National Mortgage Note Repository Act of 2017

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “National Mortgage Note Repository Act.”

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

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SECTION 2. FINDINGS; PURPOSES.

(a) FINDINGS.—The Congress finds as follows:

(1) Robust secondary markets for residential mortgage loans and securities backed by
residential mortgage loans enhance the liquidity and efficiency of the national
housing finance market.

(2) The current paper-based practice of the national housing finance market is error-
prone and costly. Nearly all other financial instruments are tracked and
transferred electronically.

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(3) The financial crisis that began in 2007 revealed weaknesses in the legal and market infrastructure supporting the transfer and enforcement of residential mortgage loans, including:

(A) the absence of a quick, simple and accurate way for borrowers to determine the owner of their mortgage notes and whether that person has authorized its servicer to modify the obligation evidenced by the note;

(B) recordkeeping practices that have resulted in challenges to the fundamental tenet of American law that the right to enforce a mortgage or deed of trust follow from the right to enforce the associated mortgage note;

(C) inconsistencies among negotiable instrument, secured transaction, and real property laws in their treatment of the conveyance of interests in real property; and

(D) uncertainties as to the effectiveness of the use of agents, nominees and others in the transfer of mortgage notes, and the role of the beneficial owner in a proceeding to enforce a mortgage note.

(4) These weaknesses were some of the factors that impeded resolution of troubled residential mortgage loans and the return of private capital to the market for securities backed by residential mortgage loans.

(5) A national system to maintain residential mortgage notes electronically, to identify the person with the rights to act with regard to such notes, and to facilitate the transfer of such rights, would assist borrowers and mortgage note holders.

(6) The residential mortgage industry has proven unable to create such a system.

(b) PURPOSES.—The purposes of this Act are:

(1) to provide greater transparency to borrowers concerning the person who may collect, enforce, or modify a residential mortgage note and the associated mortgage when that note is on the national repository system;

(2) to enhance efficiency and liquidity in the secondary markets for residential mortgage loans and residential mortgage-backed securities through a national repository system (and related rules governing the system) that identify the person that may enforce a residential mortgage note or foreclose on a residential mortgaged property;

(3) to provide for the conversion of paper residential mortgage notes to electronic entries on a national repository system and for the use of repository records in place of the paper notes;

(4) to foster the use of electronic residential mortgage notes and to provide legal certainty for their transferability and enforceability; and

(5) to effectuate these purposes in a manner that provides protections to borrowers, including preserving state consumer protection laws.
SECTION 3. DEFINITIONS

For purposes of this Act, the following definitions apply:

() **ADVERSE CLAIM.**—means a property claim (including judgment or other liens) of a person with respect to an electronic mortgage note. Adverse claims may arise from events occurring before or after submission of the mortgage note to the repository operator.

() **ALTERATION.**—means an alteration as defined in UCC Section 3-407.

() **AUTHORIZED TRANSFEROR.**—means a person who has been authorized by a registrant to effect a registered transfer.

() **BOARD OF GOVERNORS.**—means the Board of Governors of the Federal Reserve System.

() **BORROWER.**—means a person owing performance on a mortgage note that is secured by the mortgage, but does not include a secondary obligor except as provided in regulations. Multiple borrowers on the same mortgage note are separate persons under the Act.

() **CFPB.**—means the Consumer Financial Protection Bureau.

() **COMMUNITY-INTEREST COMMUNITY.**—means real property with respect to which a person, by virtue of ownership of a unit, is obligated to pay real property taxes or insurance premiums or for maintenance, improvement of other real property, or services described in a declaration or other governing document, however denominated. The term includes properties held by a cooperative-housing corporation. [In this paragraph, “ownership” includes a leasehold interest if the lease term is at least 20 years, including renewal options.]

() **CONTROL SYSTEM.**—means any system determined by order of the regulator that is employed to evidence the transfer of interests in a transferable record or controlled record and can reliably establish the person to whom the transferable record or controlled record was issued or transferred.

() **CONTROLLED RECORD.**—means a record in a control system that would qualify as a transferable record but for a court’s determination that the record would not meet the legal requirements for negotiability if it were in writing.

() **ELECTRONIC MORTGAGE NOTE.**—means a record on the repository system created by the repository operator pursuant to subsection 8(c) that has the effect given in subsection 9(a).

() **FDIC.**—means the Federal Deposit Insurance Corporation.

() **GATEWAY.**—means a person designated as a gateway by the repository operator pursuant to section 7.

() **INSTRUMENT.**—means an instrument as defined in UCC Article 9.

() **MODIFICATION.**—means any change to the terms of an obligation that is secured by a mortgage. The term does not include:

(i) a change made in an oral agreement;

(ii) an agreement that qualifies as a short-term forbearance program under RESPA if the
obligation were subject to RESPA [ALT 2: allows a borrower to forgo making certain payments or portions of payments of the obligation for a period that is six months or less]; or

(iii) an agreement under which the borrower does not retain an ownership interest in the residential real property that is the subject of the mortgage that secures the obligation.

() Mortgage.—means a consensual interest in real property that secures an obligation, including a deed of trust. Where a mortgage is reflected in a “short form”, references to mortgage in this Act are references to the master mortgage.

() Mortgage Note.—means an instrument, a transferable record, or a controlled record secured by a residential mortgage.

() NCUA.—means the National Credit Union Administration.

() Negotiable Instrument.—means a negotiable instrument as defined in UCC Article 3.

() Notice and Notify.—as used in subsections 10(e) and 19(b), have the meanings assigned in UCC Article 1.

() Obligation.—means a debt or other duty or liability of a person.

() OCC.—means the Office of the Comptroller of the Currency.

() Person.—means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

() Record.—means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, except for recordings of an oral communication.

() Recorder’s Office.—means the office of a person authorized under the laws of a State to maintain the official records of interests in real property in that State or a subdivision of the State.

() Registered Transfer.—means a change in the identity of the registrant in the repository system that is the effect of an instruction received by the repository operator. An instruction of a registrant to reflect a change of its legal name on the repository system is not a registered transfer.

() Registrant.—means, with respect to an electronic mortgage note, the person identified on the records of the repository system as the registrant of such electronic mortgage note.

() Regulator.—means the Federal Housing Finance Agency.

() Repository Operator.—means the entity [Alt 1: organized under] [Alt 2: licensed by] this Act to operate the repository system.

() Repository System.—means the electronic database and registered transfer service established by the repository operator.

() Residential.—means real property improved with not more than four dwelling units. The term includes:
(i) a detached or attached single-family unit;
(ii) a single-family manufactured-housing unit or a time share in a dwelling unit if either is treated as real property under law of the State where the property is located;
[(iii) real property on which construction of not more than four dwelling units has commenced;] and
[(iv)] a single-family unit in a common-interest community.

() RESPA.—means the Real Estate Settlement Procedures Act of 1975, 12 U.S.C. § 2601 et seq. (as amended [prior to the enactment of this Act]) and the regulations promulgated thereunder.

() RLN (Record Locator Number).—means the unique identifier assigned to a mortgage note submitted to the repository system.

() STATE.—means the District of Columbia, Puerto Rico, the Virgin Islands, and any other territory or insular possession subject to the jurisdiction of the United States.

() SYSTEM RULES.—means the rules the repository operator adopts concerning the operations, security, and rights or obligations of persons who may use the repository system in connection with its use.

() TRANSFERABLE RECORD.—means a transferable record as defined in 15 U.S.C. § 7021, except that no recording of an oral communication may be the basis of a transferable record.

() UCC.—means the version of the Uniform Commercial Code enacted in the relevant State and interpreted by its courts, including the State’s choice-of-law rules.

() The following terms are defined elsewhere in the Act:

() Appropriate federal banking agency is defined in subsection 5(a).

() Conversion, except as used in reference to the tort of conversion in subsection 9(c), is defined in subsection 8(c)(3).

() Discharge, except as used in subsection 9(b), is defined in section 11.

() Other financial supervisor and regulator is defined in subsection 15(c).

[ALT A] SECTION 4. REPOSITORY OPERATOR

(a) ORGANIZATION.—

(1) NAME.—The name of the repository operator is “National Mortgage Note Repository.”

(2) FEDERAL CHARTER.—The repository operator is a federally chartered, not for profit corporate instrumentality of the United States and shall not be subject to title 5 or 31 of the United States Code except: (i) subject to subparagraph (e)(2)(D) of this section and (ii) that the whistleblower protections in 5 USC § 2302(b)(8) shall apply. The repository operator shall come into existence when the regulator appoints the initial board of directors and promulgates the initial bylaws.
(3) **PERPETUAL EXISTENCE.** —The *repository operator* has perpetual existence until dissolved by act of Congress.

(b) **PURPOSES.—**The purposes of the *repository operator* are:

(1) to develop, maintain and operate the *repository system* contemplated in this Act;

(2) to establish standards and procedures for disposition of *residential mortgage notes* and related paper documents submitted to the *repository system*, including safekeeping, long-term storage, or destruction;

(3) to establish standards and procedures, consistent with privacy concerns, for making data held in the *repository system* available to stakeholders and to the public;

(4) to secure and protect data collected and maintained by the *repository system* against unauthorized access, alteration, use or disclosure; and

(5) to ensure that *repository system records* accurately reflect the records and instructions submitted to the *repository operator*.

(c) **POWERS.—**The *repository operator* shall have power:

(1) to adopt and use a corporate seal;

(2) to make contracts, incur liabilities, borrow money, and issue notes, bonds and other *obligations*;

(3) to purchase, receive, hold, and use real and personal property and other assets necessary for the conduct of its operations, provided that the *repository operator* shall not assert any property interest in an *obligation* evidenced by an *electronic mortgage note*;

(4) to sue and (subject to the provisions of this Act) be sued in any court of law or equity;

(5) to appoint by its board of directors such officers as it may determine and to define their duties and compensation;

(6) to prescribe by its board of directors bylaws consistent with this Act and other applicable law or regulation; and

(7) to exercise by its board of directors or duly authorized officers or employees all powers granted by this Act and such incidental powers as shall be necessary or appropriate to carry out its purposes.

(d) **ORGANIZATION; GOVERNANCE.—**

(1) **BOARD OF DIRECTORS.**—The board of directors is the governing body of the *repository operator*. The board of directors shall perform the duties usually appertaining to the office of directors of [not-for-profit corporations][designated financial market infrastructures] and all such duties as are prescribed by law.

(2) **INITIAL ORGANIZATION.**—Within [three] months of the date of enactment of this Act, the *regulator* shall promulgate bylaws for the *repository operator* and the *regulator* and the *CFPB* shall appoint directors subject to paragraph (3) of this subsection. The *regulator* shall appoint the initial seven directors and the *CFPB*
shall appoint two directors, and a quorum shall consist of five, including at least one CFPB director. Any director appointed by the regulator or the CFPB may be removed from the board of directors at the pleasure of the appointing agency. The bylaws may establish provisions consistent with the Act relating to the qualifications for directors, their terms of service, and such other matters with respect to directors as may be appropriate. The bylaws shall provide that subsequent directors be elected subject to paragraph (3) of this subsection.

(3) **Selection of Directors.**—There shall be nine directors who shall be elected or appointed as follows:

(A) two directors, neither of whom may be officers or employees of the CFPB, shall be appointed by the CFPB to represent the interests of borrowers and the public at large;

(B) at least one director and no more than two shall be a member of an association whose membership represents residential mortgage note originators;

(C) the remaining directors shall represent interests of registrants and gateways of different types and sizes, with due consideration to the need for directors who have expertise in electronic documentation and systems and information security (including cybersecurity), and to such other interests as are consistent with the purposes of this Act.

(4) **Bylaws.**—The bylaws, in conjunction with this statute, shall be the organizational documents of the repository operator. The bylaws shall specify the organizational law of a State to fill the gaps in this Act. The board of directors may at any time modify the bylaws of the repository operator, subject to the approval of the regulator.

(e) **Funding.**

(1) **Initial Funding.**—There is authorized to be appropriated $150,000,000.00 for the establishment of the repository operator.

(2) **Repayment of Initial Funding.**—The repository operator shall repay to the Treasury of the United States the amount of the initial funding provided in paragraph (1) of this subsection, plus interest, within the 10-year period beginning on the date that the repository system commences business.

(A) Interest shall be payable semiannually in arrears and shall accrue for each day from the time funds are disbursed until repaid at a per-annum rate equal to 100 basis points above the rate set forth for the first day of each semiannual interest period in Federal Reserve publication H.15(519) under “U.S. government securities—Treasury constant maturities—Nominal—10-year” or such comparable source as the regulator may designate.
(B) Principal may be repaid in whole or in part at any time during the 10-year period at the discretion of the repository operator. Repayments of principal shall be accompanied by accrued interest on the amount repaid.

(C) The regulator may extend the repayment term for up to five additional one-year periods.

(D) Until it has repaid the Treasury in full, with interest, the repository operator is a “mixed-ownership Government corporation” for purposes of 31 U.S.C. §§ 9101-06. After that, it no longer remains a “Government corporation” under 31 U.S.C. § 9101.

(3) ONGOING FUNDING.—

(A) COLLECTION OF FEES.—Except as prohibited by subsections 16(b)(1)(A), 16(b)(4), and 16(b)(5), the repository operator may establish and collect fees for the services provided by the repository system. Such fees may differentiate between classes or types of services and users of services.

(B) ESTABLISHMENT OF FEE SCHEDULE.—If the repository operator establishes fees, it shall establish such fees by system rule at a level sufficient to permit it to maintain the operations of the repository system, make payments pursuant to paragraph (2) of this subsection, pay its annual assessments to the regulator and establish and maintain levels of liquidity and capital required by the regulator.

(f) EXEMPTION FROM TAXATION.—The repository operator shall be exempt from all taxation imposed by the United States or any State, county, municipality, or local taxing authority, except taxes upon real estate.

(g) SUPERVISION.—The repository operator shall be subject to the exclusive supervision of the regulator, and shall not be subject to supervision by any other Federal department or agency [except the Financial Stability Oversight Council] or by any State.

(h) INSOLVENCY OF REPOSITORY OPERATOR.—

(1) Once it has opened for business, the repository operator may not be a debtor under title 11 of the United States Code and shall not be subject to the insolvency, reorganization, conservatorship, receivership, or other similar laws of any State.

(2) If the repository operator has opened for business and (i) cannot timely make the payments required by paragraph (2) of subsection (e) or (ii) if the regulator otherwise determines that the repository operator is insolvent, the regulator may operate the repository operator in conservatorship under such rules and procedures as the regulator may prescribe.

(3) No action at law affecting the repository operator (including any conservatorship described in paragraph (2) of this subsection) may affect any property rights in an obligation evidenced by an electronic mortgage note.
SECTION 4. REPOSITORY OPERATOR

(a) APPLICATION TO BECOME REPOSITORY OPERATOR.—

(1) REGULATIONS.—Within [three] months of the date of enactment of this Act, the regulator shall issue regulations governing the application process for obtaining the license to be the repository operator. The regulator may license only one person to become the repository operator.

(2) CONTENTS OF THE APPLICATION.—An application for licensing of the repository operator shall include:

(A) the applicant’s organizational documents;

(B) a detailed business plan for commencing the operations of the repository operator, including a budget;

(D) information on the operational resources of the applicant, including the expertise of individuals associated with the applicant, and the expertise of any other persons associated with the applicant, such as trade associations;

(E) identification of the proposed senior managers of the repository operator, and the relevant experience of such individuals; and

(F) any other information the regulator determines to be necessary to evaluate the likely success of the proposed repository operator.

(b) LICENSING CRITERIA.—

(1) LICENSE.—Not later than [the end of the 2-year period following the date of the enactment of this Act], the regulator shall issue a license for the repository operator to the applicant that the regulator determines, in the regulator’s sole discretion, has the managerial and operational resources to perform consistent with the purposes of this Act, especially the purposes described in subsection (c) of this section.

(2) LICENSING CRITERIA.—In making a determination under paragraph (1):

(A) the regulator shall consider (i) the competence, experience, and integrity of the applicant, the proposed senior managers of the applicant, and any other persons associated with the applicant, (ii) the operational resources and future prospects of the applicant, and (iii) the applicant’s material dependencies on service providers and the relationship between those service providers and the applicant;

(B) the regulator shall confirm that the applicant is:

(i) a cooperative, which membership shall be open to gateways, authorized transferors, and registrants; and

(ii) organized in a non-profit form; or

(iii) organized as a cooperative that distributes any profits only to the members of the cooperative in fair proportion to their usage of the repository system;
(C) the regulator shall confirm that the organizational documents of the applicant specify that, if the applicant obtains a license, amendment of the organizational documents will require the regulator’s permission; and

(D) the applicant shall demonstrate to the satisfaction of the regulator that its governance structure, including its organizational documents, will ensure adequate representation of all interested persons, including mortgage note originators, borrowers, registrants, authorized transferors, gateways, and investors in residential mortgage backed securities. The organizational documents must provide that the CFPB shall appoint individuals (not officers or employees of the CFPB) to represent borrowers and the public at large and such individuals will make up at least twenty percent of the governance structure.

(c) PURPOSES.—The purposes of the repository operator are:

(1) to develop, maintain and operate the repository system contemplated in this Act;
(2) to establish standards and procedures for disposition of instruments and paper documents submitted to the repository system, including safekeeping, long-term storage, or destruction;
(3) to establish standards and procedures, consistent with privacy concerns, for making data held in the repository system available to stakeholders and to the public;
(4) to secure and protect data collected and maintained by the repository system against unauthorized access, alteration, use or disclosure; and
(5) to ensure that repository system records accurately reflect the records and instructions submitted to the repository operator.

(d) CONSEQUENCES OF LICENSURE.—The following consequences attach to issuance of the repository operator license:

(1) the successful applicant becomes eligible for the funding described in subsection (e) of this section;
(2) once the successful applicant has accepted such funding, it shall be treated as if it were a “mixed-ownership Government corporation” for purposes of 31 U.S.C. §§ 9101-06, until it has repaid all such funding in full, with interest; and
(3) the successful applicant obtains the status of repository operator under this Act and assumes all rights, powers and duties of the repository operator.

(e) FUNDING.—

(1) INITIAL FUNDING.—There is authorized to be appropriated $150,000,000.00 for the establishment of the repository operator.

(2) REPAYMENT OF INITIAL FUNDING.—The repository operator shall repay to the Treasury of the United States the amount of the initial funding provided in paragraph (1) of this subsection, plus interest, within the 10-year period beginning on the date that the repository system commences business.
(A) Interest shall be payable semiannually in arrears and shall accrue for each day from the time funds are disbursed until repaid at a per-annum rate equal to 100 basis points above the rate set forth for the first day of each semiannual interest period in Federal Reserve publication H.15(519) under “U.S. government securities—Treasury constant maturities—Nominal—10-year” or such comparable source as the regulator may designate.

(B) Principal may be repaid in whole or in part at any time during the 10-year period at the discretion of the repository operator. Repayments of principal shall be accompanied by accrued interest on the amount repaid.

(C) The regulator may extend the repayment term for up to five additional one-year periods.

(3) ONGOING FUNDING.—

(A) COLLECTION OF FEES.—Except as prohibited by subsections 16(b)(1)(A), 16(b)(4), and 16(b)(5), the repository operator may establish and collect fees for the services provided by the repository system. Such fees may differentiate between classes or types of services and users of services.

(B) ESTABLISHMENT OF FEE SCHEDULE.—If the repository operator establishes fees, it shall establish such fees by system rule at a level sufficient to permit it to maintain the operations of the repository system, make payments pursuant to paragraph (2) of this subsection, pay its annual assessments to the regulator and establish and maintain levels of liquidity and capital required by the regulator.

(f) SUPERVISION. —The repository operator shall be subject to the exclusive supervision of the regulator, and shall not be subject to supervision by any other Federal department or agency [except the Financial Stability Oversight Council] or by any State.

(h) FAILURE OF REPOSITORY OPERATOR.—

(1) The regulator may terminate the license of the person acting as repository operator if:

(A) the repository operator has not opened for business within [2] years of obtaining the license to act as repository operator and the regulator determines in its discretion that:

(i) the person acting as repository operator has not made adequate progress in establishing the business operations of the repository system; or

(ii) the person acting as repository operator has engaged in waste of appropriated funds made available for establishment of the repository system;

(B) the repository operator cannot timely make the payments required by section 4(e)(2);
(C) the regulator otherwise determines that the repository operator is insolvent;
(D) the regulator determines that the repository operator has failed to comply with orders or directives of the regulator; or
(E) the repository operator commits a material act of malfeasance.

If the regulator terminates the license of the person acting as repository operator under subparagraphs (B)-(E) of this paragraph, it shall assume operational responsibility over the repository system unless and until another applicant receives a license. The person acting as repository operator shall cooperate with the regulator in the transition of duties and responsibilities concerning the repository system as the regulator or its designee shall reasonably require. All assets of the person acting as repository operator shall vest in the regulator, and the value of such assets shall offset the claim of the United States to repayment of any funds advanced by the Treasury.

(2) As long as the person who is licensed as the repository operator retains its license, it may not be a debtor under title 11 of the United States Code and shall not be subject to the insolvency, reorganization, conservatorship, receivership, or other similar laws of any State.

(3) No action at law affecting the repository operator may affect any property rights in an obligation evidenced by an electronic mortgage note.

SECTION 5. REGULATOR

(a) REGULATIONS.—The regulator shall issue regulations pursuant to the Administrative Procedure Act. In exercising this authority, the regulator shall consult with (i) the CFPB on matters that affect the rights and obligations of consumers, and (ii) any appropriate federal banking agency (as defined in 12 U.S.C. § 1813) on matters of concern to such agencies in the exercise of their supervisory responsibilities. In addition, before issuing regulations addressing data security, including cyber security, the regulator shall consult with those federal agencies with responsibility for the security of both private and public critical infrastructure. The regulator shall issue regulations:

(1) requiring the repository operator to have governance arrangements in place that, among other things:
   (A) promote the safety and efficiency of the repository system; and
   (B) support the stability of the broader financial system, other relevant public interest considerations such as fostering fair and efficient markets and providing consumer protections, and the legitimate interests of stakeholders.

(2) governing the safety and soundness of the operations of the repository system including capital requirements of the repository operator;
(3) establishing limitations, if any, on mortgage notes eligible to be submitted to the repository system;

(4) identifying records (if any) that may be submitted to the repository operator in addition to those expressly addressed in the Act;

(5) establishing qualification standards for gateways;

(6) establishing technical, procedural, and substantive data submission requirements for submission of mortgage notes and modifications into the repository system that advance the purposes of this Act;

(7) governing the repository system’s information security and system security programs, including such programs’ technical adequacy, scalability, and reliance on current technical standards;

(8) further defining the scope of the warranties established in this Act;

(9) in consultation with the American Law Institute and the Uniform Law Commission, addressing amendments to the UCC made by a State subsequent to the enactment of this Act;

[(10) concluding that one or more provisions of section 9 or 12 shall not apply in any State that adopts revisions to the UCC (i) in a form approved by the Uniform Law Commission and the American Law Institute and (ii) which the regulator deems to be substantively identical to the specific provisions in section 9 or 12 at issue];

(11) mandating that the repository operator implement appropriate resiliency plans to prevent the occurrence of a prolonged outage of the repository system and have appropriate contingency plans in the event of a prolonged outage of the repository system;

(12) addressing such other matters as it deems necessary or appropriate to carry out the purposes of this Act; and

(13) as otherwise expressly contemplated by this Act.

(b) Supervision Authority.—The regulator has the authority to supervise:

(1) the repository operator; and

(2) with respect solely to its role as a gateway, any gateway except a gateway that is (i) a recorder’s office or (ii) supervised by the Board of Governors, the FDIC, the NCUA, the OCC, or the CFPB,

as if the repository operator or the gateway were a “depository institution” and the regulator the appropriate federal banking agency, within the meaning of 12 U.S.C. § 1813.

(c) Annual Assessment.—

(1) The regulator shall establish and collect from the repository operator an annual assessment in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses (including administrative costs and expenses) of the regulator related to its oversight of the repository operator.
(2) The regulator [Alt 1: may] [Alt2: shall] also assess examination fees on other entities it supervises under paragraph (b)(2) of this section, solely to cover the reasonable costs and expenses (including administrative costs and expenses) of the regulator related to each such entity’s supervision.

(3) The funds received by the regulator from assessments under this subsection shall not be construed to be government or public funds or appropriated money.

(4) The regulator is not authorized under the Act to assess fees on consumers or consumer representatives. This paragraph does not prejudice any rights of the regulator to assess fees under other law.

(d) A person adversely affected by a final decision of the regulator may appeal such final decision to the United States Court of Appeals for the circuit in which the appellant is domiciled or to the United States Court of Appeals for the District of Columbia Circuit within 30 days after the earlier of the date of publication of such decision in the Federal Register or notice to such person by the regulator.

(e) For purposes of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the regulator is the “supervisory agency” of the repository operator.

SECTION 6. SYSTEM RULES

(a) ISSUANCE.—The system operator shall adopt system rules as required by this Act and may adopt system rules as it deems necessary to effect the purposes of this Act.

(b) EFFECTIVENESS.—A system rule is not effective unless it is adopted according to the procedures of this section.

(c) APPROVAL PROCESS FOR PROPOSED SYSTEM RULES.—

(1) FILING; NOTICE AND COMMENT PROCESS.—The repository operator may file a proposed system rule with the regulator, accompanied by a concise general statement of the basis and purpose of such proposed system rule. The regulator shall promptly publish such proposal and general statement in the Federal Register. The regulator shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed system rule.

(2) REVIEW OF PROPOSED SYSTEM RULES.—Not later than 180 days after the date of publication of a proposed system rule under paragraph (1) of this subsection, the regulator shall:

(A) by public order in accordance with the Administrative Procedures Act, approve or disapprove the proposed system rule; or

(B) publish in the Federal Register a notice of its intent to hold a hearing in accordance with procedures to be prescribed by regulation and the timeframe after which, in accordance with the Administrative Procedures Act, it will by public order approve or disapprove the proposed system rule.

(3) STANDARDS FOR APPROVAL AND DISAPPROVAL.—
(A) The regulator shall approve a proposed system rule if it finds that such proposed system rule is consistent with the requirements and purposes of this Act.

(B) The regulator shall disapprove a proposed system rule if it does not make a finding described in subparagraph (A).

(4) Consultation.—The regulator shall consult with and consider the CFPB’s views before approving or disapproving a proposed system rule.

(d) Exigencies.—Notwithstanding any other provision of this section, the regulator may permit a proposed system rule to have immediate effect if it appears to the regulator that an emergency exists requiring expeditious or summary action. Such system rule shall be promptly published in the Federal Register along with the regulator’s reasons for expeditious action. Any system rule approved under this provision shall be published as an interim final rule, unless it is intended to expire with the emergency.

SECTION 7. GATEWAYS

(a) The role of a gateway.—The repository operator shall only change the records of the repository system in response to communications transmitted to the repository operator through a gateway.

(b) Requirements for gateways.—The repository operator shall establish requirements for gateways by means of system rules consistent with the qualification standards in the regulations issued pursuant to subsection 5(a)(5) of this Act. Such requirements must include, among other things, data quality requirements, information security requirements and financial responsibility requirements.

(c) Role of the repository operator.—

(1) Any person, including a recorder’s office, may request that the repository operator treat it as a gateway. The repository operator shall grant this request if it finds that the requestor satisfies the regulations and the repository operator’s qualification requirements.

(2) From time to time, but not less than biennially, the repository operator shall review whether a person may continue to act as a gateway. If such person does not meet the regulatory and the repository operator’s qualification requirements, the repository operator shall cease to treat such person as a gateway.

(d) Adverse decisions.—

(1) A person may appeal any adverse decision of the repository operator concerning gateway status to the regulator. The regulator shall review the repository operator’s decision for conformance with this Act, regulations issued pursuant to this Act, and system rules. The regulator may not grant any preliminary relief during the pendency of this review.

(2) The repository operator is immune from any suit based on its refusal to authorize a person to act as a gateway or its decision to revoke such authorization.
(e) The repository operator shall maintain a public list of gateways.

SECTION 8. SUBMISSION OF MORTGAGE NOTES

(a) Use of Repository System.—No person shall be required, by virtue of this Act, to submit a mortgage note to the repository system. A person eligible to submit a mortgage note to the repository system under subsection (b) shall only do so by using a gateway. A gateway does not become the person submitting a mortgage note by virtue of its role in the submission process.

(b) Persons Eligible to Submit.—A person is eligible to submit a mortgage note to the repository system if such person is:

1. the holder, or other person entitled to enforce the instrument, under Article 3 of the UCC if the mortgage note is a negotiable instrument;
2. the person with control of the transferable record if the mortgage note is a transferable record; or
3. the person with the power to enforce the mortgage note as determined by State law other than Article 3 of the UCC if the mortgage note is not a negotiable instrument or transferable record.

(c) Creation of Electronic Mortgage Notes.—

1. Eligible Mortgage Notes.—The repository operator may accept the submission of a mortgage note if:
   
   A. an RLN is associated with the mortgage note and the related mortgage;
   B. the related mortgage with an RLN has been submitted for recording in the appropriate recorder’s office; and
   C. the mortgage note is being submitted to the repository system by a person who is (i) eligible to submit the mortgage note under subsection (b) and (ii) is also the mortgagee of record (or has submitted records to the appropriate recorder’s office that will result in such person becoming the mortgagee of record). A person who may submit a mortgage note under subsection (b) is deemed the mortgagee of record for purposes of this subparagraph even if the mortgage identifies another person as holding the mortgage in the capacity of nominee.

2. Data Requirements.—A person eligible to submit a mortgage note must comply with any relevant system rules or regulations concerning the method to be used to submit data, data quality standards, required submission format, and required data. At a minimum, the person eligible to submit a mortgage note must submit:
   
   A. the mortgage note, including any allonges or modifications to the note that were made prior to submission;
(B) [if not evident on the mortgage note, a record of each transfer (or for transferable records or controlled records, change of control) of the mortgage note prior to submission;]

(C) a copy of the entire mortgage associated with the mortgage note, and if not evident on the face of the mortgage, record(s) demonstrating:
   (i) that the mortgage is recorded (or has been submitted for recording),
   (ii) that an RLN has been associated with the mortgage, and
   (iii) the identity of the mortgagor of record;

(D) the identity of any servicer(s) (including any master servicers or subservicers) of the obligation evidenced by the mortgage note and, if a servicer is also the submitter, the identity of the person on whose behalf the servicer is servicing;

(E) an indication as to whether a servicer has authority to modify the obligation evidenced by the mortgage note, and a general statement as to the basis and scope of that authority;

(F) if the person submitting the mortgage note does not have a beneficial interest in the mortgage note, the identity of the person with such beneficial interest and the capacity of the person submitting the mortgage note (e.g., trustee, agent, as servicer for, etc.); and

(G) contact information of the borrower as known to the submitter.

(3) **CONVERSION TO ELECTRONIC MORTGAGE NOTE.**—Upon submission of a mortgage note and all required data in compliance with this section, the repository operator shall:

   (A) create a record in the repository system establishing the electronic mortgage note in substitution for the submitted mortgage note;

   (B) identify the person submitting the mortgage note as the initial registrant of the electronic mortgage note in the repository system.

Together the acts described in subparagraphs (A) and (B) shall constitute conversion of the mortgage note into an electronic mortgage note in the repository system. After conversion of the mortgage note in the repository system, a person may become a registrant of the electronic mortgage note only if the repository system identifies such person as the registrant.

(4) **SUBMISSION NOT CONFORMING TO THE REQUIREMENTS FOR SUBMISSION.**—

   (A) Even if the submission of the mortgage note was inconsistent with some or all of the requirements of paragraphs (1) and (2) of this subsection 8(c):

      (i) a mortgage note submitted to the repository system is converted to an electronic mortgage note;

      (ii) to the extent that the electronic mortgage note is valid and enforceable, the registrant is the person entitled to enforce.
(B) The repository operator is liable for accepting a mortgage note that was submitted inconsistently with the requirements of paragraphs (1) and (2) of this subsection 8(c) only if it knew about the inconsistencies at the time it converted the mortgage note to an electronic mortgage note. Any such liability is limited by subsection 19(c) of this Act.

(d) Gateway’s Warranties Relating to Mortgage Note Submissions.—

(1) If a record purporting to be a mortgage note is submitted to the repository operator within [ten] business days of the date the mortgage note is executed and the person submitting the mortgage note is the named obligee, the gateway used to submit the mortgage note warrants to any person damaged by a breach of the warranty that:
   (A) the submission is of a mortgage note as defined in this Act;
   (B) the person submitting the mortgage note to the repository operator qualifies as an eligible submitter under subsection (b) of this section;
   (C) the mortgage note is an eligible mortgage note under subsection (c)(1) of this section;
   (D) all data transmitted by the gateway to the repository system are an accurate reflection of the data received by the gateway; and
   (E) if the mortgage note is:
      (I) a negotiable instrument or transferable record, the gateway has not previously submitted another negotiable instrument or transferable record documenting the same debt as the one being deposited; or
      (II) neither a negotiable instrument nor a transferable record, the gateway has not previously submitted a copy of the mortgage note.

(2) With respect to any other mortgage notes submitted to the repository operator, the gateway used to submit that mortgage note makes the warranties of paragraph (1) of this subsection and further warrants that, as of the time of submission:
   (A) there has been no alteration to the mortgage note;
   (B) the signature or other authentication of the borrower on the mortgage note was authorized;
   (C) there is no adverse claim to the mortgage note; and
   (D) the submission of the mortgage note includes any allonges or modifications that were made prior to submission.

For mortgage notes that were executed before the date on which the repository system first begins to accept submissions, each warranty of this paragraph is made only to borrowers damaged by the breach of that warranty. For all other mortgage notes within the scope of this paragraph (2), each warranty of this paragraph runs to any person damaged by a breach of that warranty.

(3) Damages.—A person found to have been damaged by a breach of one of the warranties in paragraphs (1) and (2) is entitled solely to the direct economic losses
caused by the breach, except that a *borrower* may also recover reasonable attorney’s fees. A *person* remains liable for a warranty given under this subsection even after it ceases to be authorized to act as a *gateway*. The warranties provided in this subsection are the only warranties provided by a *gateway* under this Act but do not replace, and are in addition to, any other remedies available to *borrowers* or other *persons* under this Act or other law.

(e) *Repository Operator’s Warranty.*—With respect to any *electronic mortgage note*, the *repository operator* warrants that all data in the *repository system* are an accurate reflection of the data received through the *gateway*.

**SECTION 9. LEGAL EFFECT OF CONVERSION**

(a) Effect of Conversion.——

(1) *Conversion of a Mortgage Note.* —

(A) The *obligation* evidenced by an *electronic mortgage note* has the same effect and validity as the *obligation* evidenced by the *mortgage note* prior to *conversion* to an *electronic mortgage note*. Without limiting the foregoing, the *conversion* of a *mortgage note* does not limit any right that a *borrower* may have to assert a defense of fraud, forgery, or alteration.

(B) The *mortgage note* ceases to have any effect or validity upon *conversion*. Any claim to the *mortgage note* becomes an *adverse claim* to the *electronic mortgage note*.

(2) Submission of a Record Other Than a Mortgage Note.—This paragraph applies to any *record* that evidences an *obligation* other than a *mortgage note*. If such record is submitted to the *repository operator*, the submission does not result in the creation of an *electronic mortgage note* by the *repository operator* or alter the legal nature of the obligation evidenced by such record.

(3) Reconversion.——Once a *mortgage note* is converted to an *electronic mortgage note*, it may not be reconverted to a *mortgage note* or otherwise withdrawn from the *repository system* unless so authorized by this paragraph. The *regulator* may promulgate regulations for reconverting *electronic mortgage notes* to *mortgage notes* or otherwise withdrawing them from the *repository system* solely in connection with assuming the operations of the *repository system* as conservator in accordance with section 4 and only if necessary to support the safe and sound functioning of the *residential mortgage market*.

(b) Application of UCC Article 3.—

(1) Subject to paragraph (2) of this subsection and subsections 12(b), 18(a)(1), and 19(a)(2):

(A) an *electronic mortgage note* that was created based on the submission of:

(i) an *instrument* that at the time of submission was a *negotiable instrument*; or
(ii) a transferable record that at the time of submission was in a control system shall be treated as a negotiable instrument for all purposes;

(B) an electronic mortgage note that was created based on the submission of:
   (i) an instrument but not a negotiable instrument; or
   (ii) a controlled record shall be treated as a negotiable instrument for all purposes, except there can be no holder in due course [and additional exceptions to be suggested by ULC] of such an electronic mortgage note; and

(C) the person identified by the repository system as the registrant of an electronic mortgage note has the rights that a holder would have if the electronic mortgage note were a negotiable instrument, except as otherwise provided by subparagraph (B) of this paragraph.

(2) POST-CONVERSION TREATMENT OF THE INSTRUMENT.—Once an instrument is converted to an electronic mortgage note pursuant to this Act:
   (A) it shall not be treated as destroyed or as discharged for purposes of Article 3 of the UCC if the instrument’s destruction occurred during or after submission to the repository operator and such destruction was required or permitted by system rules or regulations; and
   (B) the records of the repository system shall satisfy any post conversion writing requirement.

(3) PAYMENTS BY BORROWER AFTER CONVERSION.—
   (A) Any payment made by or on behalf of a borrower as directed by a registrant with respect to an electronic mortgage note of the borrower shall discharge the borrower’s obligation to have made that payment to the extent of the payment, unless payment is made with knowledge by the borrower that payment is prohibited by injunction or similar process of a court of competent jurisdiction.
   (B) Subject to subparagraph (A), an electronic mortgage note is paid to the extent payment is made by or on behalf of the borrower as directed by a former registrant only if at the time of the payment the borrower has not received adequate notification of a registered transfer of the electronic mortgage note to a new registrant.

(c) APPLICATION OF THE LAW OF CHATTELS.—
   (1) An electronic mortgage note is not subject to the law governing tangible movable property. The only relief available to an adverse claimant from the repository operator is that of section 20, and the electronic mortgage note is not subject to:
      (A) the remedies of trover, detinue, replevin, or other common law remedies regarding chattels; or
      (B) the law of bailments.
(2) A person (other than the relevant gateway or the repository operator) who wrongfully prevents the registrant or authorized transferor from exercising its rights in the electronic mortgage note is subject to a liability similar to that for the torts of conversion or trespass to chattels.

(3) Notwithstanding the foregoing, a mortgage note is subject to the law governing tangible movable property and this Act does not limit any remedies available with respect to a mortgage note, except, if a mortgage note is subsequently converted into an electronic mortgage note, the remedies shall not include recovery of the relevant mortgage note.

(d) **Continuous Possession.**—

(1) The person identified by the repository system as the initial registrant shall be treated for all purposes of law as having had continuous possession or control of the mortgage note throughout the submission and conversion process.

(2) The person identified by the repository system as the registrant shall be treated for all purposes of law to have had continuous possession of the electronic mortgage note associated by the repository system with such registrant from the time the registrant is so identified until another person becomes the registrant of such electronic mortgage note.

(e) An electronic mortgage note is:

(1) not a security for purposes of:
   (A) federal or State securities regulatory laws; or
   (B) UCC § 8-102(a)(15)(iii)(A);

(2) located in the District of Columbia [for all purposes][for purposes of attachment, perfection, or priority of a security interest under Article 9 of the Uniform Commercial Code]; and

(3) not subject to State abandoned property law.

**SECTION 10. MODIFICATIONS**

(a) The regulator shall issue regulations for the submission to the repository system of modifications of the obligation evidenced by an electronic mortgage note. Such regulations shall conform as closely as possible to the regulations governing submission of the mortgage note, including with respect to appropriate warranties of the gateway and the repository operator. The regulations shall:

(1) require that a modification be submitted through a gateway by a specified time;

(2) require the registrant to pay a fine to the repository operator for each business day of delay in submitting the modification;

(3) impose liability on a registrant for any harm to the borrower caused by a delay in submission of the modification.

(b) Any indemnity or other agreement requiring a borrower to pay fees or other amounts to a registrant for the purposes of the registrant recovering fines paid by it to the repository
operator shall be unenforceable. If a registrant is found to have charged fees or other amounts under an indemnity or other agreement that is unenforceable pursuant to this subsection, the borrower shall be entitled to recover from the registrant (i) the greater of the amount that it paid and [$2,000] and (ii) reasonable attorneys’ fees.

(c) The registrant may submit any other record that identifies changes to: (i) the identities or names of the parties to the obligation evidenced by the electronic mortgage note, (ii) title to the property securing the obligation evidenced by the electronic mortgage note, or (iii) the mortgage. The repository operator shall associate such additional records with the electronic mortgage note to which they relate.

(d) The submission of, or failure to submit, any records under subsections (a) through (c) of this section shall have no effect on whether the record is valid and enforceable, with the validity and enforceability to be determined under other law.

(e) WARRANTIES RELATING TO MODIFICATION.—

(1) In any registered transfer, the transferring registrant warrants that it has submitted to the repository system any modification to the obligation evidenced by the electronic mortgage note to which it is a party and any modification of which it has notice. This warranty runs to the borrower and all proximate and remote transferees of the electronic mortgage note.

(2) In any judicial or non-judicial enforcement proceeding, the enforcing registrant warrants to the borrower that, prior to the initiation of the enforcement proceeding, it has submitted to the repository system any modification to the obligation evidenced by the electronic mortgage note to which it is a party and any modification of which it has notice.

SECTION 11. DISCHARGE

(a) REGULATIONS.— The regulator shall issue regulations:

(1) requiring that the registrant provide notice of discharge of a borrower’s obligation or discharge of an obligation evidenced by an electronic mortgage note to the repository system;

(2) establishing a process by which a borrower may provide notice to the repository operator of the borrower’s belief that its obligation or the obligation evidenced by the electronic mortgage note has been discharged and request that the registrant or, if applicable, the court issuing a court order discharging the obligation confirm such discharge to the repository operator;

(3) providing for an appropriate remedy for the registrant’s failure to provide notice of a discharge known to such registrant; and

(4) requiring the repository operator to update the repository system to reflect any discharge of a borrower’s obligation and any discharge of an obligation evidenced by an electronic mortgage note.
The notice requirement in this section does not replace: (i) any requirement under other law to deliver or record a satisfaction of mortgage nor (ii) any associated penalties for failure to comply with such requirement.

(b) Once the records of the repository system reflect that an obligation evidenced by an electronic mortgage note has been discharged, such electronic mortgage note shall cease to be transferrable.

(c) Except to the extent that the regulator mandates a different retention period or as otherwise required by law, the repository operator shall destroy all records relating to an electronic mortgage note [30] years after such electronic mortgage note (i) is discharged as to all borrowers or (ii) has matured and no notice of discharge or other instructions have been received by the repository system.

(d) “Discharge” refers to any act that terminates the duties of a person who is identified as a borrower under the obligation evidenced by the electronic mortgage note, including performance, satisfaction, strict foreclosure, bankruptcy discharge, agreement (e.g., deed in lieu), or court order. Full payment does not constitute discharge if the registrant or a person acting for the registrant has an ongoing duty to make advances under a line of credit.

SECTION 12. REGISTERED TRANSFERS AND SECURITY INTERESTS

(a) Registered Transfers.—

(1) Registered Transfer Process.—The repository operator is authorized to change the identity of the registrant upon (i) its receipt of an instruction from the registrant or an authorized transferor directing the repository operator to make a registered transfer or (ii) in response to a court order.

(2) Ineffective Transfers.—

(A) Except as provided in subparagraph (C), a registrant or authorized transferor may not transfer an electronic mortgage note outside the repository system.

(B) If a registrant attempts to make a registered transfer of less than the entire obligation evidenced by the electronic mortgage note on the repository system, the repository operator shall not effect the registered transfer.

(C) A registrant may assign its rights to payments outside of the repository system, either partially or in whole, but the assignment has no effect on the rights and obligations of the borrower, a subsequent registrant of the electronic mortgage note who takes without knowledge of the assignment, or the repository operator.

(3) Subject to paragraph (4), a registered transfer is deemed to be accompanied by an indorsement by the registrant or the authorized transferor, as applicable, of the obligation evidenced by the electronic mortgage note in the name of the registrant with the transfer warranties set forth in UCC Article 3.
(4) A registrant or authorized transferor may instruct the repository operator that the obligation should be accompanied by an indorsement other than the type described in paragraph (3) so long as such instruction comports with system rules. The repository operator shall enter the instruction in the repository system in a manner that permits the borrower and all future registrants to view the nature of the indorsement.

(5) Any act of the repository operator that changes the identity of the registrant conveys to the new registrant of the electronic mortgage note the transferor’s right to enforce the associated mortgage or, in the case of a mortgage that takes the form of a deed of trust, the transferor’s status as beneficiary of the deed of trust.

(b) UCC Article 9 Security Interests.—

(1) The act of submitting a mortgage note to the repository operator and the conversion of such mortgage note by the repository operator does not affect the attachment, perfection, or priority of a security interest granted in the mortgage note that attached before submission and conversion. [For purpose of this paragraph, the location of a mortgage note is determined by its location immediately before submission.]

(2) For purposes of UCC Article 9 an electronic mortgage note is reasonably identified in a security agreement or financing statement if it is described or indicated in the security agreement or financing statement as:

(A) an electronic mortgage note; or

(B) a specific type of collateral defined in the UCC that corresponds to the mortgage note that was converted to an electronic mortgage note by operation of section 8.

Any description or indication of a mortgage note that was sufficient before conversion remains sufficient upon and after conversion. This paragraph supplements the rules of section 9-108 of the UCC and does not prevent satisfaction of section 9-108 of the UCC under the provisions of that section.

(3) This Act does not preclude the creation of a security interest in an electronic mortgage note under Article 9 of the UCC. A secured party, other than the registrant or an authorized transferor, may enforce its security interest only as an adverse claim. A secured party who is not the registrant but is an authorized transferor may exercise its registered transfer power and become the registrant to enforce its security interest.

SECTION 13. AUTHORIZED TRANSFERORS

(a) An authorized transferor may effect a registered transfer of the electronic mortgage note to itself or any other person.
(b) A person becomes an authorized transferor of an electronic mortgage note when the repository operator creates a record of the person’s status as an authorized transferor on the repository system in response to an instruction from the registrant.

(c) There can be only one authorized transferor associated by the repository operator with an electronic mortgage note at any given time.

(d) A person ceases to be an authorized transferor of an electronic mortgage note when:

1. such electronic mortgage note has been subject to a registered transfer by the registrant;
2. the repository operator revokes the person’s status as an authorized transferor in response to an instruction from the authorized transferor or from the registrant, unless the instruction originally conferring authorized transferor status provides that the status is irrevocable by the registrant; or
3. the electronic mortgage note has been marked as discharged by the repository operator in accordance with section 11.

(e) Other Powers.—

1. Notwithstanding the existence of an authorized transferor, the registrant of an electronic mortgage note retains its right to make a registered transfer and enforce the electronic mortgage note (and associated mortgage), unless the registrant instructs the repository operator that it has waived its rights, in which case the repository operator:
   (A) shall create a record on the repository system of the extent of the waiver; and
   (B) if the right to make a registered transfer is waived, shall not act on a registered transfer instruction received from the registrant.

A waiver under this subsection 13(e)(1) is irrevocable by the registrant, but automatically terminates if there is no longer an authorized transferor.

2. Notwithstanding the existence of an authorized transferor, the registrant retains all of the duties of a registrant established under this Act. An authorized transferor does not have any of the duties of a registrant.

3. Nothing in this section gives the authorized transferor any rights in the electronic mortgage note other than the power to make a registered transfer.

(f) Possession.—Notwithstanding subsection 9(d), if a registrant waives its right to make a registered transfer in accordance with subsection 13(e)(1), the authorized transferor (and not the registrant) shall be deemed to be in possession of the electronic mortgage note for purposes of UCC Article 9.

SECTION 14. MORTGAGES ASSOCIATED WITH DEPOSITED MORTGAGE NOTES

(a) A person shall only submit a document containing an RLN for recording in a recorder’s office if the named mortgagee has submitted (or, promptly after the document is
submitted for recording with the recorder’s office, will submit) the related mortgage note to the repository system.

(b) Any requirement under State law that an assignment of a mortgage from one registrant to another be recorded is satisfied by the creation by the repository operator of a record in the repository system reflecting a change in the identity of the registrant of an electronic mortgage note that is secured by the recorded mortgage.

(c) Notwithstanding contrary State law, the registrant of an electronic mortgage note is deemed the mortgagee of record for all purposes, including for release of the mortgage. Any law that requires notice be given to a person identified in the recorder’s office as mortgagee is satisfied by giving notice to the registrant of the related electronic mortgage note.

(d) Submission of a mortgage to the repository system does not have the legal effect of recording the mortgage or establishing or affecting its validity or priority. Notice of discharge of an electronic mortgage note provided to the repository system under section 11 does not have the legal effect of delivering or recording a satisfaction of mortgage.

SECTION 15. SUPERVISORY INFORMATION SHARING

(a) Upon request, the regulator may share information obtained through the exercise of its supervisory or regulatory authority under this Act with other financial supervisors and regulators to the extent the requested information is relevant to the other financial supervisor’s or regulator’s exercise of its authority.

(b) Upon request, other financial supervisors and regulators may share information obtained through the exercise of their supervisory or regulatory authority with the regulator if the information concerns a gateway and is relevant to the requirements and standards for certification.

(c) For purposes of this section, “other financial supervisors and regulators” are:

(1) The Board of Governors, the CFPB, the Commodity Futures Trading Commission, the FDIC, the Federal Trade Commission, the NCUA, the OCC, and the Securities and Exchange Commission; and

(2) State banking, mortgage broker, mortgage lender, and insurance regulators.

SECTION 16. RECORDS, ACCESS RIGHTS, AND DATA SECURITY

(a) Creation and Maintenance of Records.—The regulator shall issue regulations directing the repository operator to:

(1) promptly and accurately record and maintain records of electronic mortgage notes, registered transfers, modifications, and other instructions or data required by this Act, regulations, or system rules and submitted to the repository system;

(2) accurately capture the optical information of any paper document that is submitted to the repository system in accordance with technical standards prescribed by system rules or regulation; and
(3) establish a process for identifying and correcting incorrect information submitted to or maintained by the repository system.

(b) ACCESS RIGHTS.—

(1) The regulator shall issue regulations governing access to information in the repository system. The regulations shall take into account the specific needs of borrowers, registrants, gateways, courts, title searchers, persons with valid subpoenas, scholars, governmental entities, the general public, potential purchasers, and others identified by the regulator as needing access. The regulations shall:

(A) subject to security procedures to verify the identity of a borrower or a representative of the borrower seeking to access information from the repository system, provide each borrower or each person identified by the borrower as its representative access to all information concerning an electronic mortgage note on which such borrower is obligated (i) promptly after the repository operator received a request for the information in accordance with relevant system rules, (ii) without cost to the borrower or any person the borrower identifies representative, and (iii) in an accessible format;

(B) require the repository operator to establish a process for a borrower to provide contact information to the repository operator;

(C) allow a registrant to access all information concerning the electronic mortgage notes for which it is the registrant;

(D) provide access to all records relating to an electronic mortgage note that is the subject of an adjudication to the court in which such action is pending;

(E) protect the privacy interests of the borrower; and

(F) protect the confidentiality of all [personally identifiable] data that are not otherwise publicly available.

(2) The registrant may instruct the repository operator that another person is authorized to access the information concerning an electronic mortgage note. After it receives the instruction, the repository operator may grant access to such authorized person. The instruction constitutes a warranty by the registrant to the borrower that the authorized person will keep the information confidential and not use it for any marketing purpose. This warranty expires if the authorized person becomes the registrant.

(3) Subject to paragraph (1) of this subsection, the repository operator may establish system rules concerning the time and manner in which information requests may be made and responded to, procedures for obtaining certified records from the repository system, and any fees associated with requests for information or certified records.
(4) The repository operator shall offer each recorder’s office free access to the records of the repository system that reflect the identity of current and prior registrants, and any indication that the obligation to the registrant has been discharged. Such access shall be limited to records relating to electronic mortgage notes secured by property in the recorder’s office’s jurisdiction.

(5) The repository operator shall offer each title company free access to the records of the repository system that reflect the identity of current and prior registrants.

(c) DATA SECURITY.—The repository operator shall maintain an information security program designed to protect the security and confidentiality of information in the repository system, to protect against any anticipated threats or hazards to the security or integrity of the information, and to protect against unauthorized access to the information. In supervising the repository operator and its activities, the regulator shall follow guidance issued by the Federal Financial Institutions Examination Council on information security programs, including cyber security and critical dependencies.

SECTION 17. POST-SUBMISSION INFORMATION

(a) NOTICE BY REPOSITORY OPERATOR.—

(1) The repository operator shall send a notice to the borrower:

(A) when it converts a mortgage note to an electronic mortgage note, stating the fact of conversion; and

(B) whenever there is a change to the repository system records involving an electronic mortgage note for which the individual is a borrower.

The notice may disclose only that there has been a change to the repository system records that the borrower can see by accessing the repository system. The form of the notice shall be prescribed by regulation. In developing the regulation, the regulator shall develop the notice for clarity and consumer comprehension, and target the notice to a reading level no higher than eighth grade.

(2) If the borrower has identified itself to the repository operator in accordance with system rules, the repository operator shall send the notice required in paragraph (1) to the borrower as provided in the manner specified in the borrower’s identification to the repository operator. If the borrower has not identified itself to the repository operator in accordance with system rules, the repository operator shall send the notice required in paragraph (a)(1) to the borrower through regular mail at an address provided by the registrant.

(3) The repository operator may not impose a fee or other charge on the borrower for the notices.

(b) NOTICE BY REGISTRANT.—

(1) When disclosure to a borrower is required under RESPA or 15 USC § 1641(g) with respect to an obligation evidenced by a mortgage note, the registrant shall also cause the disclosure to be provided to the repository operator; and
(2) To the extent known by the registrant or any master servicer or sub-servicer of the registrant, such registrant must provide the following information to the repository operator as such information changes from time to time:
(A) contact information of the borrower obtained after conversion of the mortgage note; and
(B) the identity and contact information of any successors to the borrower.

SECTION 18. PRESENTMENT AND EVIDENCE; AGENCY
(a) PRESENTMENT AND EVIDENCE.—
(1) In the case of electronic mortgage notes and related records:
(A) any statute, regulation, other rule of law, or legal process that requires that an original or a copy of any documentation or other information that has been submitted to or created by the repository system be presented, produced, exhibited, provided, available, or retained for any purpose is satisfied by the related record of the repository system that is certified by the repository operator;
(B) a record of the repository system certified by the repository operator that identifies the current registrant of an electronic mortgage note serves as irrebuttable proof of the identity of the person with such status on the repository system, but the validity of the content of all other certified records of the repository system is determined by other law;
(C) all records of the repository system that are certified by the repository operator shall be self-authenticating; and
(D) the regulator shall issue regulations governing certification by the repository operator of records of the repository system.
(2) Notwithstanding subparagraph (a)(1)(C) of this section, any record that is described in subsection 9(a)(2) or is submitted in connection with such a record may be offered as evidence with whatever admissibility and weight the court may decide to give it.
(b) AGENCY.—The extent to which a person may act through an agent or other representative is determined by other law, except that a gateway may decline to deal with an agent of a person.

SECTION 19. REPOSITORY OPERATOR’S RESPONSIBILITY FOR FRAUD AND ERROR; REPOSITORY OPERATOR’S LIABILITY
(a) MULTIPLE SUBMISSIONS OF THE SAME MORTGAGE NOTE.—
(1) If the repository operator believes that a mortgage note was submitted more than once, it shall notify all putative registrants and the borrower and shall not effect any registered transfer of such electronic mortgage notes until either:
(A) All putative registrants identified agree as to the identity of the sole registrant with respect to the mortgage note; or

(B) A court order resolves the identity of the true registrant or determines that the relevant mortgage note was submitted only once and that any supposed duplicate submissions of that mortgage note were submissions of unique mortgage notes.

(2) Multiple originals of the same mortgage note are subject to paragraph (1) of this subsection, even if some or all of them take the form of a negotiable instrument or transferable record.

(b) Repository Errors.—This section does not apply to errors made by a gateway or a gateway’s customer which are accurately reproduced by the repository operator.

(1) If the repository operator knows or reasonably believes that it erroneously identified a registrant or erroneously identified two different persons as the registrant of the same electronic mortgage note, it shall correct the error.

(2) If an erroneous registrant causes a registered transfer of the electronic mortgage note before the repository operator corrects an error of the type described in paragraph (1), then upon correcting the error as required by paragraph (1), the repository operator shall:

(A) compensate the person losing registrant status if that person is a holder in due course and acted in good faith in acquiring the electronic mortgage note for value; and

(B) be subrogated to the rights of the holder in due course to the extent the repository operator has compensated a person pursuant to subparagraph (A).

(3) The repository operator shall promptly notify any persons that its records indicate could be affected by operation of paragraph (1) or (2) of this subsection.

(c) Liability.—

(1) The repository operator shall be liable to registrants, gateways, adverse claimants, and authorized transferors only for economic losses caused directly by the failure of the repository operator to comply with this Act, regulations issued pursuant to this Act, or system rules.

(2) In connection with its role as repository operator, the repository operator shall not be liable to any person for consequential or punitive damages[, unless otherwise provided in the regulations] .

(3) The repository operator shall not be liable to any person because of a force majeure event, if the repository operator exercises the diligence the circumstances require. Any registrant or other person that cannot carry out a legal obligation due to the effect of the force majeure event on the repository operator or repository system may delay acting until the force majeure event no longer affects the repository operator or repository system.
(4) The repository operator’s acts pursuant to regulations or its system rules are immune from antitrust claims.

SECTION 20. ADVERSE CLAIMS
(a) Notice to the repository operator of an adverse claim against an obligation evidenced by an electronic mortgage note is not effective and the repository operator shall not recognize the adverse claimant unless said adverse claimant obtains a restraining order, injunction or other appropriate court order effective against the repository operator.
(b) For purposes of this section, a court order is effective against the repository operator if issued by:
   (1) a federal court, State court of general jurisdiction, or State court with special jurisdiction over real estate with personal jurisdiction over the registrant associated with the electronic mortgage note at issue in the adverse claim; or
   (2) a court with personal jurisdiction over the repository operator, if no federal court or State court of general jurisdiction or special jurisdiction has personal jurisdiction over the registrant.
(c) The repository operator shall notify the registrant promptly of any effective notice of adverse claim under subsection (a).
(d) The only relief for an adverse claim against the repository operator shall be injunctive, ordering the repository operator either not to effect a registered transfer during the pendency of the action or to effect a registered transfer to the adverse claimant at the conclusion of the action.

SECTION 21. PREEMPTION AND CONSTRUCTION
(a) Rule of Construction.—This Act may not be construed as annulling, altering, affecting, or exempting any person subject to the provisions of this Act from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that a provision of law is inconsistent with the provisions of this title, and then only to the extent of the inconsistency. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the regulator on its own motion or in response to a nonfrivolous petition initiated by any interested person.
(b) Construction. —Except as expressly provided in the Act, this Act does not address the rights of borrowers, and obligations of persons to borrowers, including with respect to:
   (1) recovery of monetary damages, whether under statute or other law, resulting from foreclosure-related conduct, including any misrepresentations about authority to foreclose of any person;
   (2) requirements for review of loss mitigation options, including required mediation and conferences;
(3) borrower claims under State and other federal laws arising from the misconduct of (i) persons who submit mortgage notes to the repository operator, (ii) gateways or (iii) registrants;

(4) notice requirements; or

(5) any consumer protection laws that do not interfere with the intent and purpose of this Act.

SECTION 22. JURISDICTION, VENUE AND CONFLICT OF LAWS

(a) Except as provided in this section and subsections 9(c)(2), 12(b)(1), and 20(b), nothing in this Act shall affect the rules used to determine jurisdiction, venue or applicable law.

(b) REPOSITORY OPERATOR.—

(1) Any suit of a civil nature at common law or in equity to which the repository operator is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of the suit.

(2) The repository operator, as defendant, may remove a suit to a United States district court by following the procedure otherwise provided by law for the removal of causes.

[(3) LOCATION OF THE REPOSITORY OPERATOR.—The repository operator is located in the jurisdiction in which the chief executive office of the repository operator is located. [Chartered instrumentality version only.]]

(c) FEDERAL SUBJECT MATTER JURISDICTION.—

(1) Except as provided in subparagraph (2), this Act does not establish federal subject-matter jurisdiction with respect to:

(A) the enforcement of an electronic mortgage note or the associated mortgage;

(B) any warranty compelled by this Act that is extended by [the repository operator or] a gateway; or

(C) in private litigation, any warranty compelled by this Act that is extended by a registrant.

(2) This Act does not preclude the assertion of diversity, ancillary, pendent or supplemental jurisdiction with respect to the actions described in paragraph (1).