System Webinar:

Understanding eNotes

Presenter: Rachael Sokolowski, Magnolia Technologies
Moderator: Vonda L. Renfrow, FHLB of Des Moines

Date: December 4, 2019

This webinar is to be used as a supplement to your Bank's official requirements and guidelines document.

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ABOUT OUR SPEAKER

Rachael Sokolowski is the president of Magnolia Technologies, L.L.C. and is a highly accomplished professional with extensive experience in electronic and digital signatures. Additionally, she is an expert in residential and commercial loan technology platforms—from origination and closing to vaulting and servicing.

Rachael is a major contributor to the Mortgage Industry Standards Maintenance Organization, known as MISMO®.

ABOUT OUR MODERATOR

Vonda Renfrow is the vice president and director of Member Services at the Federal Home Loan Bank of Des Moines (FHLB Des Moines). She joined the FHLB Des Moines in April 2013 and currently leads the electronic promissory notes (eNotes) and eMortgage initiative.

Prior to joining FHLB Des Moines, she was vice president of Pleasantville State Bank, where she was credited for starting a successful secondary market mortgage lending program.

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Today's Agenda

- Objectives of Today's Training
- Legality of eNotes
- Overview of the System's eNote Project
  - How Popular are eNotes?
- About eNotes
- eNote Format
- Spotlight on eNote Requirements
- eVault Requirements
- Servicer Requirements
- Contact Information & Resources

The 11 independent FHLBanks are known as the System.
Home banks within the System are given the general title of "the Bank."

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Objectives

- Find out if your institution is ready for eNotes.
- Learn about the timeline to accept eNotes.
- What to look for in a vendor to create eligible collateral.
- What type of loans will be accepted by the System.

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Legality of eNotes

The Electronic Signatures in Global and National Commerce Act (E-Sign Act)

- Is a federal act that governs electronic promissory notes secured by real property, if the electronic notes are secured by an interest in real property (state law, including the Uniform Electronic Transactions Act (UETA), is preempted). The E-Sign Act copied the UETA provisions covering the concept of a Transferable Record[1]—which includes electronic promissory notes—almost *verbatim*.[2]
- An Electronic Record that meets specific criteria has these two primary attributes of a paper negotiable promissory note:
  - Freedom from most defenses.
  - Freedom from most third-party claims.

1. "The Use of Electronic Promissory Notes & the MERS® eRegistry." Presentation, Federal Home Loan Bank of Des Moines, Des Moines, IA, September 17, 2019.
2. An Electronic Record under ESIGN and UETA that (1) would be a Promissory Note under the Uniform Commercial Code if the Electronic Record were in writing; (2) the issuer of the Electronic Record expressly has agreed is a Transferable Record; and (3) for purposes of ESIGN, relates to a loan secured by real property. A Transferable Record is also referred to as an eNote. (Refer to Section 16 of UETA and in Title II, Section 201 of E-SIGN.)

Overview of the System's eNote Project

- The System is working together to develop a solution for providing collateral value for eNotes.
- The System formed a multidisciplinary eNote working group made up of members from different functional areas.
- The System developed requirements that are consistent with other industry participants.
- The timeline is dependent on, among other things, system and process changes for each of the 11 independent FHLBanks.

How Popular are eNotes?

2019	# of Regs
January	5082
February	6257
March	7874
April	8338
May	7026
June	7,593
July	9,102
August	12,360
September	14,726
October	17,100
November	16,472
YTD Total	111,930

3. "Year to Date eNote Registrations 2019," data visualization by Rachael Sokolowski, accessed December 4, 2019, http://www.mismo.org.

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Next: About eNotes

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About eNotes

- The Electronic Record being "signed" must be clearly identified and noticeably display the borrower's name.
- The Electronic Record must require the borrower to take action to initiate the eSignature.
- The Electronic Record must be individually presented to the borrower for review and electronic signing.
- The eSignature System must be designed to permit the Bank to promptly determine:
  - That the borrower's eSignature is attached.
  - The type of electronic symbol or process used.
  - The name of the borrower.
  - The time and date stamp of the eSignature.

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About eNotes, *continued*

- To ensure that the eNote is a discrete Transferable Record, closing instructions or other procedures should be created to ensure that the borrower signs only the eNote at closing and that the borrower does not also sign a paper version of the promissory note.
- Each Member is responsible for determining that an eNote meets the legal, technological, and operational requirements necessary to electronically create valid, enforceable and transferable loan obligations, as well as service such loans effectively.
- In the first phase, only residential 1-4 family first mortgage loans and closed-end home equity mortgage loans will be eligible for pledging in the form of eNotes and must meet the same eligibility requirements as their paper-based counterparts.

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About eNotes, *continued*

- The closing of an eNote requires the use of an eClosing system that is a secure environment and allows the closing agent and the borrower to electronically review, sign, store, and transfer closing documents.
- The Member must obtain the borrower's or consumer's consent to sign electronically.
- The Electronic Record to be signed must be distinctly identified and clearly display the borrower's name. It must require the borrower to take action to initiate the eSignature. The Electronic Record must be individually presented to the borrower for review and electronic signing.
- An image version of a wet-ink signed paper promissory note is not a Transferable Record or an eNote.

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Pause for Questions

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Next: eNote Format

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eNote Format

Version 1.02 MISMO Category 1 SMART Doc®

- Must contain the Transferable Record (eNote) clause.
- Must contain the "For Electronic Signature" header.
- Text above or below the signature must not contain, "Sign original only."
- Footer must contain clear identification that it is an eNote.
- A Tamper Evident Signature is a "seal" wrapping an Electronic Record that is created by a Digital Signature. The seal can be verified to ensure that no changes have been made to the Electronic Record since the seal was put in place. Also known as: Tamper Seal, Tamperseal Signature and Tamper Evident Signature.

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Pause for Questions

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Next: Spotlight on eNote Requirements

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Spotlight on eNote Requirements

- Audit trails or system logs must exist and be readily available if the Bank should ask for them and they should contain:
  - The borrower's name and proof of identity.
  - Evidence that the borrower consented to sign electronically.
  - Evidence that the borrower executed their signature.
  - The date of the eSignature.
- The human-readable view of the eNote must not contain any data that is sensitive, personal, and identifying—such as a Social Security Number (SSN).

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Spotlight on eNote Requirements, *continued*

- An eClosing is the act of closing a mortgage loan electronically. This occurs through a secure environment where one or more required closing documents are accessed, presented, and signed electronically.
- The eClosing system must distinguish the display "Authoritative Copy" as the original and not as a copy of the Authoritative Copy.
- eNotes must be issued a Mortgage Identification Number (MIN) by MERS and registered in the MERS eRegistry before being considered eligible collateral.
- "Secured Party" is the entity named on the MERS eRegistry that is assigned (or granted) a security interest in the eNote.

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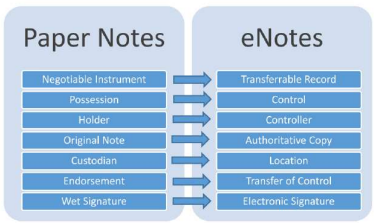
Spotlight on eNote Requirements, *continued*

Key eNote terms as they compare to Paper Notes



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Pause for Questions

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Next: eVault Requirements & Servicer Requirements

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eVault Requirements

eVaults must:

- Have the functionality to perform eNote integrity validation to verify that the Tamper Evident Signature is valid and has not been compromised.
- Interface with the MERS eRegistry.
- Have a clear distinction between the view of the Authoritative Copy and a copy of the Authoritative Copy.
- Log the validations (re-computations of Hash Values) of eNotes and any other SMART Documents' tamper seals.
- Periodically reconcile the information stored in the eVault and the information stored on the MERS eRegistry.
- Be able to transfer eNotes and any other electronic mortgage file documents to another eVault using MERS eDelivery.
- Have encryption algorithms compliant with NIST and FIPS 140-2 guidance.
- Support multi-factor authentication.

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Servicer Requirements

- Servicers may refer to the Member or a third-party servicer and must:
  - Have an eVault that complies with all the fore-mentioned or a third-party arrangement with a custodian or servicer that is holding eNotes on the Member's behalf and comply with all the fore-mentioned.
  - Have the ability to identify all eNotes pledged to the Bank.
  - Have the ability to record all status changes and required actions that occur during the life of the eNote in the MERS eRegistry.
  - Confirm that the MERS eRegistry accurately reflects the "Controller, Secured Party," and "Location" at all times.
- Once a pledged eNote is converted to a paper note, it can no longer be considered eNote collateral and is no longer considered eligible pledged collateral.

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Final Questions

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Thank you for attending!

Contact: Vonda Renfrow with questions at vrenfrow@fhlbdm.com.

Resources: Find updated information on our eNotes page at www.fhlbdm.com/member-support/collateral/enotes.

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