyone can make any decisions about usage when neither the costs nor benefits of the repository have been evaluated in monetary terms.

Another area where the value proposition of the repository may be at odds with the industry is the ability to submit transferable records ("eNote") to the repository. Today, the industry solution is based on compliance with the Electronic Signatures in Global and National Commence Act ("ESIGN") and the Uniform Electronic Transaction Act ("UETA"), which also uses the concept of a registry. The industry has spent considerable time and effort into developing standards and applications that fit into the ESIGN/UETA legal frame work, which would need to be re-done to meet the repository standards. Most important to industry is ability to extract data from the electronic record, so the repository would have to develop and adopt new system rules to insure that goal can be accomplished. While the existing solution has had limited adoption, the industry may prefer to solve its existing problems hindering adoption of eNotes, rather than starting fresh with a new untested solution.

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[1]Federal legislation passed in 2009 (Section 404 of the Truth in Lending Act) requires that anyone who acquires ownership of a mortgage loan must provide the borrower with a notice that the acquirer is the new owner (and if they use a servicing agent to collect payments, the name of the servicer). Section 1463 of the Dodd-Frank legislation enacted in 2010 also requires servicers to disclose the owner of the loan within ten days upon written request from the borrower.

[2]In 2003, there were 24 million mortgage loans originated nationally, while the comparable number this year has been 6 million (and the run rate is not projected to increase in the coming years).

We at MERSCORP Holdings have a lot of registry experience, and understand the economics of participation, because we have designed and run four voluntary mortgage related registries over the past 20 years, of which only two are currently operating[3] while the other two were discontinued for lack of usage. From our experience, we also know there are still complex operation challenges inherent in creating and operating a secure, high availability repository that will be the legal system of record for mortgage notes. But we recognize that they may be better addressed outside the scope of the proposed act and are willing to participate in overcoming such challenges.

We hope you find our suggestion of shifting attention from the repository design to the economics of user participation to be of value, and hope you will take advantage of our knowledge and expertise.

Respectfully,

Bill Beckmann
President & CEO
MERSCORP Holdings, Inc.

[3] MERS® System, MERS® eRegistry.