

## **Ann. 02-08: Selling Electronic Mortgages to Fannie Mae (06/28/02)**

### ***Amends these Guides: Selling and Servicing***

In LL09-00 (which was issued 10/25/00), we discussed the new federal and state laws -- the Electronic Signatures in Global and National Commerce Act (E-SIGN) and the Uniform Electronic Transactions Act (UETA) -- that enable the origination of enforceable eMortgages. We also provided lenders with some initial guidance that they could use as a first, critical step in their preparations for making their business processes and information systems capable of originating (and servicing) electronic mortgages for delivery to us. Last January, by issuing [Announcement 02-01](#) (which was subsequently incorporated into [Part I, Section 402](#), of the Selling Guide), we expanded a lender's ability to use electronic documents with third parties -- such as the borrower, the property appraiser, a title company, etc. -- in connection with the origination and/or servicing of mortgages. We are now ready to begin purchasing eMortgages from lenders that meet the legal, technological, and operational requirements that are necessary to create valid and enforceable eMortgages.

This Announcement summarizes the terms and conditions that must be satisfied in order for a lender to deliver and service eMortgages and sets out the general procedures that will apply. An eMortgage is a mortgage for which the promissory note and possibly other documents (such as the security instrument and loan application) are created and stored electronically rather than by using traditional paper documentation that has a pen and ink signature. Because of the limited number of recording jurisdictions that accept electronic documents for recordation, most (but not all) eMortgages will initially consist of a paper security instrument and an electronic note (eNote). [Attachment 1](#) to this Announcement also provides a broad overview of E-SIGN and UETA with respect to the use of electronic signatures, the definition of transferable records, and the use of electronic loan origination disclosures. Our procedures for the delivery and servicing of eMortgages are intended to meet the requirements of these laws.

### **Eligible Lenders**

Any Fannie Mae-approved lender can deliver an eMortgage to us as either a cash delivery or an MBS pool delivery if it has obtained an amendment to its Master Agreement to specifically cover its eMortgage deliveries. (A lender that does not currently have a Master Agreement with us must obtain one if it wishes to deliver eMortgages.) The Master Agreement will incorporate (by reference) the provisions of our eMortgage Manual (which we will provide to each lender that has a Master Agreement that covers the delivery of eMortgages).

Each lender is responsible for determining that it meets the legal, technological and operational requirements necessary to create valid and enforceable mortgage obligations and that it otherwise complies with our requirements (which, in some cases, may exceed the minimum statutory requirements). As part of our eMortgage commitment process, we will ask the lender to provide information about some of the systems and processes it intends to employ in originating and servicing eMortgages. A lender should contact its Customer Account Manager in its lead Fannie Mae regional office to determine the exact information we will require.

Before a lender can deliver eMortgages to us, it must obtain a hardware token-based TrustID™

digital certificate from Digital Signature Trust Co. (DST). (In the future, we intend to accept digital certificates issued by Mortgage Bankers' Association (MBA)-accredited issuers.) A lender may obtain information about acquiring and configuring a DST TrustID™ certificate on DST's web site ([www.trustdst.com/certificates/trust/exchange.html](http://www.trustdst.com/certificates/trust/exchange.html)). Each user of our eMortgage Delivery application must have a MORNETPlus User ID and present an individually issued digital certificate before it can submit electronic note information to us.

## Documentation for eMortgages

Most conventional first mortgages can be delivered to us as eMortgages. This includes fully amortizing fixed-rate monthly payment mortgages, fixed-rate biweekly payment mortgages, fixed-rate balloon mortgages, fixed-rate and adjustable-rate InterestFirst mortgages, and other adjustable-rate mortgages. The only exceptions are some products that require additional or special purpose legal documents (such as Texas Section 50(a)(6) mortgages, HomeStyle Construction-to-Permanent mortgages, refinance mortgages that are closed on our balloon loan refinancing instruments, reverse mortgages, mortgages secured by Puerto Rico properties, etc.). Since not all jurisdictions are currently able to accept the electronic recordation of security instruments and riders (or other alternative documents), we concentrated our development of eMortgage legal documents on the mortgage notes and deed of trust notes that we currently use for standard mortgage deliveries. This approach enables us to begin purchasing eMortgages now, rather than waiting until most local recording offices are ready to accept electronic documents for recordation. A lender that is interested in originating a mortgage product other than those for which we have developed an electronic note should contact its Customer Account team in its lead Fannie Mae regional office to discuss the possibility of obtaining an electronic version of the applicable note.

At least initially, an eMortgage that is delivered to us generally will be closed by using a paper version of the *security instrument* for the jurisdiction in which the security property is located and a paper version of *any related riders* required for the specific product or property type. (If the local recording jurisdiction is able to accept these documents for electronic recordation -- and the title insurer takes no exceptions related to the use of an electronic document or signature or the electronic recordation of such a document -- the lender may use an electronic version of these documents.) In **all** jurisdictions, a lender that delivers an eMortgage must use one of the electronic *notes* (eNote) that we have developed for use with the various mortgage products (instead of using one of our standard paper notes). Our eNotes are similar to traditional paper notes, with the following exceptions:

- The eNote includes a special section -- the eNote clause -- that has language that relates to the electronic transaction and a different footer that identifies the document as an eNote form. [Attachment 2](#) illustrates the language that is included in the eNote clause and the format for the document footer.

- The eNote (and any other electronic document delivered to us) must satisfy a special formatting requirement (known as "SMARTDOC") that is based on industry standards adopted by the MBA Mortgage Industry Standards Maintenance Organization (MISMO). The SMARTDOC specification uses open standard technologies, promotes system checks to validate that the document the borrower signs is the exact document that will be stored, and enables the data displayed on the computer screen to be checked against the data that is used for downstream processing of the mortgage. (As the MISMO SMARTDOC standard evolves, we will support new versions of the standard as soon as practicable.) More information about the SMARTDOC specification, including our detailed implementation requirements, is available in our eMortgage Manual.

We currently accept the following eNotes (and, if applicable, eNote addenda) for eMortgages that are submitted to us as cash deliveries or MBS pool deliveries:

- Multistate Fixed-Rate eNotes: 3200e, 3255e, 3260e, 3264e, 3265e, and 3271e, plus state-specific versions of: the 3200e and 3271e series for Alaska (3202e and 3271e.02), Florida (3210e and 3271e.10), Maine (3220e and 3271e.20), New Hampshire (3230e and 3271e.30), New York (3233e and 3271e.33), Vermont (3246e and 3271e.46), Virginia (3247e and 3271e.47), West Virginia (3249e and 3271e.49), and Wisconsin (3250e and 3271e.50); and the 3260 series for New York (3260e.33);
- Multistate Adjustable-Rate eNotes: 3263e, 3501e, 3502e, 3504e, 3506e, 3510e, 3514e, 3516e, 3517e, 3518e, 3520e, 3522e, 3524e, 3526e, and 3528e, plus state-specific versions of: the 3501e and 3502e series for Alaska (3501e.02 and 3502e.02), Florida (3501e.10 and 3502e.10), Maine (3501e.20 and 3502e.20), New Hampshire (3501e.30 and 3502e.30), New York (3501e.33 and 3502e.33), Vermont (3501e.46 and 3502e.46), Virginia (3501e.47 and 3502e.47), West Virginia (3501e.49 and 3502e.49), and Wisconsin (3501e.50 and 3502e.50); and
- Multistate Addenda to eNotes: for Timely Payment Rewards mortgages (1410e) and balloon mortgages that have a conditional right to refinance (3266e).

The lender is responsible for ensuring that the type of electronic signature used by the borrower in connection with an electronic note (or any other electronic record) is valid under applicable law. However, we will not accept an eMortgage for which the borrower signed any associated records by means of an audio or video recording. The lender must ensure that it has conducted the electronic signing of the eNote and related documents in such a way that it may be readily proven that the borrower did, in fact, sign such documents with the intent to be bound by them.

Regardless of the type of electronic signature used by a borrower or any other signatory, the lender must take appropriate steps to preserve the data integrity of the signed document, including collection and retention of evidence to demonstrate the signer's identity, agreement to conduct the transaction electronically, execution of a particular electronic signature, and attribution of a particular signature to that signer (and establishing proof of the same). Any files that a lender maintains must include the name of the person (and related entity, if the borrower is not a natural person) who signed each document in the loan file, the date of the signature, and the method by which the document was signed, as well as any associated identifying (and other) information that can be used to verify the electronic signature.

## **eNote Registration**

We explored various methods of originating, storing, and transferring eMortgages that would comply with E-SIGN and UETA and have concluded that a central eNote registry is the most efficient and least costly method of recording the ownership of an eNote. We are working with the MBA to explore the development of an industry registry that would facilitate the efficient transfer of eNotes among all parties who have an interest in the associated eNote. In the interim, a lender will be eligible to sell an eMortgage to us only if it registers the eMortgage in the interim registry that is part of our eMortgage Delivery application within five business days after it is closed. (Our eNotes provide that the person or entity that owns the eNote will be the person or entity shown in the records of the registry.) The lender is also responsible for storing the eMortgage file in accordance with any applicable laws until such time as it delivers the eMortgage to us. Once we purchase or securitize an eMortgage, the transfer of ownership to us will automatically be reflected in the interim registry we maintain.

We recognize that, in some cases, our requirement for an eNote to be registered in our eMortgage Delivery application within five business days of loan closing may mean that a lender will need to register the mortgage before it decides whether it will deliver the mortgage to us. Registering a mortgage in our eMortgage Delivery application does not obligate the lender to sell the mortgage to us; in fact, the lender can either retain ownership of the mortgage or transfer the registration of the mortgage to an entity of its choice if it decides not to sell us the mortgage. However, we will not purchase the mortgage unless it was registered within our required time frame.

## **Delivery Procedures**

When a lender is ready to sell an eMortgage to us, it will use our eMortgage Delivery application to effect the legal transfer of ownership of the mortgage, as well as to transmit the eNote and any other required electronic documents. Specifically, the lender must update the eNote registration to show us as the owner of the eNote and transmit the electronic record for the eNote (and any other required documents) to us. After the lender successfully completes the transaction, Fannie Mae will appear as the new owner of the eMortgage in our eMortgage Delivery application.

- For portfolio mortgages that are submitted as cash deliveries -- and for MBS pool mortgages for which our Document Delivery Facility is the document custodian -- the electronic documents will be immediately available to our Asset Acquisitions staff for review.

- For MBS pool mortgages for which the lender's trust department or a third-party is the document custodian, the lender must print a "certification copy" of the eNote that the document custodian can use to certify the eMortgage. By allowing the document custodian to certify the eMortgage using this paper copy of the eNote, we make it possible for a document custodian to use its current business practices (rather than developing a new process for eMortgages). (A document custodian that certifies eMortgages that are in MBS pools will need to amend its *Custodial Agreement* ([Form 2003](#)) to reflect the different certification requirements.)

We will use our traditional MORNET delivery applications to transmit loan delivery data for eNotes submitted through our eMortgage Delivery application. (A lender may commingle the loan delivery data for eMortgages with the loan delivery data for mortgages that are closed on paper documents.) The lender must identify an eMortgage delivery by inserting a Special Feature Code 508 on the *Loan Schedule* ([Form 1068](#) or [1069](#)) or *Schedule of Mortgages* ([Form 2005](#)).

### **Servicing eMortgages**

For the most part, eMortgages will be serviced in accordance with the standard guidelines for servicing mortgages that appear in the Servicing Guide. To the extent that there are any differences, a servicer must establish appropriate procedures to address the unique requirements that apply to eMortgages. For example, the servicer must make sure that eMortgages are appropriately identified in its computer records and the individual mortgage files to assure that its staff will be aware that special servicing procedures may be required. Areas in which special procedures apply include, but may not be limited to, the following:

- We require a servicer to contact its Servicing Consultant or Servicing Specialist in its lead Fannie Mae regional office before it initiates foreclosure proceedings for an eMortgage. If the security property is located in a state in which we have Fannie Mae-retained attorneys (or trustees), the servicer must use one of the firms we have retained for the state. If we do not have any Fannie Mae-retained attorneys (or trustees) designated for the state in which the security property is located, the servicer may retain its own attorney, but we will require that attorney to work closely with an attorney that we designate.
- We require a servicer to determine and execute the appropriate satisfaction documents for the payoff of an electronic mortgage, based on the requirements of the state in which the security property is located. In any situation in which the servicer believes that it is necessary to produce an original note (such as when a jurisdiction requires the original note to be returned to the borrower), we are willing to issue a certified copy of the eNote for the servicer's use.

- We require a servicer to provide special notification to the new servicer when it includes eMortgages in a transfer of servicing. Specifically, the transferor servicer must advise the transferee servicer that eMortgages are part of the portfolio being transferred and must confirm that the transferee servicer is not only aware of the special requirements for eMortgages required by our eMortgage Manual, but also agrees to assume the additional responsibilities associated with servicing eMortgages. The transferee servicer's agreement to assume the lender's responsibilities, duties, and selling warranties in connection with a transfer of servicing is set out in [Announcement 01-01](#) (dated 04/05/01), which amended [Part I, Section 205.03](#), of the Servicing Guide.

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Although this Announcement is only a summary of our requirements for the delivery and servicing of eMortgages, it incorporates by reference all of the terms, provisions, and requirements of our eMortgage Manual. A lender that wishes to originate and/or service eMortgages should contact its Customer Account Manager in its lead Fannie Mae regional office for assistance in identifying (and completing) all of the steps that need to be taken before the lender can deliver and/or service eMortgages or to obtain a copy of our eMortgage Manual.

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