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May 9, 2016

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

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

Dear Stephanie:

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

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

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

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

These concerns are warranted in our opinion. The “Findings and Purposes” section of the draft articulates why the repository is necessary, but the mortgage industry

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

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

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

Another area where the value proposition of the repository may be at odds with the industry is the ability to submit transferable records (“eNote”) to the repository. Today, the industry solution is based on compliance with the Electronic Signatures in Global and National Commence Act (“ESIGN”) and the Uniform Electronic Transaction Act (“UETA”), which also uses the concept of a registry. The industry has spent considerable time and effort into developing standards and applications that fit into the ESIGN/UETA legal frame work, which would need to be re-done to meet the repository standards. Most important to industry is ability to extract data from the electronic record, so the repository would have to develop and adopt new

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

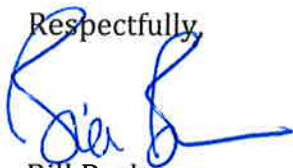
² In 2003, there were 24 million mortgage loans originated nationally, while the comparable number this year has been 6 million (and the run rate is not projected to increase in the coming years).

system rules to insure that goal can be accomplished. While the existing solution has had limited adoption, the industry may prefer to solve its existing problems hindering adoption of eNotes rather, than starting fresh with a new untested solution.

We at MERSCORP Holdings have a lot of registry experience, and understand the economics of participation, because we have designed and run four voluntary mortgage related registries over the past 20 years, of which only two are currently operating³ and other two were discontinued for lack of usage. From our experience, we also know there are still complex operation challenges inherent in creating and operating a secure, high availability repository that will be the legal system of record for mortgage notes. But we recognize that they may be better addressed outside the scope of the proposed act and are willing to participate in overcoming such challenges.

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

Respectfully,



Bill Beckmann
President & CEO
MERSCORP Holding, Inc.

³ MERS® System, MERS® eRegistry.