



## Freddie Mac eMortgage Guide

Version 2.0

## **DISCLOSURE NOTICE, DISCLAIMER**

This eMortgage Guide has been prepared by Freddie Mac for its Seller/Serviceicers that enter into negotiated agreements with Freddie Mac to originate, sell and service electronic Mortgages to Freddie Mac. eMortgages are Mortgages that are originated using an electronic Note, or “eNote.” An eMortgage may also have an electronic or paper Security Instrument and certain other paper or Electronic Records, which are part of the Mortgage File Documents. If a Seller/Serviceicer enters into an agreement with Freddie Mac to sell or service eMortgages, the requirements contained herein will be incorporated into and become a part of and will amend and supplement the Freddie Mac Single-Family Seller/Serviceicer Guide and Seller/Serviceicer’s other Purchase Documents.

The requirements in this eMortgage Guide are subject to revision by Freddie Mac at any time at its sole discretion. Notwithstanding anything contained in the Freddie Mac Single-Family Seller/Serviceicer Guide or Seller/Serviceicer’s other Purchase Documents to the contrary, any such revision shall be effective as of the date specified by Freddie Mac. The information contained in this eMortgage Guide is not a statement of law and does not create any rights for any Seller/Serviceicer or any third party, other than Freddie Mac. This eMortgage Guide replaces and supersedes, in its entirety, the Freddie Mac eMortgage Handbook published in 2005.

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## **Section 1: Introduction**

### **1.1 Introduction**

This *Freddie Mac eMortgage Guide*<sup>®</sup> ("eMortgage Guide") sets forth Freddie Mac's requirements that a Seller/Servicer must comply with to create, sell, and service eMortgages. This eMortgage Guide replaces and supersedes, in its entirety, the Freddie Mac eMortgage Handbook published in 2005.

### **1.2 Intent**

This eMortgage Guide is intended to provide Seller/Servicers, Custodians, System Providers, and other mortgage industry participants with Freddie Mac's requirements regarding eMortgages.

### **1.3 Interpreting Requirements Set Forth in This eMortgage Guide**

In any interpretation of Seller/Servicer Purchase Documents with respect to the special requirements applicable to eMortgages, the requirements set forth in this eMortgage Guide and the amendment that incorporates this eMortgage Guide into Seller/Servicer's Purchase Documents shall prevail over conflicting or contradictory requirements in the Freddie Mac Single-Family Seller/Servicer Guide. Except as provided above, eMortgages must comply with the requirements in the Freddie Mac Single-Family Seller/Servicer Guide.

#### **1.3.1 Complying With eMortgage Requirements**

If Freddie Mac, in its sole discretion, determines that a Seller/Servicer is eligible to sell and/or service eMortgages, Freddie Mac shall prepare an amendment to Seller/Servicer's Purchase Documents, which amendment shall incorporate this eMortgage Guide by reference. Seller/Servicers and, if applicable, their System Providers must comply with the requirements specified in this eMortgage Guide. In addition, contracts by and between: (i) the Seller/Servicer and any Service Provider(s) regarding the provision of eMortgage closing services and (ii) the Document Custodian and any Service Providers regarding the provision of eNote Vault services, will be required by Freddie Mac to contain certain terms and conditions. Seller/Servicers and Document Custodians will be required to make certain representations and warranties regarding their compliance with requirements in this eMortgage Guide and in other Purchase Documents.

### **1.4 Capitalized Terms**

Capitalized terms used herein shall have the meanings ascribed to such terms in the Freddie Mac Single-Family Seller/Servicer Guide, this eMortgage Guide, Seller/Servicer's other Purchase Documents, E-SIGN, and UETA.

## **1.5 Background**

The requirements and specifications in this eMortgage Guide are based, for the most part, on the requirements of E-SIGN, which is a law that was adopted by Congress and signed into law by the president in 2000, and UETA, which was adopted by NCCUSL and recommended for adoption by the 50 states, the District of Columbia, and U.S. possessions and territories in 1999. E-SIGN and UETA do not have interpretive rules or regulations; however, UETA does contain prefatory notes and commentary. Until case law interpreting E-SIGN and UETA, as enacted in any particular jurisdiction, has developed, the mortgage industry will need to move forward prudently and with a reasonable degree of caution.

## **Section 2: eMortgage Eligibility Requirements**

### **2.1 Seller Eligibility Requirements**

#### **2.1.1 Seller Approval**

Seller/Servicers who wish to sell eMortgages to Freddie Mac should contact their account manager or 800-FREDDIE to begin the process of determining their eligibility to sell eMortgages to Freddie Mac. If a Seller/Servicer is approved by Freddie Mac to sell eMortgages to Freddie Mac, the Seller/Servicer's Purchase Documents will be amended to incorporate this eMortgage Guide and other applicable terms and conditions.

#### **2.1.2 Selling eMortgages**

Seller/Servicer must enter into an amendment to its Master Agreement and other Purchase Documents in order to sell eMortgages to Freddie Mac. Such amendment shall require the Seller/Servicer to, among other things:

- Close the eMortgage with MERS<sup>®</sup> as nominee for the originator (i.e., MERS is the "Original Mortgagee of Record") and register the eMortgage on the MERS System;
- Register the eNote in the MERS eRegistry;
- Deliver the eMortgage data through the Freddie Mac Selling System;
- Insert special characteristic code (SCC) 251 in one of the SCC fields in the Selling System;
- Deliver the MERS Mortgage Identification Number (MIN) in the Selling System;
- Clear all critical purchase edits for eMortgages in the Selling System;
- Deliver the eNote to a Document Custodian that is eligible to serve as a Document Custodian for eNotes, pursuant to Freddie Mac's requirements;
- Deliver a copy of the eNote to Freddie Mac or its designee upon request; and
- Transfer control of the eNote to Freddie Mac in the MERS eRegistry resulting in Freddie Mac being noted as the Controller in the MERS eRegistry.

#### **2.1.3 Eligible eMortgages**

Although most types of Mortgages are eligible for delivery to Freddie Mac as eMortgages, certain types of Mortgages are not eligible for delivery to Freddie Mac as eMortgages because of additional risks associated with such Mortgages. Mortgages that are not currently eligible for sale to Freddie Mac as eMortgages will be identified and set forth in the amendment to Seller/Servicer's Purchase Documents that incorporates the eMortgage Guide, after Seller/Servicer has been approved to sell eMortgages to Freddie Mac.

## **2.2 Document Custodian Eligibility Requirements**

### **2.2.1 Document Custodian Approval**

To become an approved eNote Document Custodian, a Document Custodian must be recommended by a Freddie Mac Seller/Servicer, meet Freddie Mac's eligibility requirements, provide an eNote Vault that meets Freddie Mac's requirements as set forth in Section 4 of this eMortgage Guide, and otherwise be deemed acceptable to Freddie Mac.

### **2.2.2 Electronic Document Custodial Agreement**

The Seller/Servicer, the Document Custodian and Freddie Mac must enter into an Electronic Document Custodial Agreement (Form 1035e) before the Seller/Servicer may deliver an eNote to a Document Custodian on behalf of Freddie Mac. (See Section 4 of this eMortgage Guide for more information.)

The Electronic Document Custodial Agreement (Form 1035e) describes specific terms and requirements that apply to the matters addressed herein. In the event of a conflict between this eMortgage Guide and the Electronic Document Custodial Agreement, the Electronic Document Custodial Agreement will govern.

Freddie Mac may terminate the Electronic Document Custodial Agreement and require the transfer of all eNotes and related documents held by the Document Custodian.

Pursuant to the Electronic Document Custodial Agreement, the Document Custodian shall agree to, among other things, the following:

- The Document Custodian has no property interest in Freddie Mac eNotes, any other electronic Mortgage File Documents or the data that is contained in such Electronic Records;
- Notwithstanding any disputes that may arise between or among the Document Custodian, any System Provider, Freddie Mac and/or the Seller/Servicer, Freddie Mac has an unconditional and absolute right, as owner of the eNotes and any other electronic Mortgage File Documents, to have such Electronic Records transferred at any time to another Document Custodian at Freddie Mac's sole discretion. Freddie Mac may enforce its absolute and unconditional rights set forth above in an action for specific performance, if there is no other suitable remedy; and
- Any agreement between the Document Custodian and any System Provider for the storage and maintenance of Freddie Mac's eNotes and any of Freddie Mac's other Mortgage File Documents shall be consistent with the provisions of the Electronic Document Custodial Agreement, Freddie Mac Single-Family Seller/Servicer Guide and this eMortgage Guide.

### **2.2.3 Use of Additional Document Custodian**

If the Document Custodian that Seller/Servicer customarily uses to store paper Notes is not able to store eNotes in a manner that satisfies applicable Freddie Mac requirements,

Seller/Servicer agrees to use (i) Freddie Mac's Document Custodian; (ii) use a Document Custodian that has an eNote Vault that has previously received approval from Freddie Mac or (iii) a Document Custodian that has an eNote Vault that is determined to be acceptable by Freddie Mac, at its sole discretion.

## **2.3 Servicer Eligibility Requirements**

### **2.3.1 Servicer Approval**

Seller/Servicers who wish to service eMortgages for Freddie Mac should contact their account manager or 800-FREDDIE to begin the process of determining their eligibility under Freddie Mac's requirements. If Seller/Servicer is approved by Freddie Mac to service eMortgages for Freddie Mac, Servicer's Purchase Documents will be amended to incorporate this eMortgage Guide and other applicable terms and conditions. The approval by Freddie Mac of an entity as a Seller of eMortgages to Freddie Mac does not necessarily mean that such entity will also be approved as a Servicer of eMortgages for Freddie Mac or vice versa.

### **2.3.2 Servicing eMortgages**

Servicer will be required to service eMortgages in accordance with the Freddie Mac Single-Family Seller/Servicer Guide as amended and supplemented by this eMortgage Guide and Servicer's other Purchase Documents. Among other things, Servicer must:

- Identify all eMortgages in its servicing System as eMortgages and make sure that its staff complies with any special Freddie Mac eMortgage servicing requirements; and
- Perform all appropriate transactions with the MERS eRegistry to ensure that certain events that occur during the life of the eMortgage are properly recorded and, if necessary, registered in the MERS eRegistry. If a Servicer's MERS membership is terminated or if the Servicer is unable to record such events in the MERS eRegistry, the servicing of Freddie Mac's eMortgages will be transferred to an approved eMortgage Servicer whose MERS membership is in good standing and who is able to record such events in the MERS eRegistry.

### **2.3.3 Transfer of Servicing and Custody**

Servicing of eMortgages and custody of eNotes may only be transferred to Servicers and Document Custodians, respectively, that have been specifically and expressly approved in writing by Freddie Mac to service eMortgages or store eNotes, as applicable. For all other general issues related to such transfers, refer to Sections 4 and 5 of this eMortgage Guide and Volume II of the Freddie Mac Single-Family Seller/Servicer Guide.

## **Section 3: Creating and Delivering Eligible eMortgages**

### **3.1 eMortgage Closing System Requirements**

For each electronic closing System (“eClosing System”) that the Seller/Servicer intends to use (whether developed by Seller/Servicer or purchased or licensed from a System Provider), Freddie Mac will require the following:

- A legal opinion in a form, and from a lawyer or law firm, acceptable to Freddie Mac, which opinion concludes that: (i) the eClosing System and Seller/Servicer Processes used to create eNotes and Custodial Documents comply with E-SIGN and UETA, including, without limitation, Section 201 of Title II of E-SIGN and Section 16 of UETA and any other applicable state and federal laws and regulations and (ii) the eNotes created using the eClosing System and Seller/Servicer Processes will be valid, enforceable and effective eNotes for the life of each respective eNote;
- A technical review and analysis from a computer technology expert acceptable to Freddie Mac, which review and analysis confirms that the eClosing System complies with MISMO<sup>®</sup> and Freddie Mac’s standards and requirements; and
- A security review from a third-party computer security expert acceptable to Freddie Mac, which review confirms the eClosing System used by the Seller/Servicer is in compliance with Freddie Mac's eMortgage Guide.

Freddie Mac reserves the right, in its sole discretion, to require that the legal opinion, technical review and security review be updated:

- In the event of any material change to the operation or effectiveness of the eClosing System; or
- At such periodic intervals as Freddie Mac shall deem appropriate.

A Seller/Servicer that creates, stores or transfers an eNote purchased by Freddie Mac must cooperate with Freddie Mac in all activities necessary to enforce the Security Instrument and eNote. Promptly upon request by Freddie Mac, the Seller/Servicer must provide or, if applicable, cause any applicable third-party Service Provider to provide to Freddie Mac:

- An affidavit or certification regarding the creation and maintenance of the eNote and other Electronic Records in connection with the eMortgage in a form appropriate to ensure admissibility of the eNote and other Electronic Records in a legal proceeding. The affidavit or certification must include, among other things:
  - A description of the steps followed by a Borrower to execute the eNote or other Electronic Record using the eClosing System;
  - A copy of each screen, as it would have appeared to the Borrower, of the eNote or other Electronic Record that Freddie

Mac is trying to enforce when the Borrower signed the eNote or other Electronic Record;

- A description of the System controls in place at the time of signing to ensure the integrity of the data;
  - A description of how the executed eNote and other Electronic Records have been stored to prevent against unauthorized access and unauthorized alteration and a description of how, in the event of unauthorized access or alteration, the System can detect such unauthorized access or alteration; and
  - A description of the System controls in place to ensure compliance with E-SIGN and the UETA, including, without limitation, Section 201 of Title II of E-SIGN and Section 16 of UETA.
- Testimony by an authorized official or employee of the Seller/Servicer and/or System Provider to ensure admission of the eNote and other Electronic Records in a legal proceeding to enforce the loan.

Seller/Servicer must also comply with the applicable Purchase Documents and make the representations and warranties in this eMortgage Guide, including (without limitation) that any eNotes sold to Freddie Mac will be valid and enforceable, and that other Electronic Records created, provided, signed or otherwise processed using the eClosing System were so created, provided, signed or processed in compliance with applicable state and federal law.

The Seller/Servicer must (or cause the System Provider to), at least annually, conduct an audit of each eClosing System that Seller/Servicer uses to confirm that such systems continue to comply with the minimum System and security requirements in this eMortgage Guide and Seller/Servicer's other Purchase Documents. The audit type and frequency will be included in the Seller/Servicer's Purchase Documents, but must be a SAS 70 Type II or other comparable type of audit acceptable to Freddie Mac, in its sole discretion. A copy of audit shall be provided to Freddie Mac within 30 days of its completion.

### **3.2 Electronic Transaction Disclosure and Consent**

Before a Borrower uses an eClosing System, the Borrower, as part of the Consent Form, must be given a "clear and conspicuous" disclosure statement in accordance with the requirements in Title I, Section 101(c) of E-SIGN. In addition, the disclosure statement should include:

- A description of the Electronic Signature Process that will be used; and
- How the Borrower will be provided access to a copy of the eNote and other Electronic Records (this could include paper copies).

On the loan settlement (closing) date, Seller/Servicer must obtain the Borrower's express consent to use the eClosing System (refer to Section 3.3.1). The Borrower must electronically sign the Consent Form before signing the eNote or any other Electronic Record. The Borrower's consent must be obtained on the loan settlement (closing) date even if Seller/Servicer previously obtained the Borrower's consent to engage in an eMortgage transaction. The executed Consent Form must be securely stored either with the eNote or with other electronic Mortgage File Documents.

### **3.2.1 Who Must Expressly Consent**

Express consent must be obtained electronically from each Borrower participating in the eMortgage transaction.

## **3.3 Electronic Signatures**

The Borrower must sign the eNote and other Electronic Records using an Electronic Signature.

The Systems and Processes used to create the Borrower's Electronic Signature must:

- Verify the Borrower's identity as a signatory of the eNote and other Electronic Records;
- Verify the Borrower's authority to sign the eNote and other Electronic Records;
- Clearly identify the symbol or Process to be used as an Electronic Signature and the purpose of the Electronic Signature;
- Clearly identify the Electronic Record being signed;
- Capture clear evidence of the Borrower's intent to adopt the Electronic Signature and to electronically sign the eNote and other Electronic Records;
- Attach the Electronic Signature to, or associate the Electronic Signature with, the eNote and any other Electronic Records executed by the Borrower;
- Attribute the Electronic Signature to the applicable Borrower;
- Include the Borrower's name (in typed form or otherwise) so long as the Borrower's name is visible and legible on the Electronic Record; and
- Include a date and a time stamp of the time of Borrower's execution of the eNote and any other Electronic Records.

### **3.3.1 Establishing That the Borrower Used the eClosing System**

The System and/or Processes used by the Seller/Servicer must establish, to Freddie Mac's satisfaction, that the Borrower electronically signed the Consent Form, eNote and any other related Electronic Records. For example, the Borrower may enter information into the System that is personal and attributable only to the Borrower such as, a confidential user ID, password and/or personal identification number ("PIN") before electronically signing an eNote or any other Electronic Record.

In any event, whatever System or Process that a Seller/Servicer wishes to use to verify that the Borrower, in fact and intentionally, electronically signed the eNote and any

other related Electronic Records, such System or Process must be reviewed and expressly and specifically approved by Freddie Mac in writing.

### **3.3.2 Identify the Electronic Signature Symbol or Process**

Seller/Service must make it clear to the Borrower what symbol or Process the Borrower will use as his or her Electronic Signature to sign the eNote and other Electronic Records.

### **3.3.3 Identify the Electronic Record to Be Signed**

The eClosing System must be designed so that the eNote and other Electronic Records to be signed by the Borrower are clearly identified for the Borrower and are individually presented to the Borrower for review and electronic signing. For each Electronic Record that is required to be signed, the Borrower must take an action that expresses the Borrower's intent to sign the Electronic Record being presented. A single Electronic Signature cannot be applied to multiple Electronic Records.

### **3.3.4 Establish the Borrower's Intent to Use an Electronic Signature**

Seller/Service must assure that the Borrower is aware of the legal consequences of the use of an Electronic Signature. The System and/or Process used for electronically signing eNotes and other Electronic Records with Electronic Signatures must:

- Provide the Borrower with notice of the effect the Electronic Signature will have;
- Provide a mechanism or process for the Borrower to confirm that the Borrower intends to electronically sign the Electronic Record(s) presented;
- Provide the Borrower with notice that an Electronic Signature will be attached to, or logically associated with, an eNote and other Electronic Records, as applicable; and
- Capture the Borrower's acknowledgment that his or her Electronic Signature has been attached to, or logically associated with, the eNote or other Electronic Records, as applicable.

### **3.3.5 Attaching or Logically Associating an Electronic Record**

The System must be designed to permit Freddie Mac, its designees, and/or its successors or assigns (when reviewing an electronically signed eNote or other Electronic Record and its audit trail), to promptly determine:

- That the Borrower's Electronic Signature has been attached to, or is logically associated with, the eNote or other Electronic Record;
- The type of electronic symbol or Process used;
- The name of the Borrower (the name must be typed or otherwise expressed in a visible way on the Electronic Record); and
- The date and time stamp of the Electronic Signature.

### **3.3.6 Ineligible Types of Electronic Signatures**

At this time, Freddie Mac will not purchase an eMortgage with respect to which any of the Electronic Signatures is an audio or video recording or is solely biometric data (such as fingerprint, voice, facial, or retinal recognition Systems).

### **3.3.7 Presence at Signing**

Each Borrower must be physically in the presence of the closing agent and/or a notary public coordinating the signing of the eNote and other Electronic Records; however, all Borrowers do not have to be in each other's presence at the time of signing.

### **3.3.8 Mandatory Electronic Record Types and Use of Tamper Seals**

Seller/Servicer must use the following electronic document types:

- The eNote must be a valid, Version 1.02 MISMO Category 1 SMART Document, signed using an Electronic Signature process, and secured by a Tamper Seal; and
- All other Mortgage File Documents may be either MISMO Category 1, Category 2 or 4 Version 1.02 SMART Documents or Portable Document Format (PDF) documents. If the electronic Mortgage File Documents are MISMO Category 1 SMART Documents, then they must comply with the MISMO Category 1 SMART Document requirements in this eMortgage Guide. If Seller/Servicer uses PDF documents, the Adobe® Reader® software must continue to be widely available and free of charge to the public and not be subject to licensing conditions or royalties that would prohibit, limit or inhibit Freddie Mac or other mortgage industry participants from using such PDF documents.

### **3.3.9 Types of Tamper Seals**

Freddie Mac requires that all Tamper Seals on eNotes and other Electronic Records comply with the following rules:

For the eNote, Consent Form, final Truth-in-Lending Disclosure, Notice of the Right of Rescission, and HUD-1, Freddie Mac will only accept Tamper Seals utilizing industry standards specified in the *MISMO SMART Document Implementation Guide*® V1.0, Chapter 4.3.

## **3.4 Authoritative Copy and Other Record Management Requirements**

### **3.4.1 Display and Formatting Rules**

Electronic Records presented to the Borrower in the eClosing System must comply with all applicable state and federal requirements concerning the content, display and

format of information and retention (as required for paper records). As an illustration only, some of the formatting and display requirements that must be observed include:

- Use of specific fonts, specific type sizes, minimum type sizes, and boldface or italic styling;
- Physical location of particular information, such as disclosures that are required to appear just above the place for signature; and
- Requirements that certain information be boxed, segregated, or separately displayed.

### **3.4.2 Post-Execution File Formats**

Post-execution file formats for eNotes and other Electronic Records must be capable of accurately reproducing the fonts, styling, margins, and other physical features of the eNotes and other Electronic Records when electronically displayed and printed and as required by state and/or federal law.

All eNotes and other Electronic Records, regardless of format, must be maintainable, reproducible, and have no licensing conditions that would prohibit, limit or inhibit Freddie Mac from using the eNote and other Electronic Records for any customary business purpose. In addition, Freddie Mac shall not be required to pay any royalties or any other fees for its use of the eNotes and other Electronic Records.

Electronically signed eNotes and other Electronic Records or the System storing such Electronic Records must permit the party viewing or printing the Electronic Record to ascertain:

- The content of the Electronic Record;
- The method used to sign the Electronic Record, if applicable;
- The name of the Borrower signing the Electronic Record and the legal capacity in which the Borrower signed;
- The date and time the Electronic Record was signed; and
- That the eNote is the Authoritative Copy or a copy of the Authoritative Copy.

### **3.4.3 Authoritative Copy**

The eClosing System must be designed so that after execution of an eNote, the Authoritative Copy is maintained in a way so that it can be distinguished from a copy of the “Authoritative Copy.”

### **3.4.4 Electronic Record Integrity**

The eClosing System must provide reasonable evidence that Electronic Records created and maintained by the System are not, and have not been, subject to unauthorized access or alteration. In the event of unauthorized access or alteration in the eClosing System, the System Provider must have Processes in place to notify affected Seller/Servicers, Borrowers, other parties and Freddie Mac, as applicable.

### **3.4.5 eClosing System Data Security**

The System Provider of the eClosing System and Seller/Servicer both must have procedures and Processes in place to ensure that the level of security, relative to both the physical environment and the protection of data, meets MISMO and Freddie Mac standards and requirements.

### **3.5 eClosing Transaction Record**

The eClosing System must create a record of each eNote and Electronic Record presented and signed (“eClosing Transaction Record”). The eClosing System must also, among other things, track and log actions related to the creation, signing and transferring of the eNote and other Electronic Records using the eClosing System. Such information must be contained in the eClosing Transaction Record. The eClosing Transaction Record must be retained and maintained by the Seller/Servicer and, if the related eMortgage or servicing of the eMortgage is transferred, it must be retained and maintained by the subsequent Servicer. The eClosing Transaction Record, at all times, must be stored and maintained in a manner that preserves the integrity and reliability of the eClosing Transaction Record for the life of the applicable eMortgage plus seven years.

### **3.6 Title Insurance Requirements**

Each eMortgage must be insured by a lender’s title insurance policy written on the ALTA® 2006 Loan Policy (adopted by ALTA 06/17/06) or the standard ALTA Short Form Residential Loan Policy One-to-Four Family (adopted by ALTA 06/17/06). In the event the policy is not one of the ones described in the immediately preceding sentence, Seller/Servicer represents and warrants that the coverage the title insurance policy provides is equivalent to the coverage provided in the ALTA 06/17/06 lender's title insurance policies.

### **3.7 Registration of an eNote in the MERS® eRegistry**

The Seller/Servicer must register an eNote with the MERS eRegistry as soon as possible, but no later than one (1) Business Day after the eMortgage loan closing date. Registration must occur before delivery and certification. The MERS eRegistry identifies the current Controller, the Location Organization (Document Custodian) of the Authoritative Copy of the eNote, and the Delegatee, if any, who is authorized by the Controller to make certain updates in the MERS eRegistry on behalf of the Controller.

The registered eNote shall be stored in an approved eNote Vault operated by an eligible Document Custodian. The transfer or communication of the eNote to the eNote Vault must occur immediately upon execution of the eNote.

The Seller/Servicer is solely responsible for any failure to comply with the provisions of the MERS eRegistry Membership Agreement, including, but not limited to, any rules, and procedures and for any liability that it or Freddie Mac incurs as a result of Seller/Servicer’s registration of (or failure to timely register) eNotes with the MERS eRegistry. A transfer of control identifying Freddie Mac as the Controller of an eNote

registered in the MERS eRegistry does not relieve the Seller/Servicer from its responsibility to comply with all applicable provisions of the Purchase Documents.

### **3.8 eMortgage Modifications (Before Delivery)**

Changes to the Uniform Instruments may be made only in accordance with this eMortgage Guide, Freddie Mac Single-Family Seller/Servicer Guide, and Seller/Servicer's other Purchase Documents. Any changes to the terms or conditions of the eNote or Security Instrument or any other Mortgage document after the eMortgage loan closing, but before delivery and sale to Freddie Mac, may only be made using a paper modification agreement executed by the Borrower using pen and ink. The modification agreement must be recorded in the public land records if, under applicable law, such recordation is required for the modification agreement to be valid, effective and enforceable and for the modified eMortgage to maintain its first-lien status. The original signed modification agreement must be stored as a paper agreement.

The Seller/Servicer must: (i) update the MERS eRegistry to provide notice of the modification agreement; (ii) retain a copy of the modification agreement; and (iii) deliver the original modification agreement to the Document Custodian, in accordance with the Freddie Mac Single-Family Seller/Servicer Guide and this eMortgage Guide. (See Section 5.2.6 below for eMortgage Modification Requirements for Performing Loans and Section 5.4.1 below for eMortgage Modification Requirements for Non-Performing Loans.)

#### **3.8.1 eMortgage Minor Correction Process (Before Delivery)**

Making minor corrections due to a scrivener's error or omission in an eNote, Security Instrument or any other Mortgage documents after loan closing, but before delivery to Freddie Mac, is permissible, so long as the corrections do not result in a change to the terms or conditions of the eMortgage.

Seller/Servicer's eMortgage minor correction Process may not necessarily have to include the use of a modification agreement; provided that: (i) the minor correction Process clearly discloses and documents any such minor correction; (ii) clearly evidences the Borrower's approval of the minor correction; and (iii) the minor correction Process is expressly approved by Freddie Mac in advance and is added to Seller/Servicer's Purchase Documents by an amendment signed by Freddie Mac.

### **3.9 eMortgage Delivery Requirements**

Freddie Mac requires the Seller/Servicer to deliver certain documents to an approved Document Custodian (see Section 4 for Document Custodian approval requirements), including without limitation, (i) the Authoritative Copy of the eNote and any eNote addenda; (ii) any modification, conversion, reset or assumption agreements; and (iii) any intervening assignments, (the "Custodial Documents").

### **3.10 eNote Validation Prior to Purchase**

Freddie Mac requires Document Custodians to compare the Tamper Seal on the Authoritative Copy of the eNote with the Tamper Seal stored in the MERS eRegistry to authenticate the eNote before Freddie Mac will purchase it. If the values are not identical, the Seller/Servicer is responsible for promptly resolving the discrepancy.

### **3.11 Borrower Access to eMortgage Records**

After loan closing, the Borrower must be provided with a paper copy of the eNote and all other Mortgage documents, unless the Borrower expressly agrees to receive an electronic copy of the eNote and all other Mortgage File Documents. It is Seller/Servicer's responsibility to ensure that the Borrower has access to, and can view, all applicable Mortgage documents.

### **3.12 Electronic Record Images**

If an Electronic Record is delivered to Freddie Mac or the Document Custodian and such Electronic Record is deemed to have unacceptable image quality by Freddie Mac, Freddie Mac shall have the right, in its sole discretion, to require Seller/Servicer to provide an electronic copy of the Electronic Record that is acceptable to Freddie Mac.

### **3.13 Hybrid eMortgage**

At this time, Freddie Mac will only purchase Hybrid eMortgages under this eMortgage Guide and Seller/Servicer's other Purchase Documents. Freddie Mac defines a "Hybrid eMortgage" as an eMortgage in which the promissory Note is an eNote signed by the Borrower electronically and the Security Instrument is a paper document signed by the Borrower using a handwritten signature. The other Mortgage File Documents may be either paper or electronic, as permitted by applicable law and Seller/Servicer's Purchase Documents.

#### **3.13.1 Hybrid eMortgage Documentation Standards**

The Mortgage File Documents may contain paper and electronic documents, so long as Seller/Servicer or its Document Custodian: (a) maintains records that cross-reference the paper and electronic documents, and (b) delivers promptly the documents to Freddie Mac or its designee in the format required by applicable law and/or Freddie Mac's requirements.

#### **3.13.2 Hybrid eMortgage Records Management**

If some of the Mortgage File Documents are paper and some are electronic, the paper documents must be retained as required by the Freddie Mac Single-Family Seller/Servicer Guide, and the other electronic Mortgage File Documents must be retained in compliance with the requirements of this eMortgage Guide, the Freddie Mac Single-Family Seller/Servicer Guide, and Seller/Servicer's other Purchase Documents.

### **3.14 Selling eNotes With or Without Recourse**

Unless Seller/Servicer and Freddie Mac have agreed (or subsequently agree) in Seller/Servicer's Master Agreement or other Purchase Documents to the contrary, eNotes sold hereunder will be sold by Seller/Servicer "without recourse", as that term is used and described in Article 3 of the model Uniform Commercial Code the "UCC" promulgated by NCCUSL, as amended from time to time, and Section 11.10 (b) of the Freddie Mac Single-Family Seller/Servicer Guide. Seller/Servicer shall nevertheless remain responsible for all of its representations, warranties, covenants and agreements under Seller/Servicer's Master Agreement, the eMortgage Guide, and other Purchase Documents including, without limitation, any repurchase or indemnification agreements applicable to any eMortgage sold hereunder.

### **3.15 eNote Transfer Warranties**

Notwithstanding the transfer warranties or anything else contained in Section 3-416 of Article 3 of the UCC, Seller/Servicer, as transferor of each eNote transferred to Freddie Mac hereunder for consideration, hereby warrants to Freddie Mac, as transferee, and to Freddie Mac's successors and/or assigns, as successor transferees, that:

- Each eNote is being maintained in an eNote Vault system that satisfies the requirements of Section 16(b) and (c) of UETA and Section 201(b) and (c) of the E-SIGN Act;
- The transferor is duly authorized to transfer each eNote;
- The transferor is a person or an organization entitled to enforce each eNote;
- All Electronic Signatures attached to or logically associated with each eNote, and in connection with any prior authorization to transfer, are authentic, authorized, genuine and enforceable against the party purporting to have electronically signed;
- Each eNote has not been altered since it was executed by the Borrower(s);
- Each eNote is not subject to a defense or a claim of recoupment of any party that can be asserted against the transferor;
- The transferor has no knowledge of any insolvency proceeding commenced or threatened with respect to the Borrower(s) on each eNote; and
- Each eNote has at all times been maintained by a person identified as the person: (a) to whom the eNote was issued or transferred and (b) asserting control of the eNote, or that person's designated custodian.

Freddie Mac and any successor transferee taking any of the eNotes sold hereunder in good faith may recover from the Seller/Servicer, as transferor, damages for breach of any of the warranties set forth in this paragraph, in an amount equal to the loss suffered as a result of the breach, but not more than the unpaid principal balance of the applicable eNote at the time of any such breach, plus expenses and loss of interest incurred as a result of the breach.

Seller/Servicer and Freddie Mac agree that under no circumstances shall the transfer warranties or any conditions precedent to enforcement of such transfer warranties

contained in Section 3-416 of Article 3 of the UCC (or in the Uniform Commercial Code as enacted in the state in which the Mortgaged Premises is located) apply to eNotes sold to Freddie Mac hereunder.

### **3.16 Special eMortgage Representations and Warranties**

In addition to making all applicable representations and warranties in the Freddie Mac Single-Family Seller/Servicer Guide and Seller/Servicer's Purchase Documents, Seller/Servicer further represents, warrants and covenants to Freddie Mac, with respect to each and every eMortgage sold to Freddie Mac, that:

- All Borrowers electronically signed the Consent Form in advance of being presented with any Electronic Record to be signed;
- The Consent Form provided to the Borrower(s) complies with: (a) Seller/Servicer's Purchase Documents as amended by this eMortgage Guide; (b) Section 101(c) of Title I of E-SIGN; and (c) all other applicable laws, regulations and rules;
- The Systems and Processes used to create, register, transfer, store, retrieve, maintain, and secure the eNote, and any other electronic Mortgage documents, comply with: (a) Seller/Servicer's Purchase Documents as amended by this eMortgage Guide; (b) E-SIGN and/or UETA, as enacted by the applicable jurisdiction, including, without limitation, Section 201 of Title II of E-SIGN and Section 16 of UETA; and (c) all other applicable laws, regulations and rules;
- The Electronic Record identified as an eNote is a Transferable Record that complies with: (a) Seller/Servicer's Purchase Documents as amended by this eMortgage Guide; (b) E-SIGN and/or UETA, as enacted by the applicable jurisdiction, including, without limitation, Section 201 of Title II of E-SIGN and Section 16 of UETA; (c) all other applicable rules, regulations and laws; and (d) MISMO Industry Standards and Implementation Guide recommendations;
- All other Electronic Records comply with: (a) Seller/Servicer's Purchase Documents as amended by this eMortgage Guide; (b) E-SIGN and/or UETA, as enacted by the applicable jurisdiction, including, without limitation, Section 201 of Title II of E-SIGN and Section 16 of UETA; and (c) all other applicable rules, regulations and laws;
- The Electronic Signature Process used by the Borrower to electronically sign the eNote, and any other Electronic Record, complies with: (a) Seller/Servicer's Purchase Documents as amended by this eMortgage Guide; (b) E-SIGN and/or UETA, as enacted by the applicable jurisdiction; and (c) all other applicable rules, regulations and laws;
- All disclosures required pursuant to applicable law were provided to the Borrower either on paper or electronically. If the disclosures were provided electronically, then they were provided after the Borrower was presented with and executed the Consent Form; and
- No eMortgage was funded at closing by Seller/Servicer using the proceeds from the sale of such eMortgage to Freddie Mac.

## **Section 4: Document Custodian and eNote Vault Requirements**

### **4.1 Custodial Duties and Obligations**

The Authoritative Copy of the eNote and other Custodial Documents must be stored at all times with an approved Document Custodian in an eNote Vault that complies with the specifications and requirements set forth in Section 5 of this eMortgage Guide.

#### **4.1.1 Certifying an eNote**

The Document Custodian is required to certify the eNote in the Selling System. In addition to the certification requirements in the Freddie Mac Single-Family Seller/Servicer Guide, the Document Custodian must verify that:

- The Selling System reflects that the promissory Note is an eNote;
- The Selling System reflects the correct MIN for the eMortgage;
- The Tamper Seal on the eNote matches the Tamper Seal stored in the MERS eRegistry;
- Freddie Mac is the Controller of the eNote and that the Document Custodian is registered as the Location Organization of the eNote;
- When the eNote is viewed online, there is a representation of an Electronic Signature on the eNote that includes the Borrower's name, the date and time of the Electronic Signature and the legal capacity in which the Borrower signed;
- When the eNote is viewed online, MERSCORP, Inc., a Delaware corporation, has been named as the "Operator of the Registry" in the Uniform eNote;
- The Freddie Mac loan number in the Note Tracking System (for paper and electronic Notes) is delivered with the eNote and matches that data in the Selling System;
- If the eNote has been modified, the MERS eRegistry reflects the modification; and
- The eNote is a valid Version 1.02 MISMO Category 1 SMART Document.

The Document Custodian must contact the Seller/Servicer to resolve discrepancies before certification can be completed. If the eNote does not meet certification requirements and the Seller/Servicer has been unable to resolve outstanding issues, the Document Custodian must contact Freddie Mac to effect a Transfer of Control of the eNote.

#### **4.1.2 Validate eNote Vault Tamper Seals**

Freddie Mac requires that the Document Custodian validate the:

- Tamper Seal for all eNotes stored in the Document Custodian's eNote Vault at least once a year. Document Custodians must retain a backup of the validation results until the next validation occurs. Additionally, the Tamper Seal must be validated for any eNotes affected by the restoration or partial restoration of the

eNotes and other data in the eNote Vault immediately preceding the loss of such eNotes and data; and

- Tamper Seals of a sample of all eNotes stored in the Document Custodian's eNote Vault against the applicable Tamper Seals in the MERS eRegistry at least once a year. Freddie Mac will determine the required sampling percentage in its sole discretion.

## **4.2 eNote Vault Requirements**

The following is a list of requirements for obtaining approval of an eNote Vault. These requirements are in addition to the eligibility requirements listed above for Document Custodians and set forth in the Freddie Mac Single-Family Seller/Servicer Guide.

Freddie Mac must receive:

- A legal opinion, in a form, and from a lawyer or law firm, acceptable to Freddie Mac, which opinion concludes that: (a) the eNote Vault to be used by the Document Custodian to store eNotes and Custodial Documents complies with E-SIGN and the UETA, including, without limitation, Section 201 of Title II of E-SIGN and Section 16 of model UETA and any other applicable state and/or federal laws and regulations and (b) the eNotes stored in the eNote Vault will remain valid, enforceable and effective for the life of each respective eMortgage;
- A technical review and analysis from a third-party computer technology expert acceptable to Freddie Mac, which review and analysis confirms the eNote Vault used by the Document Custodian meets MISMO and Freddie Mac's technical standards and requirements; and
- A security review from a third-party computer technology expert acceptable to Freddie Mac, which review confirms the eNote Vault used by the Document Custodian complies with Freddie Mac's security requirements as set forth in this eMortgage Guide.

Freddie Mac reserves the right, in its sole discretion, to require that the legal opinion, technical review and security review be updated:

- in the event of any material change to the operation or effectiveness of the eNote Vault; or
- at such periodic intervals as Freddie Mac may deem appropriate.

A Seller/Servicer that stores or transfers an eNote purchased by Freddie Mac must cooperate with Freddie Mac in all activities necessary to enforce the eNote. Upon request by Freddie Mac, the Seller/Servicer must provide or cause the applicable Document Custodian to provide an affidavit, certification or testimony that complies with the following:

- An affidavit or certification regarding the maintenance of the eNote and Custodial Documents in connection with the eMortgage in a form appropriate to

ensure admissibility of the eNote and other Custodial Documents in a legal proceeding. The affidavit or certification must include:

- A description of the System controls in place to ensure compliance with E-SIGN and UETA, including, without limitation, Section 201 of Title II of E-SIGN and Section 16 of UETA;
  - A description of how the executed eNote and other Electronic Records have been stored to prevent unauthorized access and unauthorized alteration;
  - A description of how, in the event of unauthorized access or alteration, the System can detect such unauthorized access or alteration; and
  - A description of the interface with the MERS eRegistry.
- Testimony by an authorized official or employee of the Seller/Servicer and Document Custodian to ensure admission of the eNote and other Custodial Documents in a legal proceeding to enforce the loan.

#### **4.3 Document Custodian Use of Third-Party Systems**

The Document Custodian may use third-party System Providers to provide technical solutions for the storage of eNotes, Custodial Documents or other Electronic Records. The following terms apply to any such relationships:

- Freddie Mac does not require the use of particular System Provider solutions, nor does Freddie Mac approve System Providers. Freddie Mac does require System Provider's Systems to meet certain minimum requirements;
- The Seller/Servicer and Document Custodian remain solely responsible for the adequacy of the eNote Vault and other record management systems used for electronic Mortgage File Documents and compliance with applicable laws and Freddie Mac's requirements in this eMortgage Guide;
- The Seller/Servicer and/or Document Custodian must, at least annually, conduct proper and adequate due diligence regarding the capability of each System Provider and eNote Vault to store the eNotes safely and soundly for the life of each eMortgage plus seven years;
- Seller/Servicer contracts and Document Custodian contracts must specify standards of performance and a Process to confirm that appropriate due diligence standards are being met. As a Seller/Servicer or Document Custodian, you should implement Processes and controls that allow you to make that determination;
- All contracts between the Document Custodian and third-party eNote Vault System Providers must specify that eNote Vault System Providers will comply with Document Custodian instructions to send any eNotes, Custodial Documents or other Electronic Records required by Freddie Mac to Freddie

Mac or its designee upon request, notwithstanding any dispute the eNote Vault System Provider has with the Document Custodian;

- Any data storage facilities used by the Document Custodian or provided by the eNote Vault System Provider must be domiciled and physically located in the United States;
- The Document Custodian must ensure that any outsourced Systems comply with the *Sarbanes-Oxley Act of 2002* and all other applicable laws; and
- The System Provider used by the Document Custodian must be contractually obligated to provide ongoing support for the life of the eMortgage plus seven years, to or on behalf of Freddie Mac, its designees, and its successors or assigns as specified herein.

#### **4.4 Interface With the MERS® eRegistry**

The *MISMO eMortgage Vaulting Guide*®, as amended from time to time, provides both required and suggested eNote Vault interface capabilities with the MERS eRegistry. (Refer to the MERS eRegistry for detailed System integration requirements at URL <http://www.MERSinc.org>.)

#### **4.5 Support Original Version of Electronic Records**

The eNote Vault System must support, at all times, the MISMO industry standard document version in which the eNote and other electronic documents were originally created. This includes, but is not limited to, the applicable MISMO SMART Document Specification version as well as the Logical Data Set specification version used to create the documents. This support must span the entire life of the eNotes and any other Electronic Records stored in the eNote Vault plus seven years. The Document Custodian must ensure the integrity of the software used to store the eNotes and other Electronic Records by following the best practices of U.S. federally regulated financial institutions for software version changes and testing, retirement, and control.

#### **4.6 Securely Receive Electronic Records**

The Document Custodian's eNote Vault System must support multiple methods of delivery of eNotes, other electronic Mortgage documents, and data. At a minimum, the eNote Vault System must be able to:

- Securely receive eNotes and other Custodial Documents;
- Use X.509 digital certificates for device/server-based TLS/SSL session authentication. Mutual authentication is recommended but not required. To ensure data confidentiality and integrity in transit, the digital certificate must support TLS/SSL sessions that use a minimum of 1024 bit RSA public keys and 128 bit AES or 3DES;
- Acknowledge the success or failure of the eNote transfer to sending Systems, and have logging and reporting capabilities for eNote transfer events; and

- Logically associate any riders, addenda, or other modifying instruments, whether electronic or paper, with the eMortgage using the MIN and/or Freddie Mac loan number.

Ensure time stamps on all operating systems so delivery and transmit time integrity is verifiable in an electronic forensic investigation.

Specifications for integration with Freddie Mac Systems will be provided separately and included in an amendment to Seller/Servicer's Purchase Documents.

#### **4.7 User Authentication**

The eNote Vault System must support one or more authentication methods, such as unique user ID/password, S/Key, two-factor authentication, password tokens, Kerberos, biometrics, smart card authentication, various vendor solution single sign-on products, and/or X.509 digital certificates. Freddie Mac recommends the use of individual or organizational digital certificates.

If the eNote Vault System uses an ID/password for user authentication, the Document Custodian must impose password complexity rules. The password complexity rules, should, at a minimum, require at least the following: eight characters, at least one uppercase character, at least one special character, and at least one number. The eNote Vault System and Processes must support:

- Password aging and enforce password change every 90 days;
- The storage of user passwords as a Salted Hash;
- System lockout after three (3) unsuccessful login attempts;
- The approval of accounts by authorized management prior to granting access;
- User enrollment and registration in accordance with a documented and trackable account provisioning process;
- The logging of files that record successful and unsuccessful logins;
- The logging of files that record login attempts by user ID;
- The logging of files that record account locking events.

Document Custodians must follow the best practices of U.S. federally regulated financial institutions to distribute user IDs and credentials to users. For example, if using e-mail, two separate e-mails should be used, one for the user ID and another for the password. The eNote Vault System should require users to reset passwords upon initial login.

## **4.8 Support Role-Based Access Controls**

The Document Custodian must establish request and approval policies for granting access rights to eNotes and other Custodial Documents.

The security policies should at a minimum include documented policies that describe rules for:

- Creating, viewing, updating, and deleting activities on users, groups, protected resources, roles, access rights, and policies;
- Distributed and remote administration functions (the Document Custodian or System Provider must provide the support model and policies to transaction parties); and
- Immediate removal of a user or role from the System if it is no longer authorized to access the System.

The eNote Vault System should also:

- Support groups controls;
- Provide tiered access and permission to have detailed and flexible access control over user permission levels;
- Detect and block unauthorized access requests, log such events, and alert operational staff of failed access attempts;
- Implement session management techniques to prevent unauthorized users from establishing or intercepting a valid session ID and accessing any resources within the application; and
- Terminate access either by an active logout from the application or by predetermined system timeout parameters.

## **4.9 Verify System Integrity**

The eNote Vault System must, at a minimum, provide the following protections:

- Safeguard against malware and other malicious or destructive software coding by detection and removal;
- Appropriate firewall and network perimeter security controls;
- Host-based intrusion detection/prevention; and
- Configuration management controls to ensure baseline data versioning (e.g., use a release engineering System to ensure that the correct code libraries and modules are released, create and apply a version numbering scheme into software and track that number back to specific source files, use a documented change management Process, ensure that the correct patches are released for the version of the software to which the patches apply).

## **4.10 Verify Electronic Record Integrity**

The eNote Vault System must have the capability to verify document integrity including, but not limited to, compliance with eNote Document Type Definition

("DTD") or schema and eNote Tamper Seal before accepting third-party submissions into the Document Custodian Systems.

The eNote Vault System must be able to verify Tamper Seals applied to eNotes by:

- Checking the Certificate Revocation List (CRL) for revoked digital certificates;
- Updating the CRL; the local CRL list on the Document Custodian's local systems should be periodically updated to obtain new or updated lists from major providers;
- Checking online certificate status protocol (OCSP); the OCSP may be used to validate certificates in real-time (live connection to OCSP service needed);
- Verifying root certificates for certificates and Tamper Seals are issued by trusted third-party providers;
- Comparing the eNote Tamper Seal in the MERS eRegistry by comparing the hash value of the eNote in the incoming package with the hash value of the same eNote as registered in the MERS eRegistry; and
- Checking eNote Tamper Seals on demand or in batch mode.

The eNote Vault System must also be capable of:

- Rejecting eNotes and/or other electronic documents by notifying the submitting party of an invalid Tamper Seal;
- Recovering uncorrupted data from backup devices if the current data is determined to be invalid;
- Notifying Controller or Controller's System that the eNote's Tamper Seal has been determined to be invalid;
- Recording the Tamper Seal validation in an event log for audit purposes;
- Applying a Tamper Seal to a specific eMortgage file during eNote Vault-to-eNote Vault transfers; and
- Validating the entire certificate chain of eNote Vault-to-eNote Vault transfers.

The eNote Vault System must use a Certificate Authority ("CA") that: (a) issues organizational digital certificates to facilitate the use of electronic signatures when conducting high-risk transactions; (b) is compatible with the MERS eRegistry; (c) is commonly used by U.S. federally regulated financial institutions; and (d) is acceptable to Freddie Mac.

#### **4.11 Transfers of Custodial Documents**

The Document Custodian's eNote Vault System must have the capability to transfer eNotes and any other electronic Mortgage File Documents in the eNote Vault to another Document Custodian's eNote Vault. The Document Custodian may use MERS® eDelivery as its means of making such transfers. The eNote Vault System must maintain the confidentiality, integrity, and enforceability of eNotes at rest and in transit. Either the Document Custodian's eNote Vault System must track and provide feedback regarding transfer success or failure or the Document Custodian must have another

method of tracking the success or failure of such transfers that is acceptable to Freddie Mac in Freddie Mac's sole discretion.

#### **4.12 eNote Vault Physical Security Requirements**

The Document Custodian's eNote Vault in which the eNotes and other Electronic Records reside must comply with the standards set forth in the most recent version of the *MISMO eMortgage Vaulting Guide*<sup>®</sup>. The Document Custodian must employ the highest level of physical security for the eNote Vault and address, among other things, access control, surveillance, fire suppression, water detection, and other disasters and hazards (e.g., earthquake, hurricane, tornado, tsunami, flood, mudslide, landslide, etc.). Minimum requirements for the eNote Vault include:

- Discreet building signage;
- Building entrances and exits that are monitored for unauthorized access and activities;
- Two forms of authentication for entry of authorized staff to the data center, such as photo ID scan card and either a biometric device or a number keypad;
- Additional authorization verification for access to the eNote Vault;
- Commercially reasonable physical security for all other electronic Mortgage File Documents;
- 24 hour, 7 day a week operation (allowing downtime for upgrades, maintenance, and repairs);
- Redundant primary Systems (power, connectivity) and sub-systems (HVAC, telecommunications) and appropriate backup capabilities (battery power, generator);
- Must abide by local building and construction codes;
- Data centers and rooms that house information technology (IT) Systems must have mechanisms that automatically and immediately alert the System Provider or party maintaining such System that the temperature in such data centers or rooms is outside the temperature range (high or low) recognized by the U.S. federally regulated financial institutions industry as the appropriate temperature range for maintaining hardware, software and data safely and soundly; and
- Data centers and rooms that house information technology (IT) Systems must have mechanisms that automatically and immediately alert the System Provider or party maintaining such System that the relative humidity in such data centers or rooms is outside the relative humidity range (high or low) recognized by the U.S. federally regulated financial institutions industry as the appropriate relative humidity range for maintaining hardware, software and data safely and soundly.

#### **4.13 Backup/Business Continuity**

The Document Custodian must back up eNotes and other Electronic Records on a regular basis. The Document Custodian must maintain backup and recovery Systems for eNotes and must make certain that at least two backup copies at all times are stored

in a System that meets or exceeds Freddie Mac's requirements for an eNote Vault. In addition:

- Security access control to backup tapes and other backup media must be part of the overall Document Custodian System security policies and practices. The System must restore archived/backup materials within 24 hours of a request. In case of data corruption, archived data must be restored to the point of failure within 10 minutes;
- The Document Custodian must have at least one geographically remote disaster recovery site in addition to the primary site for the Document Custodian's production Systems. All technical, security, and physical site requirements for the primary site shall apply equally to the disaster recovery site. The disaster recovery site must be in a different power grid and not be susceptible to the same potential disasters as the primary site; and
- The Document Custodian must have a documented Business Continuity Plan ("BCP") to recover functionality, availability and data to the point of failure within 48 hours of a declared disaster or other event requiring the activation of a BCP. The Document Custodian shall provide a copy of the BCP to Freddie Mac promptly upon Freddie Mac's request. The BCP should be tested at least annually.

The Document Custodian's BCP shall address at a minimum:

- Staff responsibilities, including on-call availability, etc.;
- Location of, and transportation to, a backup facility with access security, power backup and fire prevention and containment measures at least equal to that of the primary site;
- Communication and business continuity activation programs;
- Notification to Freddie Mac within 24 hours of determining that a disaster has impacted the Document Custodian's site and/or that a change to the physical location of the primary site of the Document Custodian and associated documentation and data will continue for more than two Business Days;
- Security for storage, testing, and recovery; and
- Software versioning, replacement, and retirement/control.

#### **4.14 Associating eNotes With Other Custodial Documents**

The Document Custodian must maintain records that identify the electronic Mortgage File Documents in its eNote Vault and paper Mortgage File Documents in its paper Vault. For example, a method of identification in a Note Tracking System (for paper and electronic Notes) would be to cross-reference the MIN, the Freddie Mac loan number, and the Seller/Servicer loan number.

#### **4.15 Restricted eNote Access**

The eNote Vault must prevent any other party who is storing eNotes and other Custodial Documents with the same Document Custodian from accessing or viewing

Freddie Mac's eNotes and other Custodial Documents. For example, the Document Custodian may restrict access and viewing by segregating eNotes and Custodial Documents by server, database, or by the use of file system permissions, authorizations, virtual machine or otherwise.

#### **4.16 eNote Vault Data Security**

The Document Custodian must follow the data privacy protection guidance specified in the Freddie Mac Single-Family Seller/Servicer Guide and in this eMortgage Guide.

The Document Custodian must prevent unauthorized viewing of the most sensitive data and documents through restricted access. Some recommended best practices for protecting the confidentiality of data include, but are not necessarily limited to:

- Establishing an encrypted channel (e.g., HTTPS, SFTP, FTPS) for the transmission of the most sensitive data;
- Encrypting the most sensitive data before transmission over an insecure channel. Use and support National Institute of Standards and Technology (NIST) and Federal Information Processing Standard (FIPS 140-2) specified encryption algorithms – for example, AES (Advanced Encryption Standard) and 3DES – as encryption algorithms;
- Encrypting the most sensitive data before storing it (e.g., encrypting a file or database);
- Generating a message digest for password value and storing it for subsequent comparison for validation; and
- Separating administrative responsibilities of encryption key management from those of System management.

#### **4.17 Track and Log Significant Events**

The System must track and log significant security events such as authentication, authorization, and administrative activities to allow all actions to be traced to users.

In addition, the System must:

- Track and log eNote receipt and processing events, including communications between eNote vaults;
- Track and log all transaction-related communications sent to, and received from, the MERS eRegistry;
- Record time stamps in all log file and event records;
- Record IP addresses in all firewall, router, switch, and intrusion detection event logs;
- Record invalid input attempts;
- Record overwriting of memory storage before reuse;
- Record system errors; and
- Record all file receive events.

All databases must record the following:

- Successful logins;
- Login failures;
- Database create, view, modify, delete events;
- Schema object create, view modify, delete events;
- All password change events;
- Add member to a database role events;
- Add or drop a user role events;
- Role change events;
- Backup and restore events;
- Database synchronization and replication events; and
- All database management events.

All eNotes and Custodial Documents stored in the System must record the following properties:

Created By	The name of the person who originally entered the information to create the document or eNote
Creation Date	The date and time when the document or eNote was created. Use the time zone of the place where the eNote was signed.
Modified By	Indicates the last user who modified the document or eNote
Modified Date	Indicates the date when the document or eNote was modified last.
Export time	When the document or eNote was exported successfully.
Failed export	When the document or eNote was not exported successfully.

The System must alert appropriate organizational officials in the event of a logging or processing failure (e.g., the file System fills up or is about to fill up).

The System must have thresholds set so that it will send an alert to the administrator if the log files threaten to fill up the file system (e.g., the file System reaches 90 percent of capacity).

The System should be configured so that administrators can only view log files and cannot modify them.

All administrator logins should be recorded so that it is possible to trace which administrator performed which actions.

All information tracked and logged must be contained in an eNote Vault transaction record (“eNote Vault Transaction Record”). The eNote Vault Transaction Record must be maintained by the Seller/Servicer and transferred and retained (as applicable) by a subsequent Seller/Servicer. The eNote Vault Transaction Record, at all times, must be stored and maintained in a manner that preserves the integrity and reliability of the eNote Vault Transaction Record for the life of the applicable eMortgage plus seven years.

#### **4.18 System Audit Requirements**

The Document Custodian must conduct System audits to ensure the System’s continued compliance with the minimum System and security requirements in this eMortgage Guide. The audit type and frequency will be included in the Seller/Servicer’s Purchase Documents and the Custodial Agreement, but must be a SAS 70 Type II or other comparable type of audit acceptable to Freddie Mac, in its sole discretion.

The results of such audit will be provided to the Seller/Servicer and to Freddie Mac within 30 days of its completion and delivery to the Document Custodian.

#### **4.19 Document Custodian Reports and Reviews**

As indicated in the Custodial Agreement, each Document Custodian must submit an Annual Document Custodian Eligibility Certification Report with a Document Custodian Certification Addendum. The certification provides a means for Document Custodians to confirm compliance with the requirements of this eMortgage Guide, the Freddie Mac Single-Family Seller/Servicer Guide, and the Custodial Agreement. The Certification also requires the Document Custodian to inform Freddie Mac of the primary and backup data storage sites where eNotes are held. In addition, each Document Custodian is subject to periodic on-site reviews by Freddie Mac as described in the Freddie Mac Single-Family Seller/Servicer Guide.

## **Section 5: Seller/Servicer Requirements for Servicing eMortgages**

### **5.1 Interface With the MERS® eRegistry**

The *MISMO eMortgage Vaulting Guide*®, as amended from time to time, provides both required and suggested eNote Vault interface capabilities with the MERS eRegistry. (Refer to MERS eRegistry for detailed System integration requirements at URL <http://www.MERSinc.org>.)

### **5.2 Management of Electronic Mortgage File Documents**

This subsection describes record management requirements for paper and Electronic Records that are in the Mortgage File Documents.

Paper Mortgage File Documents must be stored in accordance with the requirements in the Freddie Mac Single-Family Seller/Servicer Guide and this eMortgage Guide. Electronic Records held by Servicers, Document Custodians, and any other parties on Freddie Mac's behalf must be stored in an Electronic Records storage and management System ("Servicing Records System") that complies with the Freddie Mac Single-Family Seller/Servicer Guide, this eMortgage Guide and Servicer's other Purchase Documents.

#### **5.2.1 Associating Mortgage File Documents**

Paper documents that are part of the Mortgage File Documents must be associated with all Electronic Records stored in the Servicing Records System so that all the records (both paper and electronic) are identified with, and associated to, the applicable eMortgage transaction.

#### **5.2.2 Document Retention Period and Accessibility**

All paper documents in the Mortgage Document File must either be stored in their original paper form or, if permitted by Section 52.2 of the Freddie Mac Single-Family Seller/Servicer Guide, be stored as electronic images of the original paper documents for the life of the applicable eMortgage plus seven years. All Electronic Records (including electronic images) that are Mortgage File Documents must be stored and maintained in accordance with the Freddie Mac Single-Family Seller/Servicer Guide, this eMortgage Guide and Servicer's other Purchase Documents, for the life of the applicable eMortgage plus seven years. All Mortgage File Documents must be capable of being retrieved and printed in a manner that accurately reflects the information originally contained in the Electronic Record. Mortgage File Documents also must be accessible (either electronically or on paper) and promptly made available to Freddie Mac upon request.

#### **5.2.3 Servicing Records System Data Security**

Servicers must follow data privacy protection standards set forth in Section 53.3 of the Freddie Mac Single-Family Seller/Servicer Guide. The Servicing Records System must also have user authentication and role-based access control capability.

Some best practices for protecting confidentiality of data include, but are not necessarily limited to:

- Establishing an encrypted channel (e.g., HTTPS, SFTP, FTPS) for the transmission of the most sensitive data;
- Encrypting the most sensitive data before transmission over an insecure channel. Use and support National Institute of Standards and Technology (NIST) and Federal Information Processing Standard (FIPS 140-2) specified encryption algorithms – for example, AES (Advanced Encryption Standard) and 3DES – as encryption algorithms;
- Encrypting the most sensitive data before storing it (e.g., encrypting a file or database);
- Generating a message digest for password value and storing it for subsequent comparison for validation; and
- Separating administrative responsibilities of encryption key management from those of System management.

The Servicing Records System must also be capable of detecting unauthorized access to, and alterations of, Electronic Records, and alert the Servicer if access attempts exceed established thresholds.

Servicers are required to maintain the Servicing Records System and conduct periodic information security reviews of their data stored and maintained in the Servicing Records System based on, but not limited to, state and federal laws and regulations, E-SIGN, UETA, and requirements in the Freddie Mac Single-Family Seller/Servicer Guide, this eMortgage Guide and Servicer's other Purchase Documents regarding Record and Electronic Record retention.

Freddie Mac reserves the right to require the Servicer to implement additional security measures regarding their Servicing Records Systems.

#### **5.2.4 Maintenance of Mortgage File Documents**

The Servicing Records System must track and log user identity, specified actions performed (view, modify, delete, etc.) on Electronic Records, and the date and time of the event.

The Servicing Records System must:

- Track and log:
  - All transactions associated with the use of a user ID;
  - All successful and unsuccessful logins;
  - All password changes;
  - Create, view, modify, delete actions;
  - File transfers from one System to another;
  - Stopping and starting of System services;
  - All connections made to the System from another System;

- Maintain a secure transaction record (“Servicing Transaction Record”) of Electronic Records accessed and keep such record as part of each Mortgage File Document for the life of the applicable eMortgage plus seven years;
- Perform regular backup of all Electronic Records, and restore such electronic documents that are damaged, corrupted, or lost. All Electronic Records must be archived for the life of the applicable eMortgage plus seven years; and
- Create and maintain a Disaster Recovery/Business Continuity Plan (DR/BCP) that includes a backup storage site that is not susceptible to the same types of major disasters as the primary storage site (i.e., the backup site must be geographically remote from the primary site, and in a different power grid). Servicer’s DR/BCP site must follow the guidance set forth in Section 18.2(b) of the Freddie Mac Single-Family Seller/Servicer Guide. The DR/BCP must provide for recovery of functionality, availability, and data services back to the point of failure within 48 hours of a disaster.

### **5.2.5 Obtaining Access to Custodial Documents**

The Servicer shall assure that the Document Custodian promptly provides Freddie Mac with any Mortgage File Documents in the Document Custodian’s possession. Servicer must continue to complete and send to the Document Custodian a form entitled *Request for Release of Documents* (Form 1036) to obtain any document (paper or electronic) from the Document Custodian.

### **5.2.6 eMortgage Modification Requirements – Performing Loans**

In addition to complying with the requirements set forth in Section 51.20(c) of the Freddie Mac Single-Family Seller/Servicer Guide regarding modification of a performing loan owned by Freddie Mac, when a performing eMortgage is modified, a paper modification agreement must be signed by the Borrower with pen and ink. The original signed modification agreement must be stored as a paper agreement. The Servicer must: (a) update the MERS eRegistry to provide notice of the modification agreement; (b) retain a copy of the modification agreement; and (c) deliver the original modification agreement to the Document Custodian, in accordance with the Freddie Mac Single-Family Seller/Servicer Guide and this eMortgage Guide. (See Section 3.8 above for eMortgage Modification Requirements Before Delivery and Section 5.4.1 below for eMortgage Modification Requirements for Non-Performing Loans.)

Freddie Mac will consider, on a case-by-case basis, requests from Servicers to use electronic modification agreements. Servicers must obtain Freddie Mac’s specific and express written consent to use electronic modification agreements.

### **5.2.7 Transfer of Mortgaged Premises – Assumption of eMortgages**

In addition to complying with the requirements set forth in the Freddie Mac Single-Family Seller/Servicer Guide regarding the assumption of an assumable Mortgage, after the Servicer qualifies the new Borrower to assume an eMortgage, the Borrower must sign a paper assumption agreement with pen and ink. The original signed assumption

agreement must be stored as a paper agreement. The Servicer must: (a) update the MERS eRegistry to provide notice of the assumption agreement (modification agreement); (b) retain a copy of the assumption agreement; and (c) deliver the original assumption agreement to the Document Custodian in accordance with the Freddie Mac Single-Family Seller/Servicer Guide and this eMortgage Guide.

### **5.2.8 eMortgage Payoffs**

Except as otherwise agreed in writing by and between Servicer and Freddie Mac, eMortgage payoffs shall be processed and administered in the same manner as paper Mortgage payoffs as set forth in the Freddie Mac Single-Family Seller/Servicer Guide. The Servicer must update the MERS eRegistry to provide notice of the payoff of an eMortgage.

### **5.2.9 Producing the eNote for Payoffs**

If the Servicer is required to provide the Borrower with the eNote upon payoff and satisfaction of the eMortgage, Servicer and Freddie Mac will document the procedure for providing the Borrower with evidence of the paid off eMortgage in Seller/Servicer's Purchase Documents.

### **5.2.10 Conversion of the eNote to Paper**

Neither the Servicer nor any other party may convert an eNote owned by Freddie Mac into a paper-based Note without Freddie Mac's prior specific and express written consent. In the event Freddie Mac gives its specific and express written consent, the Servicer, after converting an eNote to a paper Note, must update the MERS eRegistry to provide notice of the conversion of an eNote to a paper Note.

### **5.2.11 Voluntary eMortgage Repurchase Request**

In addition to complying with the repurchase requirements set forth in the Freddie Mac Single-Family Seller/Servicer Guide, when a Servicer makes a request to repurchase an eMortgage, Servicer must identify the loan as an eMortgage.

### **5.2.12 Damage or Loss of Mortgage File Documents**

Servicers shall be solely responsible for all costs of restoring electronic Mortgage File Documents damaged or lost for any reason. In the event that an electronic Mortgage File Document is not recoverable from a back up copy or otherwise, Servicer may be required to repurchase the eMortgage at Freddie Mac's sole discretion.

## **5.3 Transfer of Servicing of eMortgages**

Transfer of Servicing of eMortgages, whether voluntary or involuntary, must be to a Servicer specifically and expressly approved by Freddie Mac to service eMortgages. (Refer to Chapter 56 of the Freddie Mac Single-Family Seller/Servicer Guide.) Once the

Transferee Servicer is approved by Freddie Mac, before initiating any Transfer of Servicing, the Transferor Servicer must notify:

- The Transferee Servicer of any eMortgages contained in the servicing portfolio that have any special servicing requirements;
- The Document Custodian holding the eNotes; and
- MERS, if it is named as the nominee for the original mortgagee in the Security Instrument or named as assignee in the recorded assignment of the Security Instrument.

The Transferor Servicer and Transferee Servicer must take any and all actions necessary to transfer the servicing of the eMortgages in accordance with Freddie Mac’s requirements, which include, but are not limited to, compliance with all laws, the MERS eRegistry requirements, and eNote Vault requirements. If Freddie Mac approves the Transfer of Servicing, the Transferor Servicer shall, in addition to the requirements in the Freddie Mac Single-Family Seller/Servicer Guide, change the Delegatee on the MERS eRegistry to the Transferee Servicer.

The Document Custodian’s duties, obligations and responsibilities with respect to storing eNotes can only be transferred to a new Document Custodian that has been specifically and expressly approved by Freddie Mac, in writing, to store its eNotes. Transfers of Servicing of eMortgages must comply with the Freddie Mac Single-Family Seller/Servicer Guide, this eMortgage Guide and Servicer’s other Purchase Documents.

### 5.3.1 Transfer Types and Associated Responsibilities

The Servicer must instruct the Document Custodian to comply with the following requirements in connection with a transfer of servicing of eMortgages. Refer to the Freddie Mac Single-Family Seller/Servicer Guide for definitions of the types of servicing transfers and descriptions of requirements for such transfers.

<b>Transfer Type</b>	<b>Role</b>	<b>File Type</b>	<b>Responsibilities</b>
<b>Concurrent and Subsequent Transfers</b>	Transferor Document Custodian	Electronic, Hybrid	<ul style="list-style-type: none"> <li>• Transfer all eNotes and other electronic Custodial Documents (eNote Vault-to-eNote Vault) to the transferee Document Custodian and update Location Organization</li> <li>• Transfer paper Custodial Documents, if any, to the transferee Document Custodian</li> <li>• Maintain a copy of all eNotes, addenda, modification agreements, and other Custodial Documents (paper or electronic) for 180 days after Transfer Date</li> </ul>
<b>Concurrent and Subsequent Transfers</b>	Transferee Document Custodian	Electronic, Hybrid	<ul style="list-style-type: none"> <li>• Certify the eNotes including any addenda and any modification agreements</li> <li>• Update the Freddie Mac Selling System to</li> </ul>

Transfer Type	Role	File Type	Responsibilities
			indicate certification completed

### 5.3.2 Transfer of Custodial Documents and Mortgage File Documents

Freddie Mac may at any time require the Servicer to deliver (or direct the Document Custodian to deliver) any of the following eMortgage documents to Freddie Mac or its designee:

- The eNote, any addenda, modifying instrument, and original assignments, and any other Custodial Documents (paper or electronic); and
- Any Mortgage File Documents, and other related documents in the custody of the Servicer, regardless of whether the documents are electronic or paper.

Servicers may entrust custody of all or part of the Mortgage File Documents to the Document Custodian that is storing the related eNotes and other Custodial Documents, provided that Servicer obtains Freddie Mac's express written consent. When requested by Freddie Mac, Servicers must be able to promptly identify the Mortgage File Documents stored by the Document Custodian.

The Servicer must maintain a copy (paper or electronic) of any Mortgage File Document that has been delivered to the Document Custodian. The Servicer agrees to immediately instruct the Document Custodian to deliver any such Mortgage File Documents (paper or electronic) to Freddie Mac (at the Servicer's expense) upon Freddie Mac's request.

## 5.4 Loss Mitigation

For non-performing eMortgages, Servicer must comply with the loss mitigation requirements set forth in the Freddie Mac Single-Family Seller/Servicer Guide for paper Mortgages, as amended and supplemented by this eMortgage Guide.

### 5.4.1 eMortgage Modification Requirements – Non-Performing Loans

In addition to complying with the requirements set forth in the Freddie Mac Single-Family Seller/Servicer Guide, when modifying a non-performing eMortgage, the Servicer must have the Borrower sign a paper modification agreement. The original signed modification agreement must be stored as a paper agreement. The Servicer must: (a) update the MERS eRegistry to provide notice of the modification agreement; (b) retain a copy of the modification agreement; and (c) deliver the original modification agreement to the Document Custodian in accordance with the Freddie Mac Single-Family Seller/Servicer Guide and this eMortgage Guide. (See Section 3.8 above for eMortgages Modification Requirements Before Delivery and Section 5.2.6 above for eMortgage Modification Requirements of Performing Loans.)

Freddie Mac will consider, on a case-by-case basis, requests from Servicers to use electronic modification agreements. Servicer must obtain Freddie Mac's specific and express written consent to use electronic modification agreements.

#### **5.4.2 Foreclosure, Bankruptcy, or Other Legal Proceedings**

The Servicer must contact Freddie Mac before pursuing legal action or foreclosure with respect to an eMortgage. Requests to proceed with legal action or foreclosure in connection with an eMortgage should be sent to [NPL\\_eMortgages@FreddieMac.com](mailto:NPL_eMortgages@FreddieMac.com). If the property secured by an eMortgage is located in a state covered by Freddie Mac's Designated Counsel Program, the Servicer must refer the foreclosure to a law firm or trustee in Freddie Mac's Designated Counsel Program. If the property secured by an eMortgage is not located in a state covered by Freddie Mac's Designated Counsel Program, Freddie Mac may direct the use of a law firm to assist with, or manage, the foreclosure.

The Servicer is required to monitor the foreclosure of eMortgages and update the MERS eRegistry after the foreclosure is final.

Except as provided otherwise above, legal proceedings involving eMortgages must be processed and administered in the same manner as legal proceedings for paper Mortgages as set forth in the Freddie Mac Single-Family Seller/Servicer Guide.

#### **5.4.3 Producing the eNote for Legal Proceedings**

If the Servicer is required to produce a copy of the Authoritative Copy of the eNote for foreclosure, bankruptcy, or other legal proceedings, Servicer shall contact Freddie Mac for instructions. Servicer and Freddie Mac will document the procedure for providing evidence of the eNote for legal proceedings in Servicer's Purchase Documents.

## 5.5 Special eMortgage Servicing Representations and Warranties

Servicer represents and warrants (and, as applicable covenants) to Freddie Mac that:

- All eMortgages will be serviced in accordance with the requirements in the Freddie Mac Single-Family Seller/Servicer Guide, this eMortgage Guide and Servicer's other Purchase Documents;
- The Servicer at all times has connectivity to MERS and is in compliance with the provisions of the MERS eRegistry Membership Agreement;
- All eMortgages that are modified comply with: (a) the requirements in the Freddie Mac Single-Family Seller/Servicer Guide, this eMortgage Guide and Servicer's other Purchase Documents; (b) E-SIGN and/or the UETA, as enacted by the applicable jurisdiction, including, without limitation, Section 201 of Title II of E-SIGN and Section 16 of the applicable UETA; and (c) all other applicable laws, regulations and rules; and
- All eMortgages that are modified are valid, enforceable, and effective, and each modified eMortgage continues to be a first lien on the Mortgaged Premises. Servicer has not (and will not), through any act or omission on its part, cause any eMortgage it services for Freddie Mac to become invalid, ineffective or unenforceable or to lose its first-lien status.

In addition, the Servicer agrees to indemnify Freddie Mac and hold Freddie Mac harmless from and against any loss, damage, or expense (including court costs and reasonable attorney fees) that Freddie Mac may incur as a result of Servicer's decision to have the Document Custodian store all or part of the Mortgage File Documents in the Document Custodian's eNote Vault or paper vault, as applicable.

## Appendix A: eMortgage Guide Glossary

**Alteration** means a change to the terms or conditions of a Record or Electronic Record and/or a change in the variable information added to the Record or Electronic Record after it is signed or, if it is not required to be signed, after it has been delivered.

**Authoritative Copy** means the copy of the Transferable Record (eNote) that has been registered in the MERS<sup>®</sup> eRegistry and is stored with the Location Organization specified in the MERS<sup>®</sup> eRegistry.

**Borrower** means a person defined as a consumer under the federal E-SIGN Act, to the extent E-SIGN applies to a transaction; for the purposes of this eMortgage Guide, “Borrower” also includes any and all persons obligated under the terms of any applicable eNote, as the context shall permit or require.

**Copy of the Authoritative Copy** means a copy of the Transferable Record (eNote) that has been registered in the MERS<sup>®</sup> eRegistry and is stored in a place other than with the Location Organization specified in the MERS<sup>®</sup> eRegistry.

**Control** means that a Person has Control of an eNote if a system employed for evidencing the transfer of interests in the eNote reliably establishes that Person is the Person to which the eNote was issued or transferred pursuant to Section 16 of UETA and Title II, Section 201 of E-SIGN.

**Controller** means the entity named in the MERS<sup>®</sup> eRegistry as the entity who has Control of the Authoritative Copy of the eNote.

**Custodial Documents** mean (i) the Note or Authoritative Copy of the eNote and any Note or eNote addenda; (ii) any modification, conversion, reset or assumption agreements; and (iii) any intervening assignments.

**Delegatee** means a member of the MERS<sup>®</sup> eRegistry authorized by the Controller to perform certain MERS<sup>®</sup> eRegistry transactions on the Controller’s behalf.

**Digital Signature** means the result of encrypting a *hash value* with a private key. Digital signatures in the mortgage banking industry are also known as Tamper Seals, Tamper Seal Signatures, and Tamper Evident Signatures.

**Document Custodian** means a federally regulated financial institution that offers storage and maintenance services for promissory Notes, eNotes and other types of legal documents for the benefit of other parties. See Freddie Mac Custodial Agreements (Forms 1035 or 1035e) for usage of the term.

**eClosing System** has the meaning set forth in Section 3.1 of this eMortgage Guide.

**Electronic Mortgage or eMortgage** means Mortgages that were originated using an eNote. An eMortgage may also have an electronic or paper Security Instrument and

certain other paper or Electronic Records, which are part of the Mortgage File Documents.

**Electronic Note or eNote** means an Electronic Record that would be a promissory note if it was issued in paper, and that the Borrower has agreed to issue as a Transferable Record.

**Electronic Note Vault or eNote Vault** means an electronic storage system that uses computer hardware and software to store and maintain eNotes (Transferable Records) and other Electronic Records.

**Electronic Signature** means an electronic symbol or process attached to, or logically associated with, a contract or other Record and executed or adopted by a Person with the intent to sign the Record.

**E-SIGN** means the federal Electronic Signatures in Global and National Commerce Act (15 U.S. Code, Chapter 96) signed into law in 2000.

**Freddie Mac Single-Family Seller/Servicer Guide** means Freddie Mac's requirements for the sale and servicing of Mortgages secured by residential 1- to 4- unit properties. The Freddie Mac Single-Family Seller/Servicer Guide is one of the Purchase Documents, as that term is defined in the Freddie Mac Single-Family Seller/Servicer Guide, under which Seller/Servicers agree to sell Mortgages to or Service Mortgages for Freddie Mac (Refer to Sections 1.1 and 1.2 of the Freddie Mac Single-Family Seller/Servicer Guide for more information about the Freddie Mac Single-Family Seller/Servicer Guide).

**FTPS** stands for File Transfer Protocol Secure. This is an extension of FTP that adds support for the Transport Layer Security (TLS) and the Secure Sockets Layer (SSL) cryptographic protocols.

**Hash Value** means the result of a *hashing algorithm* and is a unique, fixed sized computed value that represents any arbitrary length string (such as a document). Hash values are also known as **message digests, hash values, hash codes, hash sums**, or simply **hashes**.

**Hashing Algorithm** means a mathematical function that maps any arbitrary length string (such as a document) to a unique computed fixed length value. Since this value is unique to the document, if the document were altered, the result from applying the hashing algorithm to the altered document would be different from applying the mathematical function to the original document. The difference in results from the hashing algorithm indicates tampering of the data integrity of the original document.

**Holder** means a Person described in Section 16(d) of UETA and in Title II, Section 201(d) of E-SIGN who has Control of a Transferable Record and who is named as the Controller in the MERS<sup>®</sup> eRegistry. (Also known as Note Holder, which is a field in the MERS<sup>®</sup> eRegistry.)

**HTTPS** stands for Hypertext Transfer Protocol Secure. This refers to a combination of the Hypertext Transfer Protocol with the SSL/TLS protocol to provide encryption and secure identification of the server.

**Hybrid eMortgage** means an eMortgage in which the promissory Note is an eNote signed by the Borrower electronically and the Security Instrument is a paper document signed by the Borrower using a handwritten signature.

**Location Organization** means the organization (business entity) named on the MERS<sup>®</sup> eRegistry that stores and maintains the Authoritative Copy of the eNote either as Controller or as a designated Document Custodian (Delegatee) on behalf of the Controller.

**MERS<sup>®</sup>** means Mortgage Electronic Registration Systems, Inc.

**MERS<sup>®</sup> eDelivery** means a MERS<sup>®</sup> system (operated by MERSCORP, Inc.) that is used by MERS<sup>®</sup> eRegistry Members to deliver documents and data ("eMortgage Packages") from one MERS<sup>®</sup> eRegistry Member to another using the same infrastructure, open system-to-system interface and standards of the [MERS<sup>®</sup> eRegistry](#).

**MERS<sup>®</sup> eRegistry** means the electronic registry (operated by MERSCORP, Inc.) that serves as the system of record to identify the current Controller and Location Organization of the Authoritative Copy of an eNote.

**MERS<sup>®</sup> System** means an electronic registry (operated by MERSCORP, Inc.) that tracks changes in loan servicing and beneficial ownership rights. Member companies update the registry via MERS<sup>®</sup> OnLine (the browser-based interface) or through batch file interfaces.

**MIN** means Mortgage Identification Number, which is the 18-digit number composed of a seven-digit organization ID, 10-digit sequence number, and check digit. The MIN is used to cross-reference eNotes to modifications and addenda.

**MISMO<sup>®</sup>** means Mortgage Industry Standards Maintenance Organization, which is the body created by the Mortgage Bankers Association of America (MBA) in October 1999 to develop, promote, and maintain voluntary electronic commerce standards for the mortgage industry.

**Modification Agreement** means an agreement that amends a Mortgage or eMortgage. If the Note is an eNote that is registered in the MERS<sup>®</sup> eRegistry, the Servicer, as Delegatee, must initiate a modification flag update in the MERS<sup>®</sup> eRegistry and register the Modification Agreement. (The eNote and the Modification Agreement are cross-referenced on the MERS<sup>®</sup> eRegistry).

**MOM means MERS<sup>®</sup> as the Original Mortgagee.** This language is written into security instruments to establish MERS<sup>®</sup> as the Original Mortgagee and nominee for the Lender, its successors, and assigns.

**Mortgage File Documents** means all Mortgage documents from the Mortgage closing (including paper or Electronic Records), other than the original Note or Authoritative Copy of the eNote, any Note or eNote addendums, any ARM conversion instrument, any balloon/reset instrument, any Modification Agreements, Assumption Agreements and any intervening assignments.

**NCCUSL** means the National Conference of Commissioners on Uniform State Laws.

**Paid Off** means a Note or eNote has been paid in full. If the debt instrument is an eNote registered in the MERS<sup>®</sup> eRegistry, the Servicer must initiate a change status request in the MERS<sup>®</sup> eRegistry reflecting a payoff of the eNote.

**PIN** means a personal identification number.

**Process** means a series of actions or steps necessary to perform a particular task or meet a particular requirement. Except where applicable law or the context requires otherwise, a Process may be deployed through electronic means, or involve steps or actions which are non-electronic, or may involve a combination of both electronic and non-electronic means, steps or actions.

**Record or Electronic Record** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Registration Reversal** means a transaction that reverses the registration of an eNote from the MERS<sup>®</sup> eRegistry, typically an erroneous registration.

**Salted Hash** means a random set of bytes (the salt), which are added to a data set before calculating the Hash; also known as an initialization vector.

**Servicing Records System** means a Servicer's computer hardware and software system for storing, tracking and managing electronic Mortgage File Documents and other Electronic Records related to servicing eMortgages.

**SFTP** means Secure File Transfer Protocol. Any network protocol that provides secure file transfers. An example of this is FTP over SSL.

**SMART Document or SMART Doc** means an electronic document created to conform to a specification standardized by MISMO. A SMART Document locks together data and presentation in such a way that it can be system-validated to guarantee the integrity of the document. There are different categories of SMART Docs as specified by MISMO.

**System** means a computer system, or any component of such computer system, used to create, register, sign, transfer, store, maintain, retrieve, and/or secure an eNote, Custodial Document or other Mortgage File Document.

**System Provider** means an entity providing a System, or any component of such System, used to create, register, sign, transfer, store, maintain, retrieve, and/or secure eNotes or other Mortgage File Documents.

**Tamper Seal, Tamperseal Signatures and Tamper Evident Signatures** mean a Digital Signature applied to an electronic record. The Tamper Seal can be verified to ensure that no changes have been made to the electronic record since the seal was put in place.

**Transfer of Control** means the transfer of a person's right, title, and interest in an eNote to another Person within an eNote registry. If the MERS<sup>®</sup> eRegistry is the designated Note Holder Registry in an eNote, it also means a change in the Controller of the eNote.

**Transferable Record** means an Electronic Record as described in Section 16 of UETA and in Title II, Section 201 of E-SIGN. A Transferable Record is referred to herein as an eNote.

**UCC** means the Uniform Commercial Code, which is a model commercial transactions statute promulgated by NCCUSL and which has been published and distributed by members of NCCUSL to the states, territories and possessions of the United States for enactment. UCC Article 3 governs negotiable instruments, including paper notes.

**UETA** means the Uniform Electronic Transactions Act of 1999, which is a model act promulgated by NCCUSL and which has been published and distributed by members of NCCUSL to the states, and territories and possessions of the United States for enactment. UETA and E-SIGN govern eNotes.

## **Appendix B: Required Changes to Uniform Instruments**

**B.1 Electronic Notes.** Freddie Mac requires that the Seller/Servicer/Service use a Uniform Note as follows:

**B.2 Note Heading.** An Electronic Note must contain the following heading:

**Note**  
(For Electronic Signature)

**B.3 New Paragraph 11.** An Electronic Note must contain a new paragraph 11 as follows:

An electronic Note must contain a new paragraph 11 as follows:

**“11. ISSUANCE OF TRANSFERABLE RECORD; IDENTIFICATION OF NOTE HOLDER; CONVERSION FROM ELECTRONIC NOTE TO PAPER-BASED NOTE**

(A) I expressly state that I have signed this electronically created Note (the “Electronic Note”) using an Electronic Signature. By doing this, I am indicating that I agree to the terms of this Electronic Note. I also agree that this Electronic Note may be Authenticated, Stored and Transmitted by Electronic Means (as defined in Section 11(F)), and will be valid for all legal purposes, as set forth in the Uniform Electronic Transactions Act, as enacted in the jurisdiction where the Property is located (“UETA”), the Electronic Signatures in Global and National Commerce Act (“E-SIGN”), or both, as applicable. In addition, I agree that this Electronic Note will be an effective, enforceable and valid Transferable Record (as defined in Section 11(F)) and may be created, authenticated, stored, transmitted and transferred in a manner consistent with and permitted by the Transferable Records sections of UETA or E-SIGN.

(B) Except as indicated in Sections 11 (D) and (E) below, the identity of the Note Holder and any person to whom this Electronic Note is later transferred will be recorded in a registry maintained by **[Insert Name of Operator of Registry here]** or in another registry to which the records are later transferred (the “Note Holder Registry”). The Authoritative Copy of this Electronic Note will be the copy identified by the Note Holder after loan closing but prior to registration in the Note Holder Registry. If this Electronic Note has been registered in the Note Holder Registry, then the authoritative copy will be the copy identified by the Note Holder of record in the Note Holder Registry or the Loan Servicer (as defined in the Security Instrument) acting at the direction of the Note Holder, as the authoritative copy. The current identity of the Note Holder and the location of the authoritative copy, as reflected in the Note Holder Registry, will be available from the Note Holder or Loan Servicer, as applicable. The only copy of this Electronic Note that is the authoritative copy is the copy that is within the control of the person identified as the Note Holder in the Note Holder Registry (or that person’s designee). No other copy of this Electronic Note may be the authoritative copy.

(C) If Section 11 (B) fails to identify a Note Holder Registry, the Note Holder (which includes any person to whom this Electronic Note is later transferred) will be established by, and identified in accordance with, the systems and processes of the electronic storage system on which this Electronic Note is stored.

(D) I expressly agree that the Note Holder and any person to whom this Electronic Note is later transferred shall have the right to convert this Electronic Note at any time into a paper-based Note (the “Paper-Based Note”). In the event this Electronic Note is converted into a Paper-Based Note, I further expressly agree that: (i) the Paper-Based Note will be an effective, enforceable and valid negotiable instrument governed by the applicable provisions of the Uniform Commercial Code in effect in the jurisdiction where the Property is located; (ii) my signing of this Electronic Note will be deemed issuance and delivery of the Paper-Based Note; (iii) I intend that the printing of the representation of my Electronic Signature upon the Paper-Based Note from the system in which the Electronic Note is stored will be my original signature on the Paper-Based Note and will serve to indicate my present intention to authenticate the Paper-Based Note; (iv) the Paper-Based Note will be a valid original writing for all legal purposes; and (v) upon conversion to a Paper-Based Note, my obligations in the Electronic Note shall automatically transfer to and be contained in the Paper-Based Note, and I intend to be bound by such obligations.

(E) Any conversion of this Electronic Note to a Paper-Based Note will be made using processes and methods that ensure that: (i) the information and signatures on the face of the Paper-Based Note are a complete and accurate reproduction of those reflected on the face of this Electronic Note (whether originally handwritten or manifested in other symbolic form); (ii) the Note Holder of this Electronic Note at the time of such conversion has maintained control and possession of the Paper-Based Note; (iii) this Electronic Note can no longer be transferred to a new Note Holder; and (iv) the Note Holder Registry (as defined above), or any system or process identified in Section 11 (C) above, shows that this Electronic Note has been converted to a Paper-Based Note, and delivered to the then-current Note Holder.

(F) The following terms and phrases are defined as follows: (i) “Authenticated, Stored and Transmitted by Electronic Means” means that this Electronic Note will be identified as the Note that I signed, saved, and sent using electrical, digital, wireless, or similar technology; (ii) “Electronic Record” means a record created, generated, sent, communicated, received, or stored by electronic means; (iii) “Electronic\_Signature” means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign a record; (iv) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and (v) “Transferable Record” means an electronic record that: (a) would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing and (b) I, as the issuer, have agreed is a Transferable Record.”

#### **B.4 eNote Taglines.**

Fixed-rate tagline: MULTISTATE FIXED RATE eNOTE—Single Family—  
Fannie Mae/Freddie Mac Uniform Instrument Form 3200e 5/05

ARM tagline: Contact Freddie Mac for specific ARM taglines.

Balloon/reset tagline: Contact Freddie Mac for specific Balloon/reset tagline.