



November 29, 2019

Seth Appleton
Principal Executive Vice President
Ginnie Mae
U.S. Department of Housing and Urban Development
Capitol View, 425 3rd St SW
Washington, DC 20024

Re: Request for Input on Ginnie Mae Digital Collateral Guide (eGuide)

Dear Mr. Appleton:

The Housing Policy Council¹ (HPC) commends you and the Ginnie Mae team for your leadership in advancing the agency's objective to develop a digital securitization environment for Ginnie Mae Residential Mortgage Backed Securities (RMBS), an objective welcomed by HPC members that participate in the Ginnie Mae program. The Digital Collateral Guide is an important step forward and HPC members applaud you for producing a proposal that is thoughtful, thorough, and practical. Further, we appreciate the opportunity to comment on the proposal.

Our comments are categorized into two sections: a) questions that should be answered and discussed with stakeholders, particularly potential pilot partners, prior to final design of the Digital Collateral program and b) concerns with specific policies and/or requirements included in the proposal. Overall, we would recommend that Ginnie Mae align the Digital Collateral program requirements and procedures with those of the existing RMBS standards, to the extent feasible. Such alignment will minimize the need for unique and specialized processes and dedicated resources, which will in turn improve efficiency and reduce the potential for operational risk.

Questions Regarding the Digital Collateral Requirements and Pilot Program Terms:

1) What is the term of the pilot?

HPC members would prefer a short pilot timeframe, such as 90 or 120 days, for initial certification of Digital Pools or Loan Packages. HPC requests that Ginnie Mae define the specific population of Digital Pools or Loan Packages as those e-assets that receive initial certification

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families.

within the pilot timeframe; it is important to allow the natural flow of these assets through to final certification at a later date that would not be set definitively as part of the pilot, to allow for ordinary course of business activities to occur, such as compilation, validation, and reconciliation of digitized information and electronic documents. A short pilot duration for production and initial certification of Digital Pools and Loan Packages would minimize the impact of some of the stringent pooling requirements that are challenging for issuers, such as:

- no commingling of paper and e-Notes, which may have negative financial implications for issuers that need to bifurcate their business and potentially hold back some loans for custom pooling;
- prohibition from participation in the Pools Issued for Immediate Transfer (PIIT) program; and
- distinct commitment authority for the digital business.

All of these specialized requirements for the pilot will compel issuers to maintain separate processes, which not only complicate the operations of pilot partners, but also require additional resources to execute. Therefore, HPC members recommend that Ginnie Mae consider retaining existing policy – permitting commingling, PIIT participation, and single request for commitment authority - for any Issuer who would like to participate in the delivery of eMortgages to Ginnie Mae. If Ginnie Mae maintains these distinct requirements for the pilot, HPC members would prefer a shorter-term pilot to prevent these unique rules from affecting a significant volume of issuer business.

2) *Did Ginnie Mae intend to limit participation to only those issuers who can originate eNotes?*

The requirements (page 9) state that an issuer applicant must have the ability to originate and secure Eligible eNotes, which suggests that only issuers who originate e-Notes through their own retail channel, rather than those that are engaged in digital mortgage business through their correspondent lending channel, may participate. Is this correct? If yes, HPC would suggest that Ginnie Mae modify the requirement to also permit issuers that purchase eNotes for delivery. These lenders may also originate within their own retail operation, but the volume of production of eNotes through retail and correspondent channels may make participation in the pilot more viable.

3) *Could Ginnie Mae provide more specific requirements for e-Servicing?*

To qualify as an issuer, the applicant must have “demonstrated experience servicing eNotes (page 10),” but there are no specific timeframes or volume figures that would define “demonstrated experience.” Additional insight regarding what constitutes “demonstrated experience” would enable potential applicants to discern their eligibility before applying.

4) *Loan Modification Questions:*

- a. *Are e-Notes that are modified eligible for re-pooling, but those that reperform without modification not eligible?*

The Certification of eMortgage Loan Modifications section of the guide (page 23) states that an eCustodian may accept modified eMortgages for delivery into Ginnie Mae securities, with several requirements, including that the modification be executed with a wet signature. Ginnie states "The loan modification may be certified as part of any eligible pool or loan package, other than a Digital Pool or Loan Package." Does this

mean that the modified loan, because of the wet-signature-on-paper profile, may only be delivered into a "paper" standard RMBS? The guide then goes on to say that re-delivery of reperforming loans that are *not* modified may not be re-delivered at all (page 25). "Ginnie Mae will not authorize re-delivery of loans that were previously bought out due to borrower delinquency but are not re-performing under the original terms of the eMortgage (re-performing loans without a loan modification)." Does this mean that a non-modified eNote can never be re-delivered to Ginnie? We assume that it could only be delivered into a Digital Pool, given the prohibition on commingling. Therefore, is the restriction on re-delivery of re-performing eNotes limited to the pilot, due to the temporary nature of the pilot period? HPC would recommend that Ginnie Mae remove such a requirement for a permanent digital collateral program.

- b. *Are permissible wet signature Loan Modifications limited to rate and term changes, or may these also be used to correct the Security Instrument? In other words, will Ginnie Mae consider and treat as a modification loan changes that are recorded for other reasons, e.g., corrections to the legal description.*

The guide defines (page 29) Loan Modifications as those mortgage loans that have undergone a rate and/or term modification pursuant to a duly executed loan modification agreement.

5) *MERS / MIN Questions:*

- a. *Mortgages must be assigned out of MERS prior to any legal action. Loans get assigned out at 30 days delinquent in some states or when subject to bankruptcy, so loans may be deactivated in MERS prior to final certification.*

Section 5440.01 (page 21) of the guide states loans that are not registered on the MERS® System at the time of loan and pool certification are not acceptable collateral for a Digital Pool or Loan Package. The eCustodian must also validate that the MIN associated with each loan is reflected on the MERS® System as an active registration and that it matches the MIN associated with the corresponding eNote on the MERS® eRegistry. This means that the Digital Collateral process would prohibit some loans that would otherwise be eligible for final certification under existing pooling requirements. Is this intentional?

- b. *If pooled loans are deactivated from MERS and lose their MIN, per one of the above legal actions for example, are they to be removed from Digital Pools? Does the loss of the MERS active status and MIN trigger the buyout of e-Mortgages, prior to the 90-day delinquency standard?*

- c. *Is it expected that the eCustodian will perform a MIN match using the physical security instrument? Does the custodian need to add a step to their review to check the MERS eRegistry to confirm the loan has not been deregistered or deactivated? Is this verification to ensure that the note is still registered as an eNote or that the loan is still registered in MERS?*

The guide (pages 20-21) indicates that the eCustodian must review the eNote record on the MERS eRegistry and validate that "MIN associated with the eNote and the

corresponding MOM Security Instrument match." Currently, the custodian is not required to review the security instrument at initial certification. Is Ginnie expecting the eCustodian to perform a review of data in the eRegistry or a review of the physical security instrument? This needs clarification.

d. *Does the MIN need to be on the Mail Cover page?*

The guide (page 21) states that, at the time of storing an authorized eDoc and at all points thereafter, the file name of each file containing an eDoc must contain the following Components: - Ginnie Mae Loan Package/Pool Number - Loan's MIN (MERS® Mortgage Identification Number) - A short description of the document type (e.g., title policy, security instrument, Form HUD 11711A)

e. *Must Loans be originated with a MERS as the Original Mortgagee (MOM)?*

The guide (page 17) states that, to be eligible collateral for a Digital Pool or Loan Package, "the eMortgage must be originated with Mortgage Electronic Registration Systems, Inc. (MERS) as the Original Mortgagee (MOM)." Given that both Fannie Mae and Freddie Mac recommend mortgages be originated as MOM, but do not require this arrangement, could Ginnie Mae change this requirement to permit loans that were not closed as MOM, but were later assigned to MERS? Further, Maine does not recognize MERS as a beneficiary. Lenders are not allowed to do MOM loans in Maine.

6) *If the security instrument was signed electronically but could not be recorded electronically due to a transmission error with the corresponding county's system, the county will allow the electronically signed document to be printed and recorded. How will the eCustodian know that the document was submitted to the county electronically or if a hard copy was recorded?*

The guide (page 19) states that electronic copies of the security instrument may be submitted electronically to an eCustodian in lieu of a hard copy of the same document if and only if: the security instrument was originally submitted for recordation as an electronic image through a process available and approved at the corresponding county or state recorder's office; the electronic image reflects evidence of recordation, including information relating to the date and time of recordation; and the file containing the electronic image of the security instrument is delivered as a PDF file.

7) *Is Ginnie expecting the eCustodian to have their own image repository? If the servicer has image repository with the document stored and the eCustodian has access, would this be acceptable?*

The guide (page 19) states that the Custodian must receive a hard copy of any document required for the Initial Certification, Final Certification, or Recertification of a Digital Pool or Loan Package, must store the hard copy document in accordance with the procedures set forth in the DCM and must also create an electronic image of the same to be stored electronically.

8) *Is there a requirement to submit pools for final certification on MyGinnieMae? What about Form 11708?*

The guide (page 9) states that the Issuer must submit the eIssuer Application to Participate in the Digital Collateral Pilot, including all corresponding certifications, Appendix A of this eGuide. The application must be signed by an employee of the Issuer identified on the most recent Form

HUD 11702 submitted to Ginnie Mae, and submitted via email to XXXXXXXX@hud.gov. Hard copy paper submissions will not be accepted. Ginnie Mae, in its sole discretion, may refuse to grant eIssuer status if Ginnie Mae determines that the applicant has failed to meet the requirements set forth in this eGuide, or if Ginnie Mae otherwise determines that approval of the applicant would be detrimental to the MBS Program.

Concerns with Specific Requirements and Policies

1) Commingling Prohibition

One of the restrictions on Digital Pools and Loan packages is the prohibition of any mortgage with a paper promissory note (page 17). HPC members assume that the separation of RMBS into Digital versus standard pools is done for the purpose of ensuring that all of the parties involved in the production and oversight of the Digital Pools and Loan Packages meet the eligibility standards to handle e-Notes. However, the bifurcation of mortgages into distinct pools would be difficult, if not impossible, to sustain over the longer term. For the purposes of the pilot, HPC members could maintain distinct business operations for a short period of time, separating the processes for delivering eNotes from paper files, but over the long term, such bifurcation of the business would be problematic both operationally and financially, disrupting the ability to deliver assets into pools based on the best execution.

2) Final Certification Completed within 6 Months

The timeframe to perform the various actions necessary and to complete final certification for Digital Pools and Loan Packages is no different from that required for paper procedures, at least at this nascent point in the production of eNotes. Therefore, HPC would recommend that Ginnie Mae align this requirement with standard processing timeframe, to permit one year for the e-Issuer to complete this process with the e-Custodian.

3) PIIT Prohibition

The restriction on PIIT participation will be difficult to manage and will narrow the population of loans eligible for the pilot. Each restriction of this sort creates the need for additional filtering mechanisms in both the origination and closing practices of companies, which creates technology and resource demands that make participation in the pilot much more challenging. We would recommend that, based on existing and potential relationships among Issuers that support Ginnie Mae liquidity, eClosings should be eligible for PIIT.

4) eVault Legal Certifications are not industry practice

To qualify for eVault approval, the entity must provide Ginnie Mae with: a) "a signed legal opinion from a third-party law firm that is recognized to have a proficiency in eCommerce and/or Computer/Internet technology law, and that is specifically recognized within the legal community and mortgage industry as having legal proficiency with respect to eNotes and related processes and systems, including E-SIGN and UETA;" b) "a written review provided by an independent third-party technology specialist known nationally in the technology and mortgage industry as having proficiency with respect to eVault and eNote storage systems;" and c) annual certification, attesting that eVault satisfied a Statement on Auditing Standards,

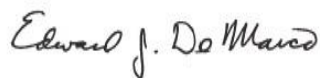
validating that “the system continues to meet the requirements in this section 2600 (page 15).” All of these certifications may be difficult to obtain and costly, given that they are not industry standards today. Could Ginnie Mae possibly provide a list of acceptable eVault providers in lieu of these requirements? Alternatively, could Ginnie Mae provide a list of companies that provide these types of certifications?

5) *Prohibition on Adjustable Rate Mortgages (ARMs)*

The guide (page 16) states that only eMortgages with fixed interest rates and level monthly payments are eligible collateral and that ARMs and GPMs are ineligible. For both Fannie Mae and Freddie Mac, ARMs are permissible and the only limitation on eMortgage delivery is for loans with special purpose legal documentation or those with more challenging legal profiles, such as mortgages for residents of Puerto Rico, coop loans, or loans to consumers using a Power of Attorney. We would suggest that Ginnie Mae include ARMs in the pilot program.

HPC and HPC member companies want to express our appreciation to Ginnie Mae for the progress the agency has made in the development of a digital securitization environment. This proposed guidance is a significant step in the right direction. However, we want to point out that the extent to which Ginnie Mae can adopt existing policy, practices, and processes into the Digital Collateral pilot and final program, the less operational burden and risk the agency will impose on its business partners and the greater likelihood for issuer participation. Each variation from standard practice reduces the benefits of engaging in the Digital Collateral program, requiring specialized and unique operations and dedicated resources. Therefore, we would strongly recommend that Ginnie Mae align as much of the Digital Collateral program as possible with the standard procedures and requirements. Thank you for the opportunity to comment on this proposal and we stand ready to continue to work with you on this important effort. Should you have any questions, please don't hesitate to call Meg Burns, SVP for Mortgage Policy, at 202-589-1926.

Yours Truly,



Edward J. DeMarco
President, Housing Policy Council