The Simplified Mortgage and Recorded Title ('SMART') Act of 2019

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We design a digital home mortgage and title registry system, overseen by a new public sector entity, to provide clearing and settlement efficiencies in mortgage-related instruments comparable to those enabled by the Depository Trust Company ('DTC') in other investment securities. We believe such a system to be a prerequisite to the return of a safe, transparent, and liquid 'private' secondary market in mortgage loans.

Simplified Mortgage and Recorded Title ("SMART") Act of 2019

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

- (a) SHORT TITLE.—This Act may be cited as the "SMART Act."
(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Definitional

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Section 17	SMART System Administrator’s Responsibility for Fraud and Error; SMART System Administrator’s Liability
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SECTION 2. FINDINGS; PURPOSES

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

- (1) Robust private secondary markets for residential mortgage loans, and securities backed by such loans, enhance the liquidity and efficiency of the national housing finance markets by ensuring transparency and that the market is Stable, Arbitrage-Free, and Efficient (“SAFE”). When properly functioning, these markets contribute to the economic stability of the United States and provide Americans the opportunity to own their own homes and accumulate wealth.
- (2) The current paper-based practice of the national housing finance market with respect to mortgage-associated instruments, such as residential mortgage notes and liens, is error-prone and costly. Nearly all other financial instruments are now tracked and transferred electronically.
- (3) Emerging financial technologies offer efficient means of tracking and transferring financial instruments, including mortgage-associated instruments, in a manner that is secure, low cost, unambiguously accurate, and consistent with Americans’ privacy concerns.
- (4) The financial crisis that began in 2007 revealed the technological obsolescence of the current legal and market infrastructures underlying the transfer and enforcement of residential mortgage loans in the United States. The problems to which that obsolescence gives rise include:
 - the absence of a quick, simple, and accurate way for borrowers to determine the beneficial owners of their mortgage notes and whether those persons have authorized servicers to modify the obligations evidenced by the notes;
 - the lack of an unambiguous title system that makes the transfer of title and liens certain and inexpensive; and
 - the lack of a standardized foreclosure process, which imposes a credit risk premium on homeowners that makes the acquisition of homes more expensive.

- (5) The establishment of a transparent and publicly accessible title registry and tracking infrastructure is a public good that private capital has no economic incentive to provide.
 - (6) The American Law Institute and the National Conference of Commissioners on Uniform State Laws have revised Articles 1, 3, 8, and 9 of the Uniform Commercial Code to accommodate this Act.
- (b) PURPOSES.—The purposes of this Act are:
- (1) to provide greater transparency to debtors and creditors concerning the entity that is legally entitled to collect, enforce, and/or modify a residential mortgage note and its associated mortgage;
 - (2) to enhance efficiency and liquidity in the secondary markets for residential mortgage loans and residential mortgage-backed securities. This shall be accomplished by a uniform and unambiguous standard for title, deed, and lien recording as well as for consistent, fair, transparent, and humane foreclosure processes nationwide;
 - (3) to provide for the conversion of paper residential mortgage notes and liens to electronic entries on a national SMART System and for the use of repository records in place of the paper notes;
 - (4) to foster the use of electronic residential mortgage notes and to provide legal certainty as to their ownership, transferability, immutability and enforceability; and
 - (5) to effectuate these purposes in a manner that provides protections to homeowners, borrowers, and investors in such mortgages or *MBS Pools*.

SECTION 3. DEFINITIONS

For purposes of this Act, the following definitions apply:

- () 1st or Senior Lien. —means the senior most lien on a property.
- () ADVERSE CLAIM.—means a claim that a *person* has a property interest in an *electronic mortgage note* and that it is a violation of the rights of the claimant for the *registrant* to hold, transfer, or deal with the *electronic mortgage note*. *Adverse claims* may arise from events occurring or property interests existing before or after submission of the *mortgage note* to the *SMART System*.
- () AUDITING REQUIREMENTS.—means independent auditing requirements for *MBS* pools as shall be determined by the SMART System Board
- () AUTHORIZED TRANSFEROR.—means, with respect to an *electronic mortgage note*, the *person* identified on the *records* of the *SMART System* as the *authorized transferor* of such *electronic mortgage note*.
- () BOARD.—means the SMART System Board as covered by Section 5 and section 4(d)(3).
- () BOARD OF GOVERNORS.—means the Board of Governors of the Federal Reserve System.

- (l) BORROWER.—means any maker or other *person* owing performance on a *mortgage note* that is secured by a *mortgage*, but does not include a person owing performance on the note solely as a secondary obligor except as provided in rules promulgated pursuant to this Act. Multiple *borrowers* on the same mortgage note are separate *persons* under the Act.
- (m) BORROWER LATE FEE RULES.—means rules governing the amounts of, and rights to, fees charged to borrowers when payments are delinquent.
- (n) CAPTIVE SERVICING.—means servicing in which a servicer has a conflict of interest and is responsible for procuring outside services with affiliated companies for which the costs are paid by the owner of the *mortgage note or pool of mortgage notes*;
- (o) COMMERCIAL-LAW MATTER.—as used in section 19 means:
 - (1) the right of a person with respect to a mortgage note that is submitted to the SMART System, whether or not the mortgage note is converted to an electronic mortgage note;
 - (2) the right of a person with respect to a mortgage note that is delivered by a secured party to a debtor for submission to the SMART System, whether or not the mortgage note is submitted to the SMART System or converted to an electronic mortgage note;
 - (3) the right of a person with respect to an electronic mortgage note;
 - (4) an obligation evidenced by a mortgage note that is converted to an electronic mortgage note;
 - (5) an obligation evidenced by an electronic mortgage note;
 - (6) an obligation for breach of warranty with respect to a transfer of a mortgage note that is converted to an electronic mortgage note; and
 - (7) an obligation for breach of warranty with respect to the transfer of an electronic mortgage note.

The term does not include an obligation for breach of a warranty arising under the Act.

- (p) COMMON-INTEREST COMMUNITY.—means real property with respect to which a *person*, by virtue of ownership of a unit, is obligated to pay real property taxes or insurance premiums or for maintenance, improvement of other real property, or services described in a declaration or other governing document, however denominated. The term includes properties held by a cooperative-housing corporation. For the purposes of this definition, “ownership” includes a leasehold interest if the lease term is at least [20] years, including renewal options.
- (q) CONFLICTED RATING AGENCY.—means a *rating agency* that has an economic incentive to rate a mortgage note or security in a particular manner.
- (r) CONTROL SYSTEM.—means any system determined by order of the *Board* that is employed to evidence the transfer of interests in a *transferable record* or *controlled record* and can reliably establish the identity of the *person* to whom the *transferable record* or *controlled record* was issued or transferred.

- () CONTROLLED RECORD.—means a *record* that (i) is in a *control system* and (ii) would be an *instrument* as defined in *UCC* Article 9, but would not be a *negotiable instrument* as defined in *UCC* Article 3, if the *record* were in writing.
- () ELECTRONIC MORTGAGE NOTE.—means a *record* of the *SMART System* created by the *SMART System Administrator* pursuant to paragraph 7(c)(3).
- () FDIC.—means the Federal Deposit Insurance Corporation.
- () FHFA. —means the Federal Housing Finance Agency or its successors.
- () INSTRUMENT.—has the meaning assigned to such term in *UCC* Article 9.
- () KNOWLEDGE and KNOWS.—have the meanings assigned to such terms in *UCC* Article 1.
- () MBS Pool. —means a group of mortgage notes aggregated for the purpose of securitizing.
- () *MBS SUBORDINATION RULES*.—means subordination amounts and structures for *MBS* pools as determined by the SMARTBoard
- () MODIFICATION.—means any change made pursuant to an agreement to the terms of an *obligation* that is secured by a *mortgage*. The term does not include:
 - (1) a change made in an oral agreement not reflected in a written agreement;
 - (2) an agreement that allows a *borrower* to forgo making certain payments or portions of payments of the *obligation* for a period that is six months or less; or
 - (3) an agreement under which the *borrower* does not retain an ownership interest in the *residential* real property that is the subject of the *mortgage* that secures the *obligation* (e.g., a short sale).
- () MORTGAGE.—means a consensual interest in real property that secures an *obligation*. Where a *mortgage* is reflected in a “short form”, references to *mortgage* in this Act are references to the master mortgage.
- () MORTGAGE NOTE.—means an *instrument*, a *transferable record*, or a *controlled record* secured by a *residential mortgage*. The term does not include:
 - (1) a *negotiable instrument* not in the possession of the person entitled to enforce such *instrument* where the *instrument* has been lost, stolen or destroyed;
 - (2) a *mortgage note* secured by real property situated within the lands of a federally recognized Indian tribe, as defined by the Secretary of the Interior pursuant to 25 U.S.C. § 5131, if such tribe has not consented to be deemed to be a *state* for purposes of the Act; or
 - (3) *electronic mortgage notes*.
- () MORTGAGE BACKED SECURITY OR MBS.—means any negotiable security constructed from or backed by one or more mortgage notes either directly or indirectly.
- () MORTGAGE SERVICER.—means any person or institution that collects payments and remits payments on behalf of mortgage obligors.
- () NCUA.—means the National Credit Union Administration.
- () NEGOTIABLE INSTRUMENT.—has the meaning assigned to such term in *UCC* Article 3.
- () NOTICE, NOTIFY and GIVES NOTICE.—Except as used in Section 6 have the meanings assigned to such terms in *UCC* Article 1.

- () OBLIGATION.—except as used in the definition of “System Rules” and subparagraphs 4(c)(2), 4(e)(2)(D), 5(a), 11(a)(2)(C), 18(c)(2), and 20(d), means a debt of a *person* and any duty or liability ancillary to the debt of a *person*.
- () OCC.—means the Office of the Comptroller of the Currency.
- () OTHER ENCUMBRANCES.—means non-mortgage claims on real Property.
- () PERSON.—means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal entity.
- () RECORD.—except when used in the expression “mortgagee of record” or “recording”, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, except for recordings of an oral communication.
- () RECORDER’S OFFICE.—means the office of a *person* authorized under the laws of a *State* to maintain the official *records* of interests in real property in that *State* or a subdivision of the *State*.
- () REGISTERED TRANSFER.—means a change in the identity of the *registrant* in the *SMART System* that is the effect of an instruction by the *registrant* or the *authorized transferor* of the relevant *electronic mortgage note* received by the *SMART System Administrator*. An instruction of a *registrant* to reflect a change of the registrant’s name on the *SMART System* is not a *registered transfer*.
- () REGISTRANT.—means, with respect to an *electronic mortgage note*, the *person* identified on the records of the *SMART System* as the *registrant* of such *electronic mortgage note*.
- () RATING AGENCY.—means an organization as defined in 15 USCS § 76c(61)
- () RESIDENTIAL.—means real property in a *State* that is improved with not more than four dwelling units. The term includes:
- (1) a detached or attached single-family unit;
 - (2) a single-family manufactured-housing unit or a time share in a dwelling unit if either is treated as real property under law of the *State* where the property is located;
 - (3) real property on which construction of not more than four dwelling units has commenced; and
 - (4) a single-family unit in a *common-interest community*.
- () RESPA.—means the Real Estate Settlement Procedures Act of 1975, 12 U.S.C. § 2601 *et seq.* (as amended) and the rules promulgated thereunder.
- () RESPONSIBLE PARTY.—means, with respect to an *electronic mortgage note*, the *person* identified on the *records* of the *SMART System* as the responsible party of such *electronic mortgage note*.
- () RLN (Record Locator Number).—means the unique identifier generated by the *SMART System Administrator* and distributed according to rule or *system rules*, and assigned to a *mortgage note* submitted to the *SMART System*.

- () SECURED PARTY.—has the meaning assigned to such term in *UCC* Article 9.
- () SERVICER.—means a *person* responsible for *servicing* an *obligation*.
- () *Servicer Advances*.—means the funds the servicer advances to the *MBS* transaction when an individual borrower is in arrears.
- () SERVICING.—has the meaning assigned to such term in 12 C.F.R. § 1024.2(b) or such meaning as otherwise set forth in rules promulgated by the *Board*.
- () SHORT POSITION---means any financial position taken with respect to a financial instrument or derivative instrument that increases in value when that underlying financial instrument or derivative instrument decreases in value or suffers a credit loss.
- () SMART SYSTEM ADMINISTRATOR.—means the entity organized under this Act to operate the *SMART System*.
- () SMART SYSTEM.—means the electronic database and *registered transfer* service established by the *SMART System Administrator*.
- () STATE.—means a state of the United States of America, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any other territory or insular possession subject to the jurisdiction of the United States. Except for subsections 4(f), 4(g), 4(h), 4(d)(2), 4(f), and 8(c), a federally recognized Indian tribe, as defined by the Secretary of the Interior pursuant to 25 U.S.C. § 5131, shall only be a *State* if that tribe consents to be deemed a *State* for purposes of this statute.
- () SUBSEQUENT 2ND LIENS—means subordinate liens placed on a property after the recording of the *1st and senior lien*.
- () SYSTEM RULES.—means the rules the *SMART System Administrator* adopts concerning the operations, security, and rights or obligations of *persons* who may use the *SMART System*.
- () TRANSFERABLE RECORD.—has the meaning assigned to such term in 15 U.S.C. § 7021, except that no recording of an oral communication may be the basis of a *transferable record*.
- () Trustee Conflict of Interest and Fiduciary Rules. —means rules governing the behavior of independent Trustees in *MBS Pools* which will be determined by the SMART System Board.
- () UCC.—subject to paragraph 20(b), means the version of the Uniform Commercial Code enacted in the *State* that has been identified under the applicable choice of law rules of the forum.
- () UCC AMENDMENTS.—means the Amendments to the Uniform Commercial Code Articles 1, 3, 8, and 9, promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws in 2018. The term also includes section 3-602 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws in 2002, as amended in 2018.
- () Variable Servicing Fees.—means the establishment of servicing fees that can change over time to reflect the cost of servicing defaulted or restructured mortgage notes.
- () The following terms are defined elsewhere in the Act:
 - (1) Appropriate federal banking agency is defined in subsection 5(a).
 - (2) Conversion and convert are defined in subsection 7(c)(3).

- (3) Discharge is defined in subsection 10(a).
- (4) Other financial supervisor and FHFA is defined in subsection 14(b).

SECTION 4. SMART SYSTEM AND ADMINISTRATOR

(a) ORGANIZATION.—

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

(b) PURPOSES.—The purposes of the *SMART System Administrator* are:

- (1) to develop, maintain, and operate the *SMART System* contemplated in this Act;
- (2) to establish standards and procedures for the disposition of *residential mortgage notes*, titles, pooling of mortgage notes and related paper documents submitted to the *SMART System*, including safekeeping, long-term storage, conversion to electronic form or destruction; such standards may include rules that:
 - Determine market standards and appropriate disclosure of short positions;
 - Require risk retention and *Rating Agencies* that are not economically conflicted;
 - Determine market standards and appropriate disclosure of *subsequent 2nd liens*;
 - Determine market standards and appropriate disclosure of *Captive Servicing arrangements*;
 - Establish and enforce *auditing requirements*;
 - Establish *trustee conflict of interest and fiduciary rules*;
 - Establish enforceable *MBS subordination rules*;
 - Establish *variable servicing fees*;
 - Establish standardized rules with respect to *borrower late fee rules*;
 - Establish rules regarding *Servicer Advances*;
 - Establish and enforce uniform mortgage structure, transparency and underwriting standards;
 - Establish and provide standardized *MBS* transaction documents;

- Establish qualifications or other requirements for responsible parties, including, among other things, financial responsibility requirements;
 - Establish and maintain a data base for the seamless replacement of *Mortgage Servicers*;
 - Establish fair and equitable access to the SMART System by persons eligible to submit pursuant to Section 6, authorized transferors, and registrants;
 - Establish minimum standards that the SMART System Administrator shall comply to insure protection of data and efficacy of the system in the event of a prolonged outage or cyber-attack of the SMART System;
 - Establish rules governing the SMART System Administrator's collection, use, sharing, and retention of [personally identifiable] data that contemplate the adoption of the National Institute of Standards and Technology Privacy Standards [or similar standards in wide use in the financial services industry];
 - Address such other matters as it deems necessary or appropriate to carry out the purposes of this Act; and
 - Establish governing principles for the safety and soundness of the operations of the SMART System, including capital requirements of the SMART System Administrator and limitations on or conditions under which the SMART System Administrator may pay dividends or distribute profits and any other manner as otherwise stated in this Act.
- (3) to establish standards and procedures, consistent with privacy concerns, for making data held in the *SMART System* available to stakeholders and to the public;
- (4) to secure and protect data collected and maintained by the *SMART System* against unauthorized access, alteration, use, or disclosure; and
- (5) to ensure that *records* of the *SMART System* accurately reflect the *records* and instructions submitted to the *SMART System Administrator*.
- (c) POWERS.— The *SMART System Administrator* shall have power:
- (1) to adopt and use a corporate seal;
 - (2) to make contracts, incur liabilities, borrow money, and issue notes, bonds, and other obligations;
 - (3) to purchase, receive, hold, and use real and personal property and other assets necessary for the conduct of its operations;
 - (4) to sue and (subject to the provisions of this Act) be sued in any court of law or equity;

- (5) to appoint by its board of directors such officers as it may determine and to define their duties and compensation;
 - (6) to prescribe by its board of directors bylaws consistent with this Act and other applicable law or rule; and
 - (7) to exercise by its board of directors or duly authorized officers or employees all powers granted by this Act and such incidental powers as shall be necessary or appropriate to carry out its purposes.
- (d) ORGANIZATION; GOVERNANCE.—
- (1) BOARD OF DIRECTORS.—The board of directors is the governing body of the *SMART System Administrator*. The board of directors shall perform the duties usually appertaining to the office of directors of designated financial market utilities (as defined in 12 USC § 5462(4)) and all such duties as are prescribed by law.
 - (2) INITIAL ORGANIZATION.—Within [] months of the date of enactment of the Act, the *Board* shall promulgate bylaws for the *SMART System Administrator*, and the *Board* shall appoint directors subject to paragraph (3) of this subsection. The *Board* shall appoint the initial nine directors, and a quorum shall consist of five. Any director appointed by the *Board* before a majority of directors has been elected may be removed from the board of directors at the pleasure of the *Board*. The bylaws may establish provisions consistent with the Act relating to the qualifications for directors, their terms of service, and such other matters with respect to directors as may be appropriate. The bylaws shall provide that subsequent directors be elected or appointed subject to paragraph (3) of this subsection.
 - (3) SELECTION OF DIRECTORS. —There shall be nine directors who shall be appointed as follows:
 - [TBD]
 - (4) BYLAWS.—The bylaws, in conjunction with this statute, shall be the organizational documents of the *SMART System Administrator*. The bylaws shall specify the organizational law of a *State* to fill the gaps in this Act. The board of directors may at any time modify the bylaws of the *SMART System Administrator*, subject to the approval of the *FHFA*.
- (e) FUNDING.—
- (1) INITIAL FUNDING.—There is authorized to be appropriated \$[XXX,000,000.00] for the establishment of the *SMART System Administrator*.
 - (2) REPAYMENT OF INITIAL FUNDING.—The *SMART System Administrator* shall repay to the Treasury of the United States the amount of the initial funding provided in paragraph (1) of this subsection, plus interest, within the 10-year period beginning on the date that the *SMART System Administrator* commences operating the *SMART System*.

- (A) Interest shall be payable semiannually in arrears and shall accrue for each day from the time funds are disbursed until repaid at a per-annum rate equal to 100 basis points above the rate set forth for the first day of each semiannual interest period in Federal Reserve publication H.15(519) under “U.S. government securities—Treasury constant maturities—Nominal—10-year” or such comparable source as the *Board* may designate.
 - (B) Principal may be repaid in whole or in part at any time during the 10-year period at the discretion of the *SMART System Administrator*. Repayments of principal shall be accompanied by accrued interest on the amount repaid.
 - (C) The *Board* may extend the repayment term for up to five additional one-year periods.
 - (D) Until it has repaid the Treasury in full, with interest, the *SMART System Administrator* is a “mixed-ownership Government corporation” for purposes of 31 U.S.C. §§ 9101-06. After that, it no longer remains a “Government corporation” under 31 U.S.C. § 9101.
- (3) ONGOING FUNDING.—
- (A) COLLECTION OF FEES.—Except as prohibited by subsections 15(b)(1)(A), 15(b)(4), and 15(b)(5), the *SMART System Administrator* may establish and collect fees for the services it provides. Such fees may differentiate between classes or types of services and users of services.
 - (B) ESTABLISHMENT OF FEE SCHEDULE.—If the *SMART System Administrator* establishes fees, it shall establish such fees by *system rule* at a level sufficient to permit it to maintain its operations, make payments pursuant to paragraph (2) of this subsection, pay its annual assessments to the *Board*, and establish and maintain levels of liquidity and capital required by the *Board*.
- (f) EXEMPTION FROM TAXATION.—The *SMART System Administrator* shall be exempt from all taxation imposed by the United States or any *State*, county, municipality, or local taxing authority, except taxes upon real estate.
- (g) SUPERVISION.—The *SMART System Administrator* shall be subject to the exclusive supervision of the *Board*, and shall not be subject to supervision by any other Federal department or agency or by any *State*.
- (h) INSOLVENCY OF SMART SYSTEM ADMINISTRATOR.—
- (1) Once it has opened for business, the *SMART System Administrator* may not be a debtor under title 11 of the United States Code and shall not be subject to the insolvency, reorganization, conservatorship, receivership, or other similar laws of any *State*.
 - (2) If the *SMART System Administrator* has opened for business and (i) cannot timely make the payments required by paragraph 4(e)(2) of this section or (ii) if the

Board otherwise determines that the *SMART System Administrator* is insolvent, the *Board* may operate the *SMART System Administrator* in conservatorship under such rules and procedures as the *Board* may prescribe.

- (3) A conservatorship described in paragraph (2) of this subsection shall not affect any other person's rights in or duties to any *obligation* evidenced by an *electronic mortgage note*.

(c) FUNDING.—

- (1) INITIAL FUNDING.—Unless the licensee is a for-profit entity, there is authorized to be appropriated \$[XXX,000,000.00] for the establishment of the *SMART System Administrator*. This authorization shall be disbursed to the licensee as a loan. If the licensee is a for-profit entity, remaining provisions of this subsection shall not be effective.

- (2) REPAYMENT OF INITIAL FUNDING.—The *SMART System Administrator* shall repay to the Treasury of the United States the amount of the initial funding provided in paragraph (1) of this subsection, plus interest, within the 10-year period beginning on the date that the *SMART System Administrator* commences operating the *SMART System*.

- (A) Interest shall be payable semiannually in arrears and shall accrue for each day from the time funds are disbursed until repaid at a per-annum rate equal to 100 basis points above the rate set forth for the first day of each semiannual interest period in Federal Reserve publication H.15(519) under “U.S. government securities—Treasury constant maturities—Nominal—10-year” or such comparable source as the *Board* may designate.
- (B) Principal may be repaid in whole or in part at any time during the 10-year period at the discretion of the *SMART System Administrator*. Repayments of principal shall be accompanied by accrued interest on the amount repaid.
- (C) The *Board* may extend the repayment term for up to five additional one-year periods.
- (D) Until it has repaid the Treasury in full, with interest, the *SMART System Administrator* is a “mixed-ownership Government corporation” for purposes of 31 U.S.C. §§ 9101-06. After that, it no longer remains a “Government corporation” under 31 U.S.C. § 9101.

(d) TERMINATION OF LICENSE.—

- (1) The *FHFA* may terminate the license of the person acting as *SMART System Administrator* if:
 - (A) the *SMART System Administrator* has not commenced operating the *SMART System* within [2] years of obtaining the license to act as *SMART System Administrator* and the *Board* determines in its discretion that (x) the person acting as *SMART System Administrator* has not made adequate

progress in establishing the business operations of the *SMART System* or
(y) the *person* acting as *SMART System Administrator* has engaged in
waste of appropriated funds made available for establishment of the
SMART System;

- (B) the *SMART System Administrator* cannot timely make any payments
required by paragraph 4(c)(2) of this section;
- (C) the *FHFA* otherwise determines that the *SMART System Administrator* is
insolvent;
- (D) the *FHFA* determines that the *SMART System Administrator* has failed to
comply with orders or directives of the *FHFA*; or
- (E) the *SMART System Administrator* commits a material act of malfeasance.

If the *Board* terminates the license of the *person* acting as *SMART System Administrator* under subparagraphs (B)-(E) of this paragraph (1), it shall assume operational responsibility over the *SMART System* unless and until, pursuant to subsection 4(b), the *Board* issues a license to another applicant or the *Board* determines that the *SMART System Administrator* shall be established as a federally chartered entity. The *person* acting as *SMART System Administrator* shall cooperate with the *Board* in the transition of duties and responsibilities concerning the *SMART System* as the *Board* or its designee shall reasonably require. All assets of the *person* acting as *SMART System Administrator* shall vest in the *Board*, and the value of such assets shall offset the claim of the United States to repayment of any funds advanced by the Treasury.

- (2) As long as the *person* who is licensed as the *SMART System Administrator* retains its license, it may not be a debtor under title 11 of the United States Code and shall not be subject to the insolvency, reorganization, conservatorship, receivership, or other similar laws of any *State*.
- (3) Termination under this subsection shall not affect any other person's rights in or duties under any *obligation* evidenced by an *electronic mortgage note*.

(e) ESTABLISHMENT OF FEES.

- (1) SCHEDULE OF FEES.—Subject to the requirements of this subsection (e) and except as prohibited by subparagraph 15(b)(1)(A) and paragraphs 15(b)(4) and 15(b)(5), the *SMART System Administrator* may establish and collect fees for the services it provides. All fees shall be established by *system rule*.
- (2) REVIEW BY THE BOARD.—In addition to the standard for approval set forth in Section 6, the *Board* shall approve the proposed fee schedule only if it finds that:
 - (A) to the extent fees are based on the type of service, classes of users of a service, or types of *mortgage notes* or *modifications*, the *SMART System Administrator* has demonstrated that such differentiation is based on differences in the costs to the *SMART System Administrator* including

- costs resulting from differences in the risks associated with a service, a class of users, or a type of mortgage note or modification;
- (B) the SMART System Administrator is not treating similarly situated users differently;
 - (C) if the SMART System Administrator is a for profit entity, the fees are not excessive, taking into consideration whether such fees, in the aggregate, are likely to produce a long run profit that is unreasonably high in relation to: (x) the risks of operating the *SMART System*; (y) the services rendered in operating the *SMART System*; or (z) the reasonable and necessary costs and expenses incurred in the operation of the SMART System; and
 - (D) fees are set at a level sufficient to permit the SMART System Administrator to maintain its operations consistent with its obligations under this Act (including warranty obligations) and relevant rules including rules governing fair and equitable access, capital, information security and resiliency.
- (3) INFORMATION RETENTION AND SUBMISSION RULES.—The *FHFA* may promulgate rules requiring the *SMART System Administrator* to maintain and submit to the *FHFA* information, including information relating to revenue, loss, cost, and expense data, that the *Board* determines is necessary to assist in its review of any proposed schedule of fees.
- (f) SUPERVISION.—The *SMART System Administrator* shall be subject to the exclusive supervision of the *Board*, and shall not be subject to supervision by any other Federal department or agency or by any *State*.

SECTION 5. BOARD

- (a) RULES.—In discharging its functions, the *Board* shall consult with:
- (i) the Federal Housing Finance Agency (“FHFA”);
 - (ii) the federal agency responsible for administering, enforcing, or otherwise implementing federal consumer financial laws on matters that affect the rights and obligations of consumers; and
 - (iii) any *appropriate federal banking agency* (as defined in 12 U.S.C. § 1813) on matters of concern to such agencies in the exercise of their supervisory responsibilities. In addition, before issuing adopting rules concerning data security, including cyber security, the *Board* shall consult with those federal agencies with responsibility for the security of both private and public critical financial infrastructure.
- (b) A *person* adversely affected by a final action of the *Board* may seek redress pursuant to Section 21.

SECTION 6. SUBMISSION OF MORTGAGE NOTES

(a) USE OF *SMART SYSTEM*.—

- (1) No *person* shall be required, by virtue of this Act, to submit a *mortgage note* to the *SMART System*.
- (2) The *SMART System Administrator* may through *system rules* establish eligibility requirements in addition to those set forth in subsection (b) for use of the *SMART System* and for submission of certain classes of mortgage notes. Subject to Section 21, no *person* may sue the *SMART System Administrator* for relief or redress with respect to the *SMART System Administrator's* application of the eligibility requirements referenced in this paragraph.

(b) PERSONS ELIGIBLE TO SUBMIT.—A *person* is eligible to submit a *mortgage note* to the *SMART System* if such *person* is:

- (1) the *person* entitled to enforce the *instrument* under Article 3 of the *UCC* if the *mortgage note* is a *negotiable instrument*;
- (2) the *person* with *control* of the *transferable record* if the *mortgage note* is a *transferable record*;
- (3) the *person* with the right to enforce the *mortgage note* if the *mortgage note* is not a *negotiable instrument* or *transferable record*; or
- (4) a *secured party* in possession or *control* of the *mortgage note*.

(c) CREATION OF *ELECTRONIC MORTGAGE NOTES*.—

(1) ELIGIBLE MORTGAGE NOTES.—The *SMART System Administrator* may accept the submission of a *mortgage note* if:

- (A) an *RLN* is associated with the *mortgage note* and the related *mortgage*;
- (B) the related *mortgage* with the associated *RLN* has been submitted for recording in the *recorder's office* where the real property is situated; and
- (C) the *mortgage note* is submitted to the *SMART System* by a *person* who is eligible to submit the *mortgage note* under subsection (b) and either
 - (i) is the mortgagee of record,
 - (ii) has submitted *records* to the appropriate *recorder's office* that will result in such *person* becoming the mortgagee of record, or
 - (iii) is a *secured party* eligible to submit and the *person* that granted a security interest in the *mortgage note* directly to the security party satisfies either condition (I) or (II) of this sentence.

A *person* who may submit a *mortgage note* under subsection (b) is deemed the mortgagee of record for purposes of this subparagraph even if the mortgage identifies another *person* as holding the mortgage in the capacity of nominee.

- (2) DATA REQUIREMENTS.—A *person* eligible to submit a *mortgage note* is subject to any relevant *system rules* or rules concerning the method to be used to submit

data, data quality standards, required submission format, and required data. At a minimum, these rules shall require submission of:

- (A) the *mortgage note*, shall be recorded in immutable form, including any allonges or *modifications* to the note that were made prior to submission;
 - (B) a copy of the entire *mortgage* associated with the *mortgage note*, and if not evident on the face of the *mortgage*, *record(s)* demonstrating:
 - (i) that the *mortgage* is recorded (or has been submitted for recording in the appropriate recorder's office),
 - (ii) that an *RLN* has been associated with the *mortgage*, and
 - (iii) the identity of the mortgagee of record (or if the mortgagee of record is a nominee, the deemed mortgagee of record under subparagraph 7(c)(1)(C);
 - (C) the identity, including contact information, of any servicer(s) (including any master servicers or sub-servicers) of the *obligation* evidenced by the *mortgage note*;
 - (D) a statement as to whether a servicer has authority to modify the *obligation* evidenced by the *mortgage note*, and a general statement as to the basis and scope of that authority;
 - (E) the contact information of the *person* or *persons* with a beneficial interest in the *mortgage note* and the capacity of the *person* submitting the *mortgage note* (e.g., beneficial owner, trustee, agent, servicer, etc.);
 - (F) the contact information of the *borrower*; and
 - (G) the contact information of the *person* who will be the *registrant* upon conversion of the *mortgage note* to an *electronic mortgage note*.
- (3) CONVERSION TO ELECTRONIC MORTGAGE NOTE.—Upon the *SMART System Administrator's* receipt of a *mortgage note* and all required data submitted in compliance with this section, the *SMART System Administrator*:
- (A) may create a *record* of the *SMART System* establishing the *electronic mortgage note* in substitution for the submitted *mortgage note*; and
 - (B) if it creates a *record* of the *SMART System* pursuant to the foregoing subparagraph (A), shall identify the *person* (which may include a *secured party* eligible to submit a *mortgage note* pursuant to paragraphs 7(b)(1) through 7(b)(3)) submitting the *mortgage note* as the *registrant* of the *electronic mortgage note* in the *SMART System*, except that, if the *mortgage note* is submitted by a *person* who is eligible to submit a *mortgage note* solely under paragraph 7(b)(4), the *SMART System Administrator* shall (i) identify the *secured party* submitting the *mortgage note* as the *authorized transferor* of the *electronic mortgage note* in the *SMART System* and (ii) identify the *person* that granted a security interest

in the *mortgage note* directly to the *secured party* as the *registrant* of the *electronic mortgage note* in the *SMART System*.

Together the acts described in subparagraphs (A) and (B) shall constitute *conversion* of the *mortgage note* into an electronic mortgage note in the *SMART System*, and the term *convert* shall refer to the act of *conversion*.

- (4) SUBMISSION NOT CONFORMING TO THE REQUIREMENTS FOR SUBMISSION.—
- (A) *Conversion* by the *SMART System* of the *mortgage note* to an *electronic mortgage note* is effective even if the submission of the *mortgage note* was inconsistent with some or all of the requirements of paragraphs (1) and (2) of this subsection 7(c).
- (B) This subparagraph (B) applies to any *record* that is not a *mortgage note*. If such *record* is submitted to the *SMART System Administrator*, no subsequent processing by the *SMART System Administrator* will result in the *conversion* of such record to an *electronic mortgage note* or alter the legal nature of the *obligation* evidenced by such *record*.
- (C) The *SMART System Administrator* is liable for accepting a *mortgage note* that was submitted inconsistently with the requirements of paragraphs (1) and (2) of this subsection 7(c) only as provided in subsection 7(d).
- (d) SMART SYSTEM ADMINISTRATOR'S WARRANTIES RELATING TO MORTGAGE NOTE SUBMISSIONS.—
- (1) If (i) a *mortgage note* is submitted to the *SMART System Administrator* within [ten] business days of the date the *mortgage note* is executed, (ii) the person who will be the *registrant* upon conversion of the *mortgage note* to an *electronic mortgage note* is the original payee, and (iii) the *SMART System Administrator* converts the *mortgage note* to an *electronic mortgage note*, then the *SMART System Administrator* warrants, as of the time of submission:
- (A) the *person* submitting the *mortgage note* to the *SMART System Administrator* is an eligible submitter under subsection (b) of this section;
- (B) the submission is of a *mortgage note* that is eligible under paragraph (c)(1) of this section; and
- (C) if the *mortgage note* is:
- (I) a *negotiable instrument* or *transferable record*, the *SMART System Administrator* has not previously converted another *negotiable instrument* or *transferable record* documenting the same *obligation* as the one being deposited; or
- (II) neither a *negotiable instrument* nor a *transferable record*, the *SMART System Administrator* has not previously converted a copy of the *mortgage note*.

Each warranty of this paragraph (1) runs to any *person* harmed by the breach of the warranty.

- (2) With respect to any other *mortgage notes* that the *SMART System Administrator* converts to an *electronic mortgage note*, the *SMART System Administrator* makes the warranties of paragraph (1) of this subsection and further warrants that, as of the time of submission:
- (A) there has been no *alteration* to the *mortgage note*;
 - (B) the signature or other authentication of the *borrower* on the *mortgage note* was authorized;
 - (C) there is no *adverse claim* to the *mortgage note*, except for a security interest that was perfected, as determined under other law, at the time the *mortgage note* was submitted; and
 - (D) the submission of the *mortgage note* includes any allonges or *modifications* that were made prior to submission.

For a *mortgage note* that was executed before the date on which the *SMART System Administrator* first begins to accept submissions, each warranty of this paragraph runs only to the *borrower(s)* under that *mortgage note*. For all other *mortgage notes* within the scope of this paragraph (2), each warranty of this paragraph runs to any *person*. For purposes of this paragraph (2), alteration has the meaning assigned to that term in Section 3-407 of the *UCC*, except that the term “instrument” as used in that definition shall be understood to include *transferable records* and *control records*.

- (3) With respect to any *electronic mortgage note*, the *SMART System Administrator* warrants that all data in the *SMART System* are an accurate reflection of the data it received.
- (4) DAMAGES.—A *person* found to have been damaged by a breach of one of the warranties in paragraphs (1) through (3) is entitled solely to the direct economic losses caused by the breach, except that a *borrower* may also recover reasonable costs and expenses (including reasonable attorney’s fees) and any other damages to which the borrower would be entitled under other law for a breach of warranty. The warranties provided in this subsection do not replace, and are in addition to, any other remedies available to *borrowers* or other *persons* under this Act or other law.
- (5) The warranties arising out of this subsection cannot be disclaimed or limited.
- (e) TIMING WITH RESPECT TO SUBMISSION AND CONVERSION.—*System rules* shall set forth rules for determining when a *mortgage note* is
- (1) submitted to the *SMART System Administrator*, and
 - (2) converted into an *electronic mortgage note*.
- (f) NON-STANDARD AND AMBIGUOUS DEEDS
- It is understood that there are many situations in which land ownership is ambiguous or contested. In this situation the System Operator shall seek

appropriate legal remedies to maintain the accuracy and efficacy of the SMART System

SECTION 7. LEGAL EFFECT OF CONVERSION

- (a) EFFECT OF *CONVERSION* OF A *MORTGAGE NOTE*.—
- (1) The *obligation* evidenced by an *electronic mortgage note* has the same effect and validity as the *obligation* evidenced by the *mortgage note* prior to *conversion* to an *electronic mortgage note*. Without limiting the foregoing, and except with respect to the standing of the registrant, the *conversion* of a *mortgage note* does not limit any right that a *borrower* may have to assert a claim or a defense.
 - (2) The *mortgage note* ceases to have any legal effect and, if the *mortgage note* is a *negotiable instrument*, ceases to be the embodiment of the *obligation* upon *conversion*. A claim of a *person* that such *person*, at the time of *conversion*, has a property interest in a submitted *mortgage note* and it is a violation of the rights of the claimant for another *person* to submit, hold, transfer, or deal in the *mortgage note* becomes an *adverse claim* upon *conversion* of the *mortgage note* to an *electronic mortgage note*.
- (b) RECONVERSION. —Once a *mortgage note* is *converted* to an *electronic mortgage note*, it may not be reconverted to a *mortgage note* or otherwise withdrawn from the *SMART System* unless so authorized by this paragraph. The *Board* may issue orders for reconvert~~ing~~ *electronic mortgage notes* to *mortgage notes* or otherwise withdrawing them from the *SMART System* solely in connection with assuming the operations of the *SMART System* in accordance with section 4 and only if necessary to support the safe and sound functioning of the *residential mortgage* market.
- (c) An *electronic mortgage note* is:
- (1) not a security for purposes of federal or *State* securities regulatory laws; and
 - (2) not subject to *State* abandoned property law.

SECTION 8. MODIFICATIONS

- (a) The *Board* shall promulgate rules for the submission to the *SMART System* of *modifications* of the *obligations* evidenced by an *electronic mortgage note*. Such rules shall conform as closely as possible to the rules governing submission of the *mortgage note*, including with respect to appropriate warranties of the *SMART System Administrator*. The rules shall:
- (1) require that *records* evidencing *modification* be submitted within a specified period;
 - (2) require the *registrant* to pay a fine to the *SMART System Administrator* for each business day of delay in submitting the *modification*; and
 - (3) impose liability on a *registrant* for any harm to the *borrower* caused by a delay in submission of the records evidencing *modification*.

- (b) Any indemnity or other agreement requiring a *borrower* to pay fees or other amounts to a *registrant* for the purposes of the *registrant* recovering fines paid by it to the *SMART System Administrator* pursuant rules promulgated under subsection (a) shall be unenforceable. A *registrant* that charges fees or other amounts under an indemnity or other agreement that is unenforceable under this subsection shall be liable to the *borrower* for (i) the greater of the amount that it paid and [\$2,000] and (ii) reasonable attorney's fees.
- (c) The *registrant* may submit any other *record* that identifies changes to (i) the identities or names of the parties to the *obligation* evidenced by the *electronic mortgage note*, (ii) title to the property securing the *obligation* evidenced by the *electronic mortgage note*, or (iii) the *mortgage*. The *SMART System Administrator* shall associate such additional *records* with the *electronic mortgage note* to which they relate.
- (d) The submission of, or failure to submit, any *modifications* pursuant to subsection (a) of this section shall have no effect on whether the *modification* is enforceable, with the enforceability to be determined under other law.
- (e) WARRANTIES RELATING TO MODIFICATION.—
 - (1) A *registrant* that instructs the *SMART System Administrator* to make a *registered transfer* warrants that it has submitted to the *SMART System records* of any *modification* to the *obligation* evidenced by the *electronic mortgage note* to which it is a party and any *modification* of which it has *notice* and which has not previously been submitted to the SMART System. This warranty runs to the *borrower(s)* under the relevant *electronic mortgage note* and all proximate and remote transferees of the *electronic mortgage note*.
 - (2) In any judicial or non-judicial foreclosure proceeding or any judicial proceeding to enforce the electronic mortgage note, the *registrant* warrants to the *borrower* or any other *person* against which such proceeding is brought that, prior to the initiation of the enforcement proceeding, it has submitted to the *SMART System* any *modification* to the *obligation* evidenced by the *electronic mortgage note* to which it is a party and any evidence of *modification* of which it has *notice*.
 - (3) The *SMART System Administrator* warrants that the data in the *SMART System* related to a *modification* are an accurate reflection of the data it received.

SECTION 9. DISCHARGE

- (a) “*Discharge*” means any act that terminates the *obligation* of a *borrower* evidenced by the *electronic mortgage note*, including full performance, satisfaction, strict foreclosure, foreclosure producing an amount payable to the *registrant* of the *electronic mortgage note* sufficient to pay the *obligation* in full, bankruptcy discharge, agreement (*e.g.*, deed in lieu), or court order. Full payment does not constitute *discharge* if the *registrant* or a *person* acting for the *registrant* has an ongoing duty to make advances under a line of credit or any other commitment.

- (b) RULES.—The *Board* shall issue rules:
- (1) requiring that the *registrant* give the *SMART System Administrator* notice of *discharge* of a *borrower's obligation* evidenced by an *electronic mortgage note*;
 - (2) establishing a process by which a *borrower* may (i) give *notice* to the *SMART System Administrator* of the *borrower's* belief that its *obligation* or the *obligation* evidenced by the *electronic mortgage note* has been *discharged* and (ii) request that the *registrant* or, if applicable, a court that has issued an order *discharging* the *obligation*, confirm such *discharge* to the *SMART System Administrator*;
 - (3) providing for an appropriate remedy for the *registrant's* failure to give the *SMART System Administrator* notice of a *discharge* known to such *registrant*; and
 - (4) requiring the *SMART System Administrator* to update the *SMART System* to reflect any *discharge* of a *borrower's obligation* evidenced by an *electronic mortgage note* if either the *registrant* or a court provides *notice* of *discharge* to the *SMART System Administrator*.
- The *notice* requirement in this section does not replace (i) any requirement under other law to deliver or record a satisfaction of *mortgage* or (ii) any associated penalties for failure to comply with such requirement.
- (c) Once the *records* of the *SMART System* reflect that the *obligation* evidenced by an *electronic mortgage note* has been *discharged* with respect to all *borrowers*, such *electronic mortgage note* shall cease to be transferable.
- (d) Except to the extent that rules require a different retention period or as otherwise required by law, the *SMART System Administrator* shall maintain all *records* relating to an *electronic mortgage note* in perpetuity.

SECTION 10. REGISTERED TRANSFERS AND SECURITY INTERESTS

- (a) REGISTERED TRANSFERS.—
- (1) REGISTERED TRANSFER PROCESS.—The *SMART System Administrator* is authorized to change the identity of the *registrant* (i) subject to subsection 11(b), only upon its receipt of an instruction from the *registrant* or an *authorized transferor* directing the *SMART System Administrator* to make a *registered transfer* or (ii) in response to a court order. An instruction directing the *SMART System Administrator* to make a *registered transfer* may involve one or more *electronic mortgage notes*.
 - (2) INEFFECTIVE TRANSFERS.—
 - (A) Except as otherwise provided in this subparagraph, neither a *registrant* nor an *authorized transferor* may assign an *electronic mortgage note* outside the *SMART System*.
 - (i) A *registrant* may assign an *electronic mortgage note* outside the *SMART System* as a grant of a security interest.

- (ii) A *registrant* may assign its rights to payments outside of the *SMART System*.

Such an assignment has no effect on the rights and obligations of the *borrower* or the *SMART System Administrator*.

- (B) If a *registrant* or *authorized transferor* attempts to make a *registered transfer* of less than the entire *obligation* evidenced by the *electronic mortgage note* on the *SMART System*, the *SMART System Administrator* shall not effect the *registered transfer*.
- (3) An instruction from a *registrant* (or *authorized transferor* on behalf of the *registrant*) to make a *registered transfer* may include a disclaimer of the *registrant's* liability as endorser, the transfer warranties in *UCC Article 3*, or both. In conjunction with a *registered transfer*, the *SMART System Administrator* shall create a *record* of the *SMART System* of the existence and nature of a related disclaimer.
- (4) A *registrant* may not instruct the *SMART System Administrator* to create a *record* of an indorsement of a party that transferred the *mortgage note* prior to *conversion* if such indorsement was not on or affixed to the *mortgage note* at the time of submission.
- (5) Any act of the *SMART System Administrator* that changes the identity of the *registrant* conveys to the new *registrant* of the *electronic mortgage note* the transferor's right to enforce the associated *mortgage* or, in the case of a *mortgage* that takes the form of a deed of trust, the transferor's status as beneficiary of the deed of trust.
- (b) TIMING WITH RESPECT TO REGISTERED TRANSFERS AND AUTHORIZED TRANSFERS.—*System rules* shall determine when:
 - (1) *registered transfers* are effective; and
 - (2) instructions made by the *registrant* or *authorized transferor* to the *SMART System Administrator* are effective.

SECTION 11. AUTHORIZED TRANSFERORS

- (a) AUTHORIZED TRANSFEROR'S POWER TO MAKE REGISTERED TRANSFERS.—An *authorized transferor* may effect a *registered transfer* of the *electronic mortgage note* to itself or any other *person*. In effecting such a *registered transfer*, the *authorized transferor* also has the power to instruct the *SMART System Administrator* pursuant to paragraph 10(a)(3).
- (b) AUTHORIZED TRANSFEROR'S POWER TO PREVENT REGISTERED TRANSFERS.—
 - (1) The existence of an *authorized transferor* with respect to an *electronic mortgage note* does not prevent the *registrant* of that *electronic mortgage note* from making a *registered transfer* of the *electronic mortgage note*, unless the *authorized transferor* of that *electronic mortgage note* instructs the *SMART System Administrator* not to act on a *registered transfer* instruction from the *registrant*.

- (2) If the *SMART System Administrator* receives an instruction from the *authorized transferor* pursuant to the foregoing paragraph (1), the *SMART System Administrator* shall:
 - (A) create a *record* of the *SMART System* of the instruction evidencing that instruction; and
 - (B) subject to paragraph (3), not act on a *registered transfer* instruction received from the *registrant* unless and until the *authorized transferor* instructs the *SMART System Administrator* to revoke the instruction it made pursuant to paragraph (1).
 - (3) Any instruction made pursuant to paragraph (1) by an *authorized transferor* ceases to be effective when the *person* issuing the instruction ceases to be the *authorized transferor*.
- (c) REGISTRANT'S POWER TO ENFORCE.—
 - (1) The existence of an *authorized transferor* does not prevent the *registrant* of an *electronic mortgage note* from exercising its rights to enforce the *electronic mortgage note* and foreclose on the associated *mortgage*, unless (i) the *registrant* instructs the *SMART System Administrator* that it has agreed not to exercise such rights and (ii) the *SMART System Administrator* creates a *record* of the *SMART System* of the instruction.
 - (2) The instruction from the *registrant* made pursuant to paragraph (1) may only be revoked by the *authorized transferor*. Any instruction made pursuant to paragraph (1) automatically terminates when there is no longer any *authorized transferor*.
- (d) REGISTRANT RETAINS ALL DUTIES; AUTHORIZED TRANSFEROR'S RIGHTS AND POWERS LIMITED.—
 - (1) Notwithstanding the existence of an *authorized transferor*, the *registrant* retains all of the duties of a *registrant* established under this Act. An *authorized transferor* does not have any of the duties of a *registrant*.
 - (2) Nothing in this section gives the *authorized transferor* any rights in the *electronic mortgage note*.
 - (3) Nothing in this section gives the *authorized transferor* any power in the *electronic mortgage note* other than the power to:
 - (A) make a *registered transfer*;
 - (B) upon making the *registered transfer*, disclaim the *registrant's* liability as indorser, the transfer warranties in *UCC* Article 3, or both, pursuant to paragraph 10(a)(3);
 - (C) instruct the *SMART System Administrator* not to act on a *registered transfer* instruction from the *registrant* pursuant to paragraph 11(b)(1);

- (D) instruct the *SMART System Administrator* to identify a *person* (x) as an *authorized transferor* or (y) as authorized to identify a *person* as an *authorized transferor*, in each case, pursuant to subparagraph 11(f)(1)(B);
 - (E) revoke its status of a *person* as *authorized transferor* pursuant to subparagraph 11(g)(1)(A); and
 - (F) instruct the *SMART System Administrator* that another *person* is authorized to access *records* of the *SMART System* concerning an *electronic mortgage note* pursuant to paragraph 14(b)(2).
- (e) ONLY ONE AUTHORIZED TRANSFEROR.—There can be only one *authorized transferor* of an *electronic mortgage note* at any given time.
- (f) IDENTIFICATION OF AN AUTHORIZED TRANSFEROR.—A *person* becomes an *authorized transferor* of an *electronic mortgage note* when:
 - (1) the *SMART System Administrator* creates a *record* of the *SMART System* of the *person*'s status as an *authorized transferor* in response to an instruction from:
 - (A) the *registrant*, unless there is an existing *authorized transferor* of that *electronic mortgage note* and the instruction conferring *authorized transferor* status on that existing *authorized transferor* provided that the status is not revocable by the *registrant*; or
 - (B) the existing *authorized transferor* or, at the election of the existing *authorized transferor*, a *person* identified by the *authorized transferor* to the *SMART System Administrator* and reflected on the *records* of the *SMART System* as the authorized instructing party for this sole purpose; or
 - (2) that *person* submits a *mortgage note* pursuant to paragraph 7(b)(4) and the *mortgage note* is converted to an *electronic mortgage note*.

An instruction directing the *SMART System Administrator* to identify a *person* as an *authorized transferor* may involve one or more *electronic mortgage notes*.
- (g) TERMINATION OF AUTHORIZED TRANSFEROR STATUS.—A *person* ceases to be an *authorized transferor* of an *electronic mortgage note* when:
 - (1) the *SMART System Administrator* revokes the *person*'s status as an *authorized transferor* in response to an instruction from:
 - (A) the *authorized transferor* to revoke the status or confer the status on another *person*, or
 - (B) the *registrant*, unless the instruction originally conferring *authorized transferor* status provided that the status is not revocable by the *registrant*; or
 - (2) the *electronic mortgage note* has been marked as *discharged* by the *SMART System Administrator* in accordance with section 9. An instruction directing the *SMART System Administrator* to revoke a *person*'s status as an *authorized transferor* may involve one or more *electronic mortgage notes*.

SECTION 12. MORTGAGES AND OTHER ENCUMBRANCES ASSOCIATED WITH DEPOSITED NOTES

- (a) A *person* shall submit a document containing an *RLN* for recording in a *recorder's office* only if the named mortgagee has submitted (or, promptly after the document is submitted for recording with the *recorder's office*, will submit) the related *mortgage note* to the *SMART System*.
- (b) The creation by the *SMART System Administrator* of a *record* of the *SMART System* reflecting a change in the identity of the *registrant* of an *electronic mortgage note* that is secured by the recorded *mortgage* has the same effect under *State law* as recordation of an assignment of a *mortgage* from one *registrant* to another.
- (c) Notwithstanding contrary *State law*, the *registrant* of an *electronic mortgage note* is deemed the mortgagee of record for all purposes, including for release of the *mortgage*. Any law that requires *notice* be given to a *person* identified in the *recorder's office* as mortgagee is satisfied by giving *notice* to the *registrant* of the related *electronic mortgage note*.
- (d) Submission of a *mortgage* to the *SMART System* does not have the legal effect of recording the *mortgage* or establishing or affecting its validity or priority. *Notice of discharge* of an *electronic mortgage note* provided to the *SMART System* under section 9 does not have the legal effect of delivering or recording a satisfaction of *mortgage*.

SECTION 13. SUPERVISORY INFORMATION SHARING

- (a) Upon request, the *Board* may share information obtained through the discharge of its functions under this Act with *financial supervisors and Boards* to the extent the requested information is relevant to the *financial supervisor's or Board's* exercise of its authority.
- (b) For purposes of this section, “financial supervisors and Boards” are:
 - (1) Any federal agency with supervisory powers in connection with administering, enforcing, or otherwise implementing federal consumer financial laws, the Commodity Futures Trading Commission, the *FDIC*, the Federal Trade Commission, the *NCUA*, the *OCC*, and the Securities and Exchange Commission; and
 - (2) *State banking, mortgage broker, mortgage lender, and insurance Boards* and
 - (3) The Federal Reserve.

SECTION 14. RECORDS, ACCESS RIGHTS, AND DATA SECURITY

- (a) CREATION AND MAINTENANCE OF RECORDS.—The *Board* shall issue rules directing the *SMART System Administrator* to:
 - (1) promptly and accurately create and maintain *records* of the *SMART System* of *electronic mortgage notes, registered transfers, modifications, titles* and other instructions or data required by this Act, rules, or *system rules*, and submitted to the *SMART System*;

- (2) accurately capture the optical information of any paper document that is submitted to the *SMART System* in accordance with technical standards prescribed by *system rule* or rules; and
 - (3) establish a process for identifying and correcting incorrect information submitted to the *SMART System Administrator* or maintained in the *records* of the *SMART System*.
- (b) ACCESS RIGHTS.—
- (1) The *Board* shall issue rules governing access to *records* of the *SMART System*. The rules shall consider the specific needs of *borrowers*, *registrants*, *authorized transferors*, courts, title searchers, persons with valid subpoenas, scholars, governmental entities, the general public, potential purchasers, and others identified by the *Board* as needing access. The rules shall:
 - (A) subject to security procedures to verify identity, provide each *borrower* access to all *records* of the *SMART System* concerning an *electronic mortgage note* on which such *borrower* is obligated (i) promptly after the *SMART System Administrator* receives a request for the access in accordance with relevant system rules, (ii) without cost to the *borrower*, and (iii) in an accessible format;
 - (B) require the *SMART System Administrator* to establish a process for a *borrower* to provide contact information to the *SMART System Administrator*;
 - (C) allow a *registrant* or an *authorized transferor* to access all *records* of the *SMART System* concerning the *electronic mortgage notes* for which it is the *registrant*;
 - (D) provide access to all *records* of the *SMART System* relating to an *electronic mortgage note* that is the subject of an adjudication to the court in which such action is pending;
 - (E) protect the privacy interests of the *borrower*; and
 - (F) protect the confidentiality of all [personally identifiable] data that are not otherwise publicly available.

The rules adopted pursuant to subparagraph (A) of this paragraph shall permit a representative of the *borrower* to act as the *borrower* for purposes of this paragraph, subject to verification of identity and authority.
 - (2) The *registrant* or *authorized transferor* may instruct the *SMART System Administrator* that another *person* is authorized to access the *records* of the *SMART System* concerning an *electronic mortgage note*. After it receives the instruction, the *SMART System Administrator* may grant access to such authorized *person*. The instruction constitutes a warranty by the *registrant* or *authorized transferor* to the *borrower* that the authorized *person* will keep any information

- that *person* receives confidential and not use it for: (i) any marketing purpose, unless permitted under other law, or (ii) for any other purpose prohibited by law.
- (3) Subject to paragraph (1) of this subsection, the *SMART System Administrator* may establish *system rules* concerning the time and manner in which requests for *records* of the *SMART System* may be made and responded to, procedures for obtaining certified *records* of the *SMART System*, and any fees associated with requests for *records*, including certified *records*, of the *SMART System*.
 - (4) The *SMART System Administrator* shall offer each *recorder's office* access without cost to the *records* of the *SMART System* that reflect the identity of current and prior *registrants*, and any indication that the *obligation* to the *registrant* has been *discharged*. Such access shall be limited to *records* of the *SMART System* relating to *electronic mortgage notes* secured by property in the *recorder's office's* jurisdiction.
 - (5) The *SMART System Administrator* shall offer each title company access without cost to the *records* of the *SMART System* that reflect the identity of current and prior *registrants* with respect to individual *electronic mortgage notes*, and any indication that the *obligation* to the *registrant* has been *discharged*.

SECTION 15. POST-SUBMISSION INFORMATION

(a) NOTICE BY SMART SYSTEM ADMINISTRATOR.—

- (1) The *SMART System Administrator* shall send a *notice* to the *borrower*:
 - (A) when it *converts a mortgage note* to an *electronic mortgage note*, stating the fact of *conversion*; and
 - (B) whenever there is a change to the *records* of the *SMART System* associated with an *electronic mortgage note* for which the *person* is a *borrower* unless the Board has issued rules limiting such *notice*.

A *notice* provided under this paragraph (1) may disclose only that there has been a change to the *records* of the *SMART System* that the *borrower* can see by accessing the *SMART System*. The form of the *notice* shall be prescribed by rule. In developing the rule, the *Board* shall develop the *notice* for clarity and consumer comprehension, target the *notice* to a reading level no higher than eighth grade, and require that the *SMART System Administrator* include information instructing the borrower as to how to access the *SMART System*.

- (2) If the *borrower* has identified itself to the *SMART System Administrator* in accordance with *system rules*, the *SMART System Administrator* shall send the *notice* required in paragraph (1) to the *borrower* as provided in the manner specified in the *borrower's* identification to the *SMART System Administrator*. If the *borrower* has not identified itself to the *SMART System Administrator* in accordance with *system rules*, the *SMART System Administrator* shall send the

notice required in paragraph (1) to the *borrower* through regular mail at an address provided by the *registrant*.

- (3) The *SMART System Administrator* may not impose a fee or other charge on the *borrower* for the *notices*.
- (b) NOTICE BY REGISTRANT.—
 - (1) When disclosure to a *borrower* is required under *RESPA* or 15 USC § 1641(g) with respect to an *obligation* evidenced by a *mortgage note*, the *registrant* shall also cause the disclosure to be provided to the *SMART System Administrator*.
 - (2) To the extent *known* by the *registrant* or any master servicer or sub-servicer of the *registrant*, such *registrant* must provide the following information to the *SMART System Administrator* within a reasonable period of time of the *registrant* or any master servicer or subservicer knowing of any change following submission:
 - (A) contact information of the *borrower* obtained after *conversion* of the *mortgage note*; and
 - (B) the identity and contact information of any successors to the *borrower*.
 - (3) If there are any changes to the information provided pursuant to subparagraphs 4(b)(2), the *registrant* shall submit the updated information to the *SMART System Administrator*.

SECTION 15. BIS RESPONSIBLE PARTIES

- (a) DUTIES OF A RESPONSIBLE PARTY.—If a *person* is identified on the records of the *SMART System* as the *responsible party* of an *electronic mortgage note*, the duties associated with the *registrant* under the Act with respect to that *electronic mortgage note* shall be the sole duties of the *responsible party*. Any claim that may be asserted against the *registrant* under the Act shall be asserted solely against the *person* that is the *responsible party* when the actions resulting in the claim arise.
- (b) RESPONSIBLE PARTY’S RIGHTS AND POWERS LIMITED.—
 - (1) Nothing in this section gives the *responsible party* any rights in the *electronic mortgage note*.
 - (2) Nothing in this section gives the *responsible party* any powers in the *electronic mortgage note* other than the power to instruct the *SMART System Administrator* to identify another *person* as the *responsible party* pursuant to subsection (d).
- (c) ONLY ONE RESPONSIBLE PARTY.—There can be only one *responsible party* of an *electronic mortgage note* at any given time.
- (d) IDENTIFICATION OF A RESPONSIBLE PARTY.—A *registrant* or a *responsible party* may instruct the *SMART System Administrator* to identify a *person* as the *responsible party* of an *electronic mortgage note*. The *SMART System Administrator* shall identify a *person* as the *responsible party* of an *electronic mortgage note* only (i) upon the *SMART System Administrator*’s receipt of an instruction pursuant to the foregoing sentence, (ii) upon the consent of the *registrant* if the instruction is from the *responsible party*, and (iii) after the

SMART System Administrator confirms that the *person* to be identified as the *responsible party* satisfies any qualification or other requirements set forth in the rules issued by the Board pursuant to paragraph 5(a)(8). An instruction directing the *SMART System Administrator* to identify a *person* as the *responsible party* may involve one or more electronic mortgage notes.

- (e) TERMINATION OF RESPONSIBLE PARTY STATUS.—A *person* ceases to be a *responsible party* of an *electronic mortgage note* when the *SMART System Administrator* revokes the *person's* status as an *authorized transferor* in response to an instruction from:
 - (A) the *registrant* to revoke the status or confer the status on another *person*, or
 - (B) the *responsible party* to revoke the status or confer the status on another *person*, in each case, subject to the consent of the *registrant*.

An instruction directing the *SMART System Administrator* to revoke a *person's* status as the *responsible party* may involve one or more *electronic mortgage notes*.

SECTION 16. PRESENTMENT AND EVIDENCE; AGENCY

- (a) PRESENTMENT AND EVIDENCE.—
 - (1) In the case of *electronic mortgage notes* and related *records* of the *SMART System*:
 - (A) any request to return a cancelled *mortgage note* or a cancelled *electronic mortgage note* is satisfied by a certified *record* of the *SMART System* reflecting the *discharge* of an *electronic mortgage note* certified by the *SMART System Administrator*;
 - (B) all *records* of the *SMART System* that are certified by the *SMART System Administrator* shall be self-authenticating; and
 - (C) the *Board* shall issue rules governing certification by the *SMART System Administrator* of *records* of the *SMART System*.
 - (2) Any *record* that is described in this Actor is submitted in connection with such a *record* may be offered as evidence with whatever admissibility and weight the court may decide to give it.
- (b) AGENCY.—Subject to paragraphs 10(a)(3), 11(f)(1) and 14(b)(1), the extent to which a *person* may act through an agent or other representative is determined by other law.

SECTION 17. SMART SYSTEM ADMINISTRATOR'S RESPONSIBILITY FOR FRAUD AND ERROR; SMART SYSTEM ADMINISTRATOR'S LIABILITY

- (a) MULTIPLE SUBMISSIONS OF THE SAME *MORTGAGE NOTE*.—
 - (1) If the *SMART System Administrator* believes that a *mortgage note* was submitted more than once, it shall *notify* all putative *registrants* and the *borrower* and shall not effect any *registered transfer* of such *electronic mortgage notes* until:

- (A) the *SMART System Administrator* concludes that the *mortgage note* was not submitted more than once, and it *notifies* all putative *registrants* that its belief of multiple submissions was in error;
 - (B) all putative *registrants notified* pursuant to this paragraph agree as to the identity of the sole *registrant* with respect to the *mortgage note* and provide *notice* to the *SMART System Administrator* in accordance with *system rules*; or
 - (C) a court order resolves the identity of the true *registrant* or determines that the relevant *mortgage note* was submitted only once and that any supposed duplicate submissions of that *mortgage note* were submissions of different *mortgage notes*.
- (2) Multiple originals of the same *mortgage note* are subject to paragraph (1) of this subsection, even if some or all of them are *negotiable instruments* or *transferable records*.
- (b) REPOSITORY ERRORS.—
 - (1) If the *SMART System Administrator* knows that it erroneously identified a *registrant* or *authorized transferor*, or erroneously identified two different *persons* as the *registrant* or *authorized transferor* of the same *electronic mortgage note*, it shall correct the error.
 - (2) If the *SMART System Administrator* reasonably believes that it erroneously identified a *registrant* or *authorized transferor* or erroneously identified two different *persons* as the *registrant* or *authorized transferor* of the same *electronic mortgage note*, it may correct the error.
 - (3) If the *person* erroneously identified as a *registrant* or *authorized transferor* on the *SMART System* causes a *registered transfer* of the *electronic mortgage note* before the *SMART System Administrator* corrects an error of the type described in paragraph (1) or (2), then upon correcting the error, the *SMART System Administrator* shall:
 - (A) compensate the *person* losing *registrant* status if that *person* had the rights of a *holder in due course* (as that term is defined in Article 3 of the *UCC*) and acquired the *electronic mortgage note* for value, and
 - (B) be subrogated to the rights of the *person* compensated pursuant to subparagraph (A) to the extent the *SMART System Administrator* has compensated that *person* pursuant to subparagraph (A).
 - (4) The *SMART System Administrator* shall promptly *notify* any *persons* that its *records* indicate could be affected by operation of paragraph (1), (2), or (3) of this subsection.
- (c) LIABILITY.—
 - (1) Unless otherwise provided in the Act, in connection with its role as *SMART System Administrator*, the *SMART System Administrator* is:

- (A) liable only to *registrants, borrowers, adverse claimants, and authorized transferors and only* for failure to comply with this Act, rules issued pursuant to this Act, or *system rules* and this liability is limited to economic loss caused by the failure; and
 - (B) not liable to any *person* for consequential or punitive damages.
- (2) The *SMART System Administrator* shall not be liable to any *person* because of a force majeure event, if the *SMART System Administrator* exercises the diligence the circumstances require. Any *registrant* or other *person* that cannot carry out a legal obligation due to the effect of the force majeure event on the *SMART System Administrator* or *SMART System* is excused from acting until (i) it receives *notice* that the force majeure event no longer affects the *SMART System Administrator* or *SMART System* and (ii) has a reasonable time to act.
- (3) The *SMART System Administrator* may be liable for failure to act on an instruction it receives from a *registrant or authorized transferor* or court if it has had a reasonable time to act on the instruction and has failed to do so.
- (4) The *SMART System Administrator's* acts pursuant to rules or its *system rules* are immune from antitrust claims.

SECTION 18. NOTICE TO SMART SYSTEM ADMINISTRATOR OF ADVERSE CLAIMS; RELIEF FOR ADVERSE CLAIMS AGAINST THE SMART SYSTEM ADMINISTRATOR

- (a) *Notice* to the *SMART System Administrator* of an *adverse claim* is not effective and the *SMART System Administrator* shall not recognize the *adverse claimant* unless said *adverse claimant* obtains a restraining order, injunction, or other appropriate court order effective against the *SMART System Administrator*.
- (b) For purposes of this section, a court order is issued by an appropriate court if issued by:
 - (1) a federal court, *State* court of general jurisdiction, or *State* court with special jurisdiction over real estate and, in each case, with personal jurisdiction over the *registrant* associated with the *electronic mortgage note* at issue in the *adverse claim*; or
 - (2) a court with personal jurisdiction over the *SMART System Administrator*, if no federal court or *State* court of general jurisdiction or special jurisdiction has personal jurisdiction over the *registrant*.
- (c) The *SMART System Administrator* shall *notify* the *registrant* and any *authorized transferor* promptly of any effective *notice* of *adverse claim* under subsection (a).
- (d) The only relief for an *adverse claim* against the *SMART System Administrator* shall be injunctive, ordering the *SMART System Administrator* either (i) not to effect a *registered transfer* during the pendency of the action or (ii) to make the *adverse claimant* the *registrant* and issue an appropriate order regarding the status of any *authorized transferor*.

SECTION 19. PREEMPTION; APPLICABILITY OF THE UCC AMENDMENTS; BOARD DETERMINATIONS REGARDING INCONSISTENCY WITH THE ACT; AND CONSTRUCTION

- (a) **RULE OF CONSTRUCTION.**—This Act may not be construed as annulling, altering, affecting, or exempting any *person* subject to the provisions of this Act from complying with, the statutes, rules, orders, or interpretations in effect in any *State*, except to the extent that a statute, rule, order or interpretation in effect in any *State* is inconsistent with the provisions of this Act, and then only to the extent of the inconsistency.
- (b) **APPLICABILITY OF THE UCC AMENDMENTS.**—
 - (1) To the extent that, under the applicable choice-of-law rules of the forum, a commercial-law matter would be governed by the law of a *State*:
 - (A) if the *UCC Amendments* are in force in that *State*, that *State*’s law governs the *commercial-law matter*; but
 - (B) if the *UCC Amendments* are not in force in that *State*, that *State*’s law governs the *commercial-law matter* as if the *UCC Amendments* are in force in that *State*; however, if the resulting law would be incoherent, that *State*’s law governs the *commercial-law matter* as if that *State* had enacted UCC Articles 1, 3, 8, and 9, as promulgated and amended by The American Law Institute and the National Conference of Commissioners on Uniform State Laws as of [December 31, 2018].
 - (2) For purposes of paragraph (1):
 - (A) the *UCC Amendments* are in force in a *State* if:
 - (i) the FHFA has issued an order determining that the *UCC* in force in that *State* includes provisions that are substantively identical to the *UCC Amendments*; or
 - (ii) the FHFA has not issued an order determining whether the *UCC* in force in that *State* includes provisions that are substantively identical to the *UCC Amendments* and a court determines that the *UCC* in force in that *State* includes provisions that are substantively identical to the *UCC Amendments*.
 - (B) the *UCC Amendments* are not in force in a *State* if:
 - (i) the FHFA has issued an order determining that the *UCC* in force in that *State* does not include provisions that are substantively identical to the *UCC Amendments*; or
 - (ii) the FHFA has not issued an order determining whether the *UCC* in force in that *State* includes provisions that are substantively identical to the *UCC Amendments* and a court determines that the *UCC* in force in that *State* does not include provisions that are substantively identical to the *UCC Amendments*.
 - (C) the resulting law of a *State* would be incoherent if:

- (i) the FHFA has issued an order determining that the resulting law of that State would be incoherent; or
 - (ii) the FHFA has not issued an order determining that the resulting law of that *State* would be incoherent, and a court determines that the resulting law of that *State* would be incoherent.
- (3) In determining whether provisions are substantively identical to the *UCC Amendments*, any differences in captions, numbering, capitalization, spelling, format, and gender shall be ignored.
- (c) BOARD DETERMINATIONS REGARDING INCONSISTENCY WITH THE ACT.—A determination regarding whether a statute, rule, order, or interpretation in effect in any *State* is inconsistent with the provisions of this Act may be made by the *Board* on its own motion or in response to a nonfrivolous petition initiated by any interested *person*. Except for an order of the *Board* made pursuant to subsection 20(b), such a determination is subject to *de novo* judicial review when the determination adversely affects *borrowers*.
- (d) CONSTRUCTION.—Except as expressly provided in the Act or rules adopted thereunder, this Act does not address the rights of *borrowers*, and obligations of *persons* to *borrowers*, including with respect to:
 - (1) recovery of monetary damages, whether under statute or other law, resulting from foreclosure-related conduct, including any misrepresentations about authority to foreclose of any *person*;
 - (2) recovery of monetary damages resulting from the disclosure of the *borrower's* personally identifiable information unless (i) disclosure was permitted under this Act, *rules* promulgated hereunder, *system rules* or other law or (ii) the *borrower* gave its prior written consent to such disclosure;
 - (3) requirements for review of loss mitigation options, including required mediation and conferences;
 - (4) *borrower* claims under *State* and other federal laws arising from the misconduct of (i) *persons* who submit *mortgage notes* to the *SMART System Administrator* or (ii) *registrants*;
 - (5) *notice* requirements;
 - (6) data privacy laws; or
 - (7) any consumer protection laws that do not interfere with the intent and purpose of this Act.

SECTION 20. JURISDICTION, VENUE AND CONFLICT OF LAWS

- (a) Except as otherwise provided in this section subsection 18(b), section 19, nothing in this Act shall affect the rules used to determine jurisdiction, venue, or applicable law.
- (b) *SMART SYSTEM ADMINISTRATOR*.—
 - (1) Subject to subparagraph (c)(1)(C) of this section, any suit of a civil nature at common law or in equity to which the *SMART System Administrator* is a party

shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of the suit.

- (2) The *SMART System Administrator*, as defendant, may remove a suit to a United States district court by following the procedure otherwise provided by law for the removal of causes.
 - (3) If the SMART System Administrator was established pursuant to a license issued by the Board, the *SMART System Administrator* is located in the jurisdiction in which the chief executive office of the *SMART System Administrator* is located.
- (c) FEDERAL SUBJECT MATTER JURISDICTION.—
- (1) Except as provided in paragraph (2), this Act does not establish federal subject-matter jurisdiction with respect to:
 - (A) the enforcement of an *electronic mortgage note* or the associated *mortgage*;
 - (B) *adverse claims* with respect to an *electronic mortgage note*; or
 - (C) any warranty compelled by this Act.
 - (2) This Act does not preclude the assertion of diversity or supplemental jurisdiction with respect to the actions described in paragraph (1).

SECTION 21. *PARENS PATRIAE* ENFORCEMENT

- (a) SCOPE.—
- (1) This section empowers *States*, through their attorney generals, to institute *parens patriae* civil actions in federal court if the *State* believes that the interests of *borrowers* whose *electronic mortgage notes* secure property in that *State* have been or are being threatened or adversely affected by a practice that violates this statute or any *rules* promulgated hereunder.
 - (2) The defendant in a civil action contemplated in paragraph (1) of this subsection may be any *person* whose activities create a threat or adverse effect described in paragraph (1) of this subsection.
 - (3) Nothing in this section derogates from the power that *States* have under other law.
- (b) REMEDIES.— Upon finding that a defendant’s practice has created a threat or adverse effect described in paragraph (a)(1) of this section, a court may—
- (1) enjoin that practice;
 - (2) enforce compliance with the rule;
 - (3) award damages, restitution, or other compensation on behalf of the affected residents of the *State*; or
 - (4) confer such other relief as the court considers appropriate.
- (c) PROCEDURE.—
- (1) The *State* shall serve written *notice* to the *Board* at least 60 days prior to initiating such civil action. The *notice* shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the *State* to provide

such prior *notice*, the *State* shall provide *notice* immediately upon instituting such civil action.

- (2) Upon receiving the *notice* required by paragraph (1), the *Board* may intervene in such civil action and upon intervening
 - (A) be heard on all matters arising in such civil action; and
 - (B) file petitions for appeal of a decision in such civil action.
- (d) In a civil action brought under subsection (a)
 - (1) the venue shall be a judicial district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under 28 U.S.C. § 1391; and
 - (2) process may be served without regard to the territorial limits of the district or of the *State* in which the civil action is instituted.
- (e) Whenever a civil action or an administrative action has been instituted by or on behalf of the *Board* for violation of any provision of law or rule described in subsection (a), no *State* may, during the pendency of such action institute a civil action under that subsection against any defendant named in the complaint in such action for violation of any law or rule as alleged in such complaint.
- (f) If the attorney general of a *State* prevails in any civil action under this section, the *State* can recover reasonable costs and attorney fees from the defendant or related party.

SECTION 22. BORROWER PROTECTIONS

[TBD]