

# National Mortgage Note Repository Act of ~~2016~~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) ~~The~~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 ~~is enhanced by robust secondary markets for residential mortgage loans and securities backed by residential mortgage loans.~~

- (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.
- (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 ~~any~~ a quick, simple and accurate way for borrowers to determine the ~~party with the economic interest in~~ owner of their mortgage notes and whether ~~such party~~ that person has authorized its servicer to modify ~~these loans~~ the obligation evidenced by the note;
  - (B) ~~recordkeeping~~ practices that have resulted in challenges to the fundamental tenet of ~~US~~ 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-related documents~~ notes electronically, to identify the person with the rights to act with regard to such ~~documents~~ notes, and to facilitate the transfer of such rights, would assist ~~in addressing these weaknesses~~ borrowers and mortgage note holders.
- (6) The residential mortgage industry ~~is unable to independently create~~ has not created such a system.
- (b) PURPOSES.—The purposes of this Act are ~~as follows~~:
  - (1) to provide greater transparency to borrowers concerning, ~~among other things, the party with the right to be paid or otherwise~~ the person who may collect, enforce, or modify a residential mortgage note and the associated mortgage when ~~such~~ 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 ~~the creation of~~ a national repository system (and related rules governing the system) that identify the ~~party~~ 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; ~~and~~
- (4) to foster the use of electronic residential mortgage notes and to provide legal certainty for their transferability and enforceability. ~~(e) If a court deems any part of this Act invalid, the rest of this Act shall be construed in favor of its validity.; 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.—~~An “adverse claim” is~~means a property claim (including judgment lien or other liens) of a *person* ~~against a registrant~~ with respect to an *electronic mortgage note*. Adverse claims may arise from events occurring before or after submission of the mortgage note to the ~~registry operator~~repository system.
- ( ) ALTERATION.—means an alteration as defined in UCC Section 3-407.
- ( ) AUTHORIZED TRANSFEROR.—~~An “authorized transferor” is~~means a *person*, ~~not acting as a registrant~~, who has been authorized by a registrant to effect a registered transfer.
- ( ) BOARD OF GOVERNORS.—~~The “Board of Governors” is~~means the Board of Governors of the Federal Reserve System.
- ( ) BORROWER.—~~The “borrower” is the~~means a person or persons owing performance on a mortgage note that is secured by the mortgage. ~~Except, but does not include a secondary obligor except~~ as provided in regulations. ~~this does not include guarantors promulgated pursuant to this Act. Multiple borrowers on the same mortgage note are separate persons under the Act.~~
- ( ) CFPB.—~~The “CFPB” is~~means the ~~Bureau of~~ Consumer Financial Protection Bureau.
- ( ) [COMMON-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.—~~A “control system” is~~means any system determined by order of the regulator that is ~~(i) employed for evidencing to evidence~~ the transfer of interests in a transferable record or controlled record and ~~(ii) able to~~can reliably establish ~~a person as the identity of the~~ person to whom the transferable record or controlled record was issued or transferred.

- ( ) CONTROLLED RECORD.—~~A “controlled record” is~~means a record in a control system that ~~would qualify as a transferable record but for a court’s determination that it would not meet the legal requirements for negotiability if the electronic record were in writing.~~ (i) is not a transferable record and (ii) evidences an obligation to pay and is secured by a mortgage.
- (+) COMMON-INTEREST COMMUNITY.—~~“Common 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.]~~
- ( ) ELECTRONIC MORTGAGE NOTE.—~~An “electronic mortgage note” is~~means a record on the repository system created by the ~~registry~~repository operator pursuant to ~~Section~~subsection 8(c)(3) that has the effect given in ~~Section~~subsection 9(a).
- ( ) FDIC.—~~The “FDIC” is~~means the Federal Deposit Insurance Corporation.
- ( ) GATEWAY.—~~A “gateway” is~~means a person designated as ~~such a~~a gateway by the ~~system~~repository operator pursuant to ~~Section~~section 7.
- ( ) INSTRUMENT.—~~An “—means an instrument” has the meaning given as defined in UCC Article 9 of the UCC.~~9.
- ( ) KNOWLEDGE AND KNOWS.—have the meanings assigned in UCC Article 1.
- ( ) MODIFICATION.—~~A modification is —means~~ any change to the terms of an obligation ~~except for changes pursuant to~~that is secured by a mortgage. The term does not include:
  - (i) a change made in an oral agreement;
  - (ii) ~~any agreement that reduces or forbears payment~~an agreement that [ALT 1: qualifies as a short-term forbearance program under RESPA or would qualify 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 no more than six months or less]; or
  - (iii) an agreement ~~that provides for a non-home retention option 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.—~~A “mortgage” is~~means a consensual interest in real property that secures ~~a mortgage note. 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.—~~A “mortgage note” is~~means an instrument, a transferable record, or a controlled record secured, ~~in whole or in part,~~ by a residential mortgage.

- ⊕ ~~NEGOTIABLE INSTRUMENT.~~—~~A “negotiable instrument” is as defined in Article 3 of the UCC.~~
- ( ) NCUA.—~~The “NCUA” is~~means the National Credit Union Administration.
- ⓪ ~~NEGOTIABLE INSTRUMENT.~~—means a negotiable instrument as defined in UCC Article 3.
- ( ) ~~NOTICE, NOTIFY and GIVES NOTICE.~~—as used in section 11 and subsections 10(e), 14(c), 19(b), and 19(c), have the meanings assigned in UCC Article 1.
- ⓪ ~~OBLIGATION.~~—~~An “obligation” is~~means a debt ~~or other~~of a person and any duty or liability ancillary to the debt of a person.
- ( ) OCC.—~~The “OCC” is~~means the Office of the Comptroller of the Currency.
- ( ) PERSON.—~~A “person” is~~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.—~~A “record” is~~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.
- ⓪ ~~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.
- ⓪ ~~REGISTERED TRANSFER.~~—means a change in the identity of the registrant in the repository system that is the effect of an instruction by the registrant or the authorized transferor of the relevant electronic mortgage note received by the repository operator. An instruction of a registrant to reflect a change of its name on the repository system is not a registered transfer.
- ( ) REGISTRANT.—~~A “registrant,”~~means, with respect to ~~a deposited~~an electronic mortgage note, ~~is~~ the person identified on the records of the repository system as the registrant of such ~~deposited~~electronic mortgage note.
- ⓪ ~~REGULATOR.~~—means the Federal Housing Finance Agency.
- ⓪ ~~REPOSITORY OPERATOR.~~—means the entity [Alt 1: organized under] [Alt 2: licensed by] this Act to operate the repository system.
- ⓪ ~~REPOSITORY SYSTEM.~~—means the electronic database and registered transfer service established by the repository operator.
- ( ) RESIDENTIAL.—~~“residential”~~ means real property improved with not more than four dwelling units. The term includes:
  - (i) ~~an~~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 ~~this state other than this [act]~~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*.

~~The term does not include real property that, when the mortgage was created, was used or intended to be used primarily for nonresidential purposes.~~( ) 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.~~—~~An “RLN” (Repository (Record Locator Number) is a.~~—means the unique identifier ~~used~~generated by the repository system ~~with respect to each deposited and distributed according to regulation or system rules.~~ and assigned to a mortgage note~~.~~ submitted to the repository system.

~~( )~~ ~~RECORDER’S OFFICE.~~—~~A “recorder’s office” is created under State law to maintain the official records of interests in real property in that State or a subdivision of such State.~~

~~( )~~ ~~REPOSITORY OPERATOR.~~—~~The “repository operator” is the entity [Alt 1: organized under] [Alt 2: licensed by] this Act pursuant to Section 4.~~

~~( )~~ ~~REPOSITORY SYSTEM.~~—~~The “repository system” is the electronic database and transfer service established by the repository operator to perform the activities described in this Act.~~

~~( )~~ ~~REGULATOR.~~—~~The “regulator” is the Federal Housing Finance Agency.~~

( ) ~~STATE.~~—~~“State” includes~~means a state of the United States of America, 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.~~—~~“System rules” are~~means the rules ~~adopted by~~ the repository operator adopts concerning the operations, security ~~procedures,~~ and the rights ~~and/or~~ obligations of ~~all persons with access to, or who may use of,~~ the repository system ~~in connection with such access or use.~~

~~( )~~ ~~TRANSFER.~~—~~Except as used in Section 8(d)(1), a “transfer” is a change in the identity of the registrant in the repository system that is the effect of an instruction given by the former registrant or authorized transferor. An instruction of a registrant to reflect a change of its legal name on the repository system is not a transfer.~~

( ) ~~TRANSFERABLE RECORD.~~—~~A “~~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” has the meaning given by 15 U.S.C. § 7021.~~

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

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

( ) Appropriate federal banking agency, is defined in ~~Section 5,~~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,~~subsection 11(a).

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



⊕ ~~Proposed system rules, defined in Section 6.~~

## [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 degree consistent with privacy concerns~~, to the public; ~~and~~
- (4) ~~to establish procedures~~ 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; ~~to~~ 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*; ~~to~~
- (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 to dismiss at pleasure any officers or employees 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, ~~or~~ agents 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.—~~Soon after~~ Within [three] months of the date of enactment of this Act-is enacted, 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 director appointed by the CFPB. 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 number of directors,~~ 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.—~~The~~ 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 ~~system~~ repository operator. The bylaws shall specify the organizational law of a ~~state~~ 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” ~~under for~~ [purposes of](#) 31 U.S.C. §§ 9101(2)-06. After that, it no longer remains a “Government corporation” under 31 U.S.C. § 9101.
- (3) ONGOING FUNDING.—
- (A) COLLECTION OF FEES.—~~The~~ [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, ~~any territory, dependency, or possession of the United States,~~ or any *State*, county, municipality, or local taxing authority, except ~~that any real property of the repository operator shall be subject to taxation to the same extent as real property owned by others similarly situated~~ [taxes upon real estate](#).

- (g) ~~SUPERVISION-AND-REGULATION.~~ —The *repository operator* shall be subject to the exclusive supervision of ~~and regulation by~~ the *regulator*, and shall not be subject to supervision ~~or regulation~~ by any other Federal department or agency [except ~~FSOC~~ 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. ~~Such rules and procedures shall:~~
- (A) ~~devote all operating surplus to repayment of debt incurred before the date of the conservatorship;~~
- (B) ~~prioritize payments of debts incurred after the date that the regulator commences the conservatorship;~~
- (C) ~~set fees with a primary regard to debt repayment, subject to the continuing operation of the repository operator as a going concern; and~~
- (D) ~~treat accrued assessments under Section 5(c) as subordinated debt.~~
- (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 ~~and~~ duties to any obligation evidenced by an *electronic mortgage note*.

## [ALT B] SECTION 4. REPOSITORY OPERATOR

- (a) APPLICATION TO BECOME ~~REGISTRY~~ REPOSITORY OPERATOR.—
- (1) REGULATIONS.—Within [three] months of the date of enactment of this ~~National Mortgage Repository~~ Act, the *regulator* shall issue regulations governing the application process for obtaining the license to be the *repository operator*. ~~Once the regulations are issued, any person may file an application with the regulator to obtain a license as the repository operator.~~ The *regulator* may license only one person at any given time 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 ~~succeed~~, 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 ~~*repository operator*~~ applicant, and any other persons associated with the ~~*repository operator*~~ applicant, ~~as well as~~ applicant, (ii) the operational resources and future prospects of the ~~*repository operator*~~ 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 ~~shall either be~~ is:
  - (i) a cooperative, which membership shall be open to gateways, authorized transferors, and registrants; and
  - (ii) ~~(i)~~ organized in a non-profit form; or
  - (iii) ~~(ii)~~ organized as a cooperative that distributes any profits only to the ~~mortgage originators and registrants~~ members of the cooperative in fair proportion to their usage of the ~~registry~~ repository system;
- (C) the regulator shall confirm that the organizational documents of the applicant ~~will~~ 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 ~~parties~~ persons, including mortgage note originators, borrowers, registrants, authorized transferors, gateways, and ~~beneficial owners of mortgages~~. ~~Such governance structure must ensure that those representing the interests of~~ 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 ~~are not directors, members, general partners, officers, employees or [shareholders] of a~~

~~bank, nonbank lender, mortgage broker, or servicer. Pursuant to this subparagraph, the CFPB is authorized to appoint individuals, not officers or employees of the CFPB, if the organizational documents of the repository operator call for such appointments 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 ~~mortgage-related~~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 degree consistent with privacy concerns~~, to the public; ~~and~~
  - (4) to ~~establish procedures 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 ~~LICENSE~~LICENSE.— The following consequences attach to issuance of the ~~license to become the repository operator~~ license:
- (1) ~~The~~the successful applicant becomes eligible for the funding described in subsection (e) of this section;
  - (2) ~~Once~~once the successful applicant has accepted such funding, it shall be treated as if it were a “mixed-ownership Government corporation” ~~under~~for purposes of 31 U.S.C. §§ 9101(2), 06, until it has repaid all such funding in full, with interest; ~~and~~
  - (3) ~~The~~the successful applicant obtains the status of *repository operator* under this Act and assumes all rights, powers and ~~responsibilities~~duties of the *repository operator*; ~~and~~
  - ~~[(4) The whistleblower protections of 5 USC § 2302(b)(8) shall apply to the repository operator as if its employees are government employees;]~~
- (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~~ FUNDING.—
- (A) COLLECTION OF FEES.—~~The~~ 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~~ 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, any territory, dependency, or possession of the United States, or any State, county, municipality, or local taxing authority, except that any real property of the repository operator shall be subject to taxation to the same extent as real property owned by others.]~~
- ~~(g)~~ (f) SUPERVISION-~~AND REGULATION~~. —The *repository operator* shall be subject to the exclusive supervision of ~~and regulation by~~ the *regulator*, and shall not be subject to supervision ~~or regulation~~ by any other Federal department or agency [except ~~FSOC~~ the Financial Stability Oversight Council] or by any *State*.
- (h) FAILURE OF *REPOSITORY* ~~OPERATOR~~ 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-  
~~paragraph (2) of subsection (e) of this section~~ 4(e)(2); ~~or~~

(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~~ or duties to any 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 of concern to the CFPB in the exercise of its functions under the Federal consumer financial laws and with any appropriate Federal ~~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) ~~mandating that in its oversight of~~ requiring the *repository operator*, ~~the repository operator shall explicitly consider 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 ~~stability and~~ 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*;
- (56) 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;
- (67) governing the *repository system*'s information security ~~program and system~~ security programs, including such programs' technical adequacy, scalability, and reliance on current technical standards;
- (78) further defining the scope of the warranties established in this Act;
- (89) in consultation with the American Law Institute and the Uniform Law Commission, ~~responding to any~~ addressing amendments to the *UCC* made by ~~any state~~ a State subsequent to the enactment of this Act;
- [(9) ~~limiting the application of Sections 9 and 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 ~~ULC and ALI~~ Uniform Law Commission and the American Law Institute and (ii) that the *regulator* ~~deems~~ finds to be substantively identical to the specific provisions in ~~Sections~~ section 9 and or 12 at issue]; ~~and~~
- (1011) 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* ~~other than~~ except a *gateway* that is (i) a *recorder's office* or (ii) supervised by the *Board of Governors*, the *FDIC*, the *NCUA*, ~~or~~ 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;~~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~~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. ~~REPOSITORY OPERATOR~~ SYSTEM RULES

- (a) ~~EFFECTIVENESS.—A system rule is not effective unless it is adopted according to the procedures of this section.~~ 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) ~~MINOR PROPOSED SYSTEM RULES.—~~

- ~~(1) DESIGNATION OF MINOR PROPOSED SYSTEM RULES.—The repository operator may designate any proposed system rule (including proposed amendments to system rules) (hereinafter in this subsection collectively referred to as “a proposed system rule”) as “minor” if it:~~
- ~~(A) constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing system rule; or~~

- (B) ~~is concerned with other matters that the *regulator* may specify by regulation.—~~
- (2) ~~REVIEW OF MINOR PROPOSED SYSTEM RULES.—The *repository operator* shall file any proposed system rule that it has designated as minor with the *regulator*. Such proposed system rule shall become effective 30 days after the date on which the *regulator* receives the filing unless the *regulator* notifies the *repository operator* that, in the *regulator's* opinion, the proposed system rule is not a minor one. The *repository operator* shall promptly make the text of any system rule that has become effective under this paragraph available on its public website. The publication of the system rule on a public website is notice of a final decision of the *regulator* concerning the status of the system rule as minor and is appealable in accordance with Section 5(d).—~~ EFFECTIVENESS.—A system rule is not effective unless it is adopted according to the procedures of this section.
- (c) APPROVAL PROCESS FOR ~~NON-MINOR~~ 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 ~~NON-MINOR~~ PROPOSED SYSTEM RULES.—Not later than 180 days after the date of publication of a ~~non-minor~~ proposed system rule under paragraph (1) of this subsection, the *regulator* shall:
- (A) by public order in accordance with the APA 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~~ one or more hearings 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 ~~clause~~ subparagraph (A).
- (4) CONSULTATION.—The *regulator* shall consult with and consider the CFPB's views before approving or disapproving a ~~non-minor~~ 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.—Except for court orders[ and communications from borrowers or recorder's offices pursuant to Sections 16 or 17], the repository operator shall only act on~~ROLE OF A GATEWAY.—The repository operator is authorized to change the records of the repository system only in response to communications transmitted to the *repository operator* through a *gateway* or as directed by court order.
- (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 ~~Section~~subsection 5(a)(45) 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*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~~
  - (3) If, at any time, the repository operator knows that a person acting as a gateway no longer meets the regulatory and the *repository operator's* qualification requirements, the *repository operator* shall ~~cease to treat~~promptly revoke such *person's status* 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* ~~that offer services in such capacity to the public.~~

## 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 do so only 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~~ 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 the associated RLN has been submitted for recording, ~~or is in the process of being submitted for recording,~~ in the ~~appropriate~~ recorder's office where the real property is situated; 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). ~~If at the time of submission a person is identified in a representative capacity as the mortgagee of record, the person satisfying the requirements of subsection (b) shall be treated as~~ 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 submitter~~—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 ~~submitter~~ person eligible to submit a mortgage note must submit:
    - (A) the ~~entire 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 ~~in the process of being recorded~~), has been submitted for recording in the appropriate recorder's office);
    - (ii) that an RLN has been associated with the ~~recorded~~ mortgage, and
    - (iii) the identity of the mortgagee of record (or if the mortgagee of record is a nominee, the deemed mortgagee of record under subsection 8(c)(1)(C));
  - (D) the identity of any servicer(s) (including any master servicers or sub-servicers) 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~~ a statement as to whether ~~any~~ 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 ~~submitter is acting in a representative capacity such as nominee or trustee~~ person submitting the mortgage note does not have a beneficial interest in the mortgage note, the identity of the person ~~it is representing or~~ persons with such beneficial interest and the capacity of the person submitting the mortgage note (e.g., trustee, agent, as servicer for, etc.); and
  - (G) ~~to the extent known by the submitter~~, contact information of the borrower as known to the submitter.
- (3) *CONVERSION TO ELECTRONIC MORTGAGE NOTE.* —Upon ~~submission~~ receipt of a mortgage note and all required data submitted in compliance with this ~~Section~~ 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; and
  - (B) identify the ~~submitter~~ person submitting the mortgage note as the initial registrant of the electronic mortgage note in the repository system.
- Together the acts described in ~~subsections (A) and (B)~~ (subparagraphs (A) and (B)) shall constitute conversion of the mortgage note. ~~After submission to 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 ~~an~~ the electronic mortgage note only if the repository system identifies such



person as the registrant. ~~Upon becoming a registrant such person must be adequately identified to the repository operator as required by system rules.~~

(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; and

~~An(ii) to the extent that the obligation evidenced by an electronic mortgage note is valid and enforceable, the registrant is the holder or other person entitled to enforce 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.~~

(B) This paragraph applies to any record that is not a mortgage note. Notwithstanding any other provision of this Act, 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.

(C) The repository operator is liable for accepting such a mortgage note that was submitted inconsistently with the requirements of paragraphs (1) and (2) of this subsection 8(c) only if it knew or should have known 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 if the person submitting the mortgage note has never been transferred is the named obligee, the gateway used to submit the mortgage note warrants that to any person that, as of the time of submission:

(A) the person submitting the mortgage note to the repository operator qualifies as an eligible submitter under subsection (b) of this section;

(B) the submission is of a mortgage note that is an eligible mortgage note under subsection (c)(1) of this section;

(C) all data transmitted by the gateway to the repository system are an accurate reflection of the data received by the gateway; and

(ED) if the mortgage note is:

(I) a negotiable instrument or transferable record, the gateway has not previously submitted another negotiable instrument or transferable record [Alt: substantially] identical to documenting the same obligation 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 ~~all~~any other *mortgage notes* submitted to the repository operator, the gateway used to submit ~~the~~that *mortgage note* makes the warranties of paragraph (1) of this subsection and further warrants that, as of the time of submission:
- (A) there ~~were no unauthorized alterations of~~has been no alteration to the *mortgage note* ~~before the submission~~;
  - (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.
- (3) ~~BENEFICIARIES OF WARRANTIES.—~~
- (A) ~~The warranties of paragraph (1) of this subsection are made to any person damaged by the breach of warranty.~~
  - (B) For a mortgage notes~~note~~ that ~~were~~was executed before the date on which the repository system first begins to accept submissions, ~~the warranties~~each warranty of this paragraph (2) of this subsection are~~is~~ made only to ~~borrowers damaged by the breach of the warranty.~~(C) Except for those~~the borrower(s) under that mortgage note. For all other mortgage notes within the scope of subparagraph (B) of this paragraph, the warranties of paragraph (2), each warranty of this subsection are made~~paragraph runs to any *person* ~~damaged by the breach of warranty.~~
- (43) DAMAGES.—A *person* found to have been damaged by a breach of one of the warranties in paragraphs (1) and (2) is entitled ~~to~~ 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 ~~it has~~ 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, and except with respect to the standing of the registrant, the conversion of a mortgage note does not limit any right that a borrower may have to assert a claim or a defense, including a defense of fraud, forgery, or alteration.

(B) The *mortgage note* ceases to ~~have any effect or validity~~ be the embodiment of the *obligation* upon *conversion*. Any ~~adverse claimant to~~ claim to a property right in the *mortgage note* becomes an *adverse claimant to* ~~the claim upon conversion of the mortgage note to an~~ *electronic mortgage note*.

(2) 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. ~~In connection with assuming the operations of the repository system as conservator in accordance with section 4, if necessary to support the safe and sound functioning of the residential mortgage market, the~~ The regulator may promulgate regulations for reconvert~~ing~~ *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, ~~section and subsections 12(eb), and section 18(a)(1), and 19(a)(2):~~

(A) ~~An~~ an *electronic mortgage note* ~~shall be treated as a negotiable instrument for all purposes if it 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~~ 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 of such an *electronic mortgage note*; and

- (C) ~~The~~subject to subsection 13(e)(1), 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~~DESTRUCTION OF THE INSTRUMENT.—~~Once an An~~instrument ~~that~~ is converted to an *electronic mortgage note* pursuant to this Act:~~(A) it and is destroyed during or after submission to the repository operator shall not be treated as destroyed or as discharged result in the discharge of the obligation on the instrument~~ 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
- (3) PAYMENTS BY BORROWER AFTER CONVERSION.—
- ~~(B) the records of the repository system may be used to satisfy any post-conversion writing requirement;~~
- ~~(C) the only relief available to an adverse claimant is that of Section 20, and the deposited mortgage note is not subject to the torts of conversion, trover, detinue, replevin, or other common law property torts; (D) until the borrower is served with a court order to the contrary, any payment made by 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, even if an adverse claimant has a superior claim to that of the registrant; and (A) Subject to subparagraph (D), an electronic mortgage note is paid to the extent payment is made by or on behalf of a borrower as directed by a registrant.~~
- ~~(E) until the borrower is notified of a transfer to a new registrant as required by other law, any payment made by a borrower as directed by the last registrant to have directed the borrower shall discharge the borrower's obligation to have made that payment.~~(B) Subject to subparagraph (D), an electronic mortgage is paid to the extent payment is made by or on behalf of a borrower to a person that formerly was a 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. Adequate notification is either notice pursuant to section 17 or as determined by other law.
- (C) Subject to subparagraph (D), to the extent of a payment under subparagraphs (A) and (B), the obligation of the borrower is discharged

even though payment is made with knowledge of an adverse claim to the electronic mortgage note by another person.

(D) The obligation of a borrower is not discharged under subparagraphs (A) through (C) if the person making the payment knows that payment is prohibited by injunction or similar process of a court of competent jurisdiction.

(c) APPLICATION OF THE LAW OF CHATTELS.—

(1) An electronic mortgage note is not subject to the law of bailment.

(2) The liability of 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 similar to the liability 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.

(ed) 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 Subject to subsection 13(f), 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 ~~it~~the registrant is so identified until another person becomes the registrant of such electronic mortgage note.

(de) An electronic mortgage note is:

(1) not a security for purposes of:

(A) federal or ~~state~~State securities regulatory laws; or

(B) UCC § 8-102(a)(15)(iii)(A);

(2) located in the ~~jurisdiction of the repository operator~~District of Columbia for purposes of Article 9 of the UCC to the extent the location of the electronic mortgage note is relevant; and

(3) not subject to ~~state~~State abandoned property law.

## SECTION 10. MODIFICATIONS

(a) The regulator shall issue regulations for the submission to the repository system of records evidencing 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~~records evidencing *modification* be submitted through a gateway ~~within~~by a specified time ~~period~~;
  - (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* ~~actually~~ caused by a delay in submission of the records evidencing *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 under subsection (a) shall be unenforceable. A registrant that charges fees or other amounts under an indemnity or other agreement that is unenforceable under this subsection shall be liable to the borrower for (i) the greater of the amount that it paid and [\$2,000] and (ii) reasonable attorney's 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. ~~[-The registrant may submit, and the repository operator may accept, other records related to the electronic mortgage note.-]~~
- (~~e~~d) The submission of, or failure to submit, any ~~records~~modifications under ~~subsections~~subsection (a) ~~(b)~~ of this section shall have no effect on ~~the validity of such records, with such validity~~whether the modification is enforceable, with the enforceability to be determined under other law.
- (~~e~~d) WARRANTIES RELATING TO MODIFICATION.—
- (1) In any registered *transfer*, the transferring *registrant*, ~~as a matter of law, represents and~~ warrants that it has submitted to the *repository system* records of 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 ~~representation and~~ warranty runs to the borrower(s) under the relevant electronic mortgage note and all proximate and remote transferees of the *electronic mortgage note*.
  - (2) In any judicial or non-judicial ~~enforcement~~foreclosure proceeding or any judicial proceeding to enforce the electronic mortgage note, the ~~enforcing~~ *registrant*, ~~as a matter of law, [represents and]~~ 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 is aware, that was entered into by another person but was not previously submitted to the repository system~~has notice.



- (3) ~~With respect to any modifications or other records submitted to the repository system pursuant to this Section 10, the repository operator warrants that all data in the repository system are an accurate reflection of the data that it has received and have been associated with the electronic mortgage notes to which they relate.~~

## SECTION 11. DISCHARGE

- (a) “Discharge” means any act that terminates the obligation of a borrower evidenced by the electronic mortgage note, including full performance, satisfaction, strict foreclosure, foreclosure producing an amount payable to the registrant of the electronic mortgage note sufficient to pay the obligation in full, 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.
- (b) REGULATIONS.— The regulator shall issue regulations:
- (1) requiring that the registrant give the repository operator notice of discharge of a borrower’s obligation evidenced by an electronic mortgage note to the repository system;
- (2) (a) ~~The regulator shall issue regulations requiring that the registrant provide notice of discharge of a borrower and discharge of an electronic mortgage note to the repository system. The regulator shall also establish~~establishing a process by which a borrower may ~~provide~~(i) give notice to the ~~system~~repository operator of the borrower’s belief that its obligation or the obligation evidenced by the electronic mortgage note has been discharged and (ii) request that the registrant or, if applicable, the court issuing a court order discharging the obligation confirm such discharge to the registry operator. ~~The regulations shall provide for appropriate liability for the registrant’s failure to provide notice of a discharge known to such registrant, such failure being deemed to occur in either the jurisdiction of the borrower or the jurisdiction of the mortgaged property. The notice requirement in this section does not replace any requirement under state law to deliver or record a satisfaction of mortgage and any associated penalties for failure to comply with such requirement.~~repository operator;
- (3) providing for an appropriate remedy for the registrant’s failure to give the repository operator 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 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 or (ii) any associated penalties for failure to comply with such requirement.

- (b)(c) Once the records of the repository system reflect that the obligation evidenced by an electronic mortgage note has been discharged with respect to all borrowers, such electronic mortgage note shall cease to be transferable.
- (d) Except to the extent that ~~the regulator mandates~~ regulations require 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.
- (e) ~~For the purpose of this section, “discharge” refers to any act that terminates the duties to the registrant 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, or other court order.~~

## 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 (i) subject to subsection 13(e)(1), only upon 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.
    - (B) ~~An electronic mortgage note and the associated mortgage may not be transferred, in whole or in part, outside the repository system.~~(C) Notwithstanding subparagraphs (A) or (B) of this paragraph, [(C) The Act does not limit the right of a registrant may to assign its rights to payments outside of the registry repository system, either partially or in whole, but such assignment shall have except insofar as provided in this subparagraph. Such an assignment (i) only affects the rights and obligations between the registrant and its assignee as determined under other law, and (ii) 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 system or the repository operator.]

- (23) Subject to paragraph (34), a registered transfer ~~shall be~~ is deemed to be accompanied by an unqualified indorsement ~~of the obligation evidenced by~~ by the registrant, as applicable, of the electronic mortgage note in ~~blank~~ the name of the registrant with the transfer warranties set forth in UCC Article 3 of the UCC. 3.
- (34) A ~~transferring party~~ registrant may instruct the *repository operator* that the electronic mortgage note is accompanied by an indorsement other than the type described in paragraph (23) ~~shall apply~~ so long as such instruction comports with *system rules*. The *repository operator* shall enter ~~such~~ the instruction in the *repository system records* in a manner that permits the *borrower* and all future *registrants* to view the nature of the indorsement.
- (45) Any ~~[transfer or any other]~~ 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 was granted before ~~the~~ submission and conversion. ~~For~~ purpose of this paragraph, the location of a *mortgage note* is determined by its location immediately before submission.]
- (2) ~~A~~ For purposes of UCC Article 9, a description or indication of collateral consisting of an electronic mortgage note in a security agreement or financing statement for purposes of the UCC as an is sufficient if it identifies the collateral
- (A) as an *electronic mortgage note*; or
- (B) ~~as a specific~~ by the type of collateral defined in the *UCC* that corresponds to the *mortgage note* that was converted to ~~an~~ the *electronic mortgage note* by operation of ~~Section 8~~ section 8.
- ~~reasonably identifies the electronic mortgage note for purposes of Article 9 of the UCC.~~ Any description or indication of a *mortgage note* that was sufficient before ~~submission and conversion remains sufficient upon and following submission and conversion~~ conversion is a sufficient description or indication of the related *electronic mortgage note*. 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) ~~Nothing in this~~ This Act ~~precludes~~ does not preclude the creation of a security interest in an *electronic mortgage note* under Article 9 of the *UCC*. A secured party ~~that is not~~ other than the *registrant* or an *authorized transferor*, may ~~only~~ enforce its security interest only as an *adverse claim*. A secured party ~~that~~ who is

not the *registrant* but is an *authorized transferor* may exercise its registered transfer power and become the *registrant* ~~in order~~ to enforce its security interest.

(c) TIMING WITH RESPECT TO REGISTERED TRANSFERS AND AUTHORIZED TRANSFERORS.—System rules shall determine when:

- (1) Registered transfers are effective;
- (2) Instructions creating, modifying, transferring, or destroying *authorized transferor* status are effective;
- (3) Waivers of a *registrant*'s powers to enforce or transfer are effective.

## SECTION 13. AUTHORIZED TRANSFERORS

- (a) An *authorized transferor* ~~has the power to~~ may effect a registered transfer of the *electronic mortgage note* to itself or any other person ~~—, including making any indorsements in the name of the *registrant* as contemplated by section 12. In effecting such a *registered transfer*, the *authorized transferor* also has the power to instruct the repository operator pursuant to paragraph 12(a)(4).~~
- (b) ~~With respect to~~ There can be only one *authorized transferor* of an *electronic mortgage note* ~~—, a at any given time.~~
- (c) A person becomes an *authorized transferor* of an *electronic mortgage note* when the repository operator, ~~in response to a proper instruction~~, creates a ~~corresponding~~ record of the person's status as an *authorized transferor* on the repository system in response to an instruction from the *registrant* or the *authorized transferor*.
- (1) ~~Authorized transferor status is revoked whenever the *registrant* or *authorized transferor* so notifies the repository operator, unless the instruction conferring *authorized transferor* status indicates that the status is irrevocable.—~~ d) A person ceases to be an *authorized transferor* of an *electronic mortgage note* when:
- (2) ~~The repository operator may not recognize more than one *authorized transferor* associated with an *electronic mortgage note* at any given time.—~~
- (e) ~~With respect to an *electronic mortgage note*, a person ceases to be an *authorized transferor* when:~~
- (1) such *electronic mortgage note* has been ~~transferred, either by the *authorized transferor* or~~ subject to a *registered transfer* by the *registrant*;
  - (2) the repository operator revokes the person's status as an *authorized transferor* status has been revoked in the repository system, or in response to an instruction from
    - (A) the *authorized transferor* to revoke the status or confer the status on another person, or
    - (B) from the *registrant*, unless the instruction originally *conferring authorized transferor* status provides that the status is irrevocable by the *registrant*;  
or

- (3) ~~such~~the electronic mortgage note has been marked as discharged ~~by the~~  
repository operator in accordance with section 11.
- (d) OTHER POWERS.—
- (1) ~~The registrant retains all its powers notwithstanding~~Notwithstanding the existence of an *authorized transferor*, ~~except that the registrant may waive its power to transfer~~of an electronic mortgage note retains its power to make a registered transfer and enforce the electronic mortgage note (and associated mortgage), unless the registrant waives either or both of these powers, in which case the repository operator, upon its receipt of an instruction from the registrant waiving its power(s):
- (A) shall create a record on the repository system of the extent of the waiver; and
- (B) if the power 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.
- (23) 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), upon the repository operator's receipt of a waiver instruction from the registrant, 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) ~~The~~A person ~~submitting~~shall submit a document containing an *RLN* for recording in a *recorder's office* ~~represents that it has the power and present intent to submit~~only 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~~The creation by the *repository system 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 has the same effect under State law as recordation of an assignment of a mortgage from one registrant to another.

- (c) ~~The~~ Notwithstanding contrary State law, the registrant ~~shall be treated for all purposes as of an electronic mortgage note is deemed~~ the mortgagee of record for all purposes, including for ~~purposes~~ release of ~~releasing~~ the mortgage. ~~If a~~ Any law that requires notice be given to a person identified in the recorder's office as mortgagee, ~~such law~~ 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~~ section 11 does not have the legal effect of delivering or recording a satisfaction of mortgage. ~~(e) Consistent with this section, nothing in this Act shall alter the nature or priority of the 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 ~~it~~ the information concerns a gateway ~~so long as such information~~ 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*. ~~Such~~The regulations shall ~~be tailored to~~take into account the specific needs of *borrowers*, *registrants*, *authorized transferors*, *gateways*, courts, ~~those~~title searchers, persons with valid subpoenas, scholars, governmental entities, ~~members of~~ the general public, potential purchasers, and others identified by the *regulator* as needing access. ~~Such~~The regulations shall:
- (A) ~~provide each borrower with~~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 ~~free of charge, in an accessible format, and promptly after the borrower submits a request for such information in a manner prescribed by the system~~(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;
  - ~~(B)~~(C) allow a *registrant* or authorized transferors to access all information concerning the *electronic mortgage notes* for which it is the *registrant*;
  - ~~(C)~~(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; ~~and~~
  - ~~(D)~~(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* or authorized transferor may instruct the *repository operator* that another *person* is authorized to access the information concerning ~~a deposited an~~an *electronic mortgage note*. ~~Upon receiving such an~~After it receives the instruction, the *repository operator* may grant access to such *authorized person*. ~~Such an~~The instruction constitutes a warranty by the *registrant* or authorized transferor to the *borrower* that the *authorized person* will keep the information confidential and ~~will~~ not use it for any marketing purpose. This warranty expires if ~~such the~~ *authorized person* becomes the *registrant* or authorized transferor.
- (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 the chain of registrants that preceded each of the current registrants, so that the recorder's office may continue to provide members of the public with access to chain of title type records.~~ 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, and any indication that the obligation to the registrant has been discharged.
- (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 ~~such~~the information, and to protect against unauthorized access to ~~such~~the information. In supervising the *repository operator* and its activities, the *regulator* shall follow guidance issued by the ~~FFIEC~~Federal Financial Institutions Examination Council on information security programs, including cyber security and critical dependencies.

## SECTION 17. POST-SUBMISSION INFORMATION

- (a) NOTICE BY ~~SYSTEM~~REPOSITORY OPERATOR.—
- (1) ~~If a borrower has identified itself to the system operator in accordance with system rules, the system~~ 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~~associated with~~ an electronic mortgage note for which the individual person is the ~~a~~ borrower. ~~Such~~
- A notice shall only provided under this paragraph (a)(1) 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, target the notice to a reading level no higher than eighth grade, and require that the repository operator include information instructing the borrower as to how to access the repository system.
- (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 ~~system~~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 ~~such~~the notices.

(b) NOTICE BY REGISTRANT.—

- (1) ~~Whenever~~When disclosure to a *borrower* is required under ~~12 USC § 2605(b)(3) and RESPA or~~ 15 USC § 1641(g) with respect to an ~~electronic~~obligation evidenced by a mortgage note, the *registrant* shall also cause ~~such~~the disclosure to ~~also~~ be provided to the ~~system~~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 ~~registry operator as such information changes from time to time~~repository operator within a reasonable period of time of the registrant or any master servicer or subservice knowing of any change following submission:
- (A) contact information of the *borrower* obtained after ~~submission~~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~~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 ~~shall be~~is satisfied by the related *record* of the *repository system* that is certified by the *repository operator*.~~;~~
- (2B) ~~A~~a record of the *repository system* ~~that is~~ certified by the *repository operator* and that identifies the current ~~or any prior registrants, authorized transferors, or gateways shall serve~~registrant of an electronic mortgage note serves as irrebuttable proof of the identity of ~~such party. The~~the person with such status on the repository system, but the validity of the content of all other certified *records* of the *repository system* ~~shall be~~is determined ~~under~~by other law.~~;~~
- (3C) ~~All~~all records of the *repository system* that are certified by the *repository operator* shall be self-authenticating.~~;~~ and
- (4D) ~~The~~the regulator shall issue regulations governing certification by the *repository operator* of records of the *repository system*.

- (2) Any record that is described in subsection 8(c)(4)(B) 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 ~~registrant~~person may act through an agent or other representative ~~for enforcement or any other purpose~~ is determined by other law.

## SECTION 19. REPOSITORY OPERATOR'S RESPONSIBILITY FOR FRAUD AND ERROR; REPOSITORY OPERATOR'S LIABILITY

- (a) MULTIPLE SUBMISSIONS OF THE SAME *MORTGAGE* ~~NOTE~~NOTE.—
- (1) If the repository operator believes that a mortgage note ~~is~~was submitted more than once, ~~only one submitter has the rights of a registrant. Upon detecting such a multiple submission, the repository operator shall (i) notify all submitters, and (ii) treat the first person that submitted the mortgage note as registrant unless and until it receives a court order to the contrary or all submitters agree on the identity of the registrant. For ten business days after it gives notice, the repository operator shall not effect a~~ it shall notify all putative registrants and the borrower and shall not effect any registered transfer of such electronic mortgage note. ~~notes until either:~~
- (A) All putative registrants identified agree as to the identity of the sole registrant with respect to the mortgage note and provide notice to the repository operator in accordance with system rules; 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 different mortgage notes.
- (2) ~~For the purpose of this subsection, multiple~~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~~ ~~are the same mortgage note.~~
- (b) REPOSITORY ERRORS.—This section does not apply to errors made by a gateway or a gateway's customer that are accurately reproduced by the repository operator.
- (1) If the repository operator ~~knows that it~~ erroneously identified a registrant or erroneously identified two different persons as the registrant of the same electronic mortgage note, it ~~may~~shall correct the error.
- (2) If ~~prior to~~ the repository operator ~~correcting such error, an erroneous registrant transfers~~ reasonably believes that it erroneously identified a registrant or erroneously identified two different persons as the registrant of the same electronic mortgage note, it may correct the error.
- (3) If the person erroneously identified as a registrant on the repository system causes a registered transfer of the electronic mortgage note before the repository

operator corrects an error of the type described in paragraph (1) or (2), then upon correcting the error, the repository operator shall :

(A) compensate the person losing registrant status if ~~such~~that person is a holder in due course [and] acted in good faith in acquiring the electronic mortgage note for value. ~~In such instances,]; and~~

(B) be subrogated to the rights of the holder in due course to the extent the repository operator is subrogated to the right of the person that lost registrant status to seek compensation from the erroneous registrant has compensated a person pursuant to subparagraph (A).

(34) The repository operator shall promptly notify any persons that its records indicate could be affected by operation of paragraph (1), (2) or (23) of this subsection.

(c) LIABILITY.—

(1) ~~The liability of the~~Unless otherwise provided in the Act, in connection with its role as repository operator, the repository operator is:

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

(2) ~~The repository operator shall not be~~B Not liable to any person for consequential or punitive damages.

(3) The repository operator shall not be liable to any person because of a force majeure event, if ~~it~~the repository operator exercises ~~such~~the diligence ~~as~~ the circumstances require. Any registrant or other person that ~~is legally obligated to act but is not able to do so~~cannot carry out a legal obligation due to the effect of the force majeure event on the repository operator or repository system ~~may delay~~is excused from acting until (i) it receives notice that the force majeure event ~~is~~ no longer ~~affecting~~affects the repository operator or repository system and (ii) has a reasonable time to act.

(4) The repository operator may be liable for failure to act on an instruction it receives from a registrant or authorized transferor or court if it has had a reasonable time to act on the instruction and has failed to do so.

(45) The repository operator's acts pursuant to regulations or its system rules are immune from antitrust claims.

## **SECTION 20. NOTICE TO REPOSITORY OPERATOR OF ADVERSE CLAIMS; RELIEF FOR ADVERSE CLAIMS AGAINST THE REPOSITORY OPERATOR**

(a) Notice to the repository operator of an adverse claim ~~against an obligation evidenced by an electronic mortgage note shall not be~~is not effective and the repository operator shall

not recognize ~~such~~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 it is issued by an appropriate court if~~ issued by:
- (1) a federal court, *State court of general jurisdiction*, or ~~(2) a federal~~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 ~~if no U.S. court has such jurisdiction, in~~
  - (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 ~~promptly~~ notify the *registrant* promptly of any ~~notice~~ effective notice of adverse claim under ~~this section~~subsection (a).
- (d) The only relief for an *adverse claim* against the repository operator shall be injunctive, ordering the *repository operator* either ~~to freeze transfers not to effect a registered transfer~~ during the pendency of ~~any~~the action or to ~~change the identity of the registrant to that of~~make the *adverse claimant* ~~at the conclusion thereof~~registrant.

## SECTION 21. PREEMPTION AND ~~SCOPE~~CONSTRUCTION

- (a) **RULE OF CONSTRUCTION.**—This Act may not be construed as annulling, altering, ~~or~~ 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 ~~any such~~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) ~~SCOPE~~CONSTRUCTION. —~~(1)~~ Except as expressly provided in the Act, this Act does not address the rights of *borrowers*, and *obligations* of *persons* to ~~such~~ *borrowers*, including with respect to:
- ~~(A)~~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*, ~~whether under statute or other law~~;
  - ~~(B)~~2 requirements for review of loss mitigation options, including required mediation and conferences;
  - ~~(C)~~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*; ~~or~~
  - ~~(D)~~4 notice requirements; ~~or~~ or



- ~~(2) This Act does not address:~~  
~~(A) International Emergency Economic Powers Act;~~  
~~(B) federal asset forfeiture law;~~  
(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 Subsection~~section and subsections 9(e)(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~~OPERATOR.—
- (1) ~~All suits~~Any suit of a civil nature at common law or in equity to which the *repository operator* ~~shall be~~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 ~~all such suits~~the suit.
- (2) The *repository operator*, as defendant, may remove a suit to a United States district court by following the procedure ~~for the removal of causes~~ 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) ~~This~~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) ~~Paragraph (1)~~This Act does not preclude ~~any the~~ assertion of diversity, ancillary, pendent or supplemental jurisdiction ~~regarding with respect to~~ the ~~litigation actions~~ described in ~~subparagraphs (A)–(C) of~~ paragraph (1).