Comments on FHFA's Strategic Plan 2013 – 2017
Submitted June 12, 2012 by
MERSCORP Holding, Inc. and Mortgage Electronic Registration Systems, Inc.

MERSCORP Holding, Inc. and Mortgage Electronic Registration Systems, Inc. (collectively "MERS") are pleased to provide comments to the Federal Housing Finance Administration (FHFA) regarding the Agency's proposed Strategic Plan for Fiscal Years 2013-2017, as it pertains to activities dealing with uniform data standards, disclosure regimes and information systems for document custody and electronic registration of mortgages, notes, titles, and liens.

MERS has expertise and particular interest in these matters. MERS was created in 1995 under the auspices of the Mortgage Bankers Association (MBA), the GSE's, and other important industry players as the mortgage industry's utility, to improve the mortgage process by using electronic commerce to eliminate certain cumbersome paper-based processes.

When a MERSCORP Member-lender originates a mortgage loan, the borrower executes a mortgage, which explicitly designates MERS as the mortgagee, as the nominee for the lender's successors and assigns.[1] This security instrument is recorded in the county land records and the mortgage receives a unique identifier, which it carries over the life of the loan ("Mortgage Identification Number" or "MIN"). The Members then register their loans on the MERS® System so changes in ownership and servicing rights can be electronically tracked over the life of the loans. The MERS® System is integrated with the data systems of more than 5,000 banks and other MERS members, allowing authorized users to have accurate and up-to-date information about more than 70 million registered loans.

The activities of interest to FHFA in its strategic plan raise several policy and technical questions:

- What data should be collected?
- How and with whom will this data be shared?
- How will the registry relate to other data systems?

[1] Where appropriate under local law and custom, the security instrument may take the form of a deed of trust rather than a mortgage. For the purposes of this document, the term "mortgage" is intended to cover both mortgages and deeds of trust.

- What protections will be in place for proprietary information and non-public personal information?

These questions will need to be resolved by FHFA through a public process with input from industry and other stakeholders.

However, from the outset, we believe there are certain design principles that can help frame these discussions.

- ***Use a unique loan identifier created at loan origination*** – For each loan, the registry should identify the property, borrower, servicer, mortgagee, and owner of the mortgage loan. The registry should also track where the mortgage is recorded in the public land records and identify the associated lien position at the time of origination, and likewise identify who has custody of the loan's original note and where that document is located. All of this information should be tied together in the registry by means of a unique, free and non-proprietary numeric loan identifier.[2]

- ***Require full life information*** – The registry should track the loan from origination through the full life of the loan until final payoff, foreclosure, or other termination. The registry should also be able to provide a full history of all transactions related to the transfer of the loan, mortgage, or servicing rights (e.g. milestone report).

- ***Require mandatory registration of all GSE-backed loans and encourage the registration of non-GSE-backed loans*** – For the registry to have the greatest utility, all loans should be registered. This will allow the most comprehensive understanding of the mortgage finance system, and enhance efforts to detect and prevent fraud or other mortgage abuses.

- ***Build on existing industry and public data systems and connectivity*** – The registry should be owned and operated by the mortgage finance industry, but with both an industry and public mission. The registry should serve the industry, homeowners, regulators, law enforcement, local property preservation

[2] We believe that for the purposes of the registry it is preferable to have a simple numeric identifier, rather than an identifier built with "embedded logic" – the incorporation of specific information into the identifier by means of a code associated with particular characters and order of the number (for instance, using the first and second character to designate the state, the third and fourth characters to designate the year, etc.). As a result, an embedded logic identifier can only be created once all of the incorporated information points have been established – which may occur late in the process, depending on the scope of the embedded information. By contrast, all of the information associated with a simple identifier is maintained in the corresponding registry. Therefore the simple identifier can be created at any point during the life cycle of the loan (even before origination and closing) and the loan information on the registry may be updated and modified at any time without impacting the integrity of the identifier. As a result, a simple identifier is better suited to serve as a full life identifier.

organizations, State and local governments, and policy makers. It should have oversight by the Federal Government and cover the entire housing finance value chain from origination through securitization and payoff. The registry should also build upon and complement – but not replace – the existing county land record systems. Likewise, the registry should reflect – but not replace – the existing, well established processes for transferring the interests and rights associated with mortgage loan notes and security instruments.

- ***Build on existing industry open data standards*** -- The registry should be based on existing mortgage finance industry standards, and these standards should allow for adoption by, and interconnection with, other existing industry data systems on a royalty-free basis.

  In recent years, the Mortgage Industry Standards Maintenance Organization ("MISMO") has developed two products that have enabled internet-based sharing of data among stakeholders:

  - The first is a data dictionary, which covers more than 4,000 data elements, each defined and thoroughly tested and refined for the real estate finance industry over the past ten years. Like all MISMO products, these definitions were developed through an open and inclusive process with participation from a wide range of industry players, including Ginnie Mae, FHA, HUD, Fannie Mae, Freddie Mac, and countless others.

  - The second is a non-proprietary XML data architecture that allows for the collection and transmission of data regarding virtually every aspect of the real estate finance process, including not only origination, pricing, servicing, loan delivery and investor reporting, but also information regarding appraisal orders, credit reports, title and mortgage insurance, flood reports, and other similar activities and reports. MISMO's non-proprietary XML architecture allows these data elements to be shared between and utilized by many different kinds of companies using different kinds of computers and applications without the need for extensive manipulations or conversions.

  MISMO standards are also compatible with XBRL (Extensible Business Reporting Language) which is an XML-based standard supported by the Commission for Corporate Financial Reports.

- ***Employ a standardized electronic reporting format*** – XBRL, for example, is seeing steady adoption by agencies such as the FDIC and SEC for banking, public company financials, mutual fund risk-return, and credit rating agency reporting.

- ***Ensure robust privacy protection*** **–** The registry must provide robust and appropriate privacy protections for any non-public personal information.

- ***Operate at or near real time with high availability and redundancy*** **–** Data on the registry should be frequently updated to reflect any changes in the status of the mortgage loan, so that it remains current and accurate and allows users to quickly determine the actual status of the loan.[3] The system needs to be architected and managed for large scale availability and redundancy considerations.

- ***Self-funding and operated on a utility basis*** **–** As an industry utility, the registry should be paid for by fees from the registry's industry and commercial users, with low or no-cost access for regulators and public agencies, and free access for homeowners to obtain information regarding own their mortgages. The registry should not be viewed as a profit maximizing entity; rather, any fees should be set at levels calculated to cover the cost of system operation, maintenance and improvements, and the cost of any associated services.

In its current form, the MERS® System meets almost all of these design criteria and, with the cooperation of FHFA and the industry, can be expanded and enhanced to track the additional information and provide any additional functionality necessary to achieve the goals of the FHFA. As a practical matter, the MERS® System is owned and operated by the largest industry players, has connectivity into every major lender, servicer and loan processing system, and currently registers over 60% of all new mortgages. Conversely, any other alternative, private or public, would be starting from scratch.

The MERS® System was designed and built around MISMO industry standards, including the MISMO data dictionary for mortgage data transactions and the non-proprietary XML data architecture. These are the same standards used in FHFA's new uniform mortgage data program. The MERS® System is also compatible with XBRL (Extensible Business Reporting Language), the XML-based standard used by the Securities and Exchange Commission (SEC) for corporate financial reports.

The MERS® System operates with a non-proprietary approach to data. The MERS MIN and MERS organizational identifier ("MERS Org ID") are well-established industry standards. MERS does not charge any fee for generating a MIN or Org ID; MERS charges a modest up-front fee of as little as 97 cents for registering the MIN and associated loan information on

[3] Much of the information regarding mortgage transactions that is currently gathered by Federal agencies is done through quarterly reports. While this reporting interval may serve the public policy objectives associated with those reports, it severely limits the utility of that information for other purposes. Likewise, the county-based public land records frequently have a lag time of several weeks for recording assignments and other record updates, which limits the utility of these systems for other purposes.

the MERS® System. The registration process ensures the uniqueness and integrity of the MIN and also associates the MIN with the property, borrower and loan level information. But once a mortgage has been registered and the MIN has been assigned, there is no additional charge for the use of that number in other contexts, other than transactional fees to update the MERS® System when servicing rights are transferred. Similarly MERS does not charge a licensing or other fee to any software developer or publisher that wishes to incorporate MERS MIN functionality into their product. In other words, unlike a purely proprietary system, the value of the registry is not privatized into MERS, but instead remains available for use in a wide range of applications.

This structure reflects MERS mission as an industry utility, as opposed to a profit-maximizing enterprise. MERS fees are set at levels intended to cover the basic cost of operating, maintaining, improving the MERS® System and providing a sustainable financial position.

Today, the MERS® System and the MERS MIN is used in all aspects of the mortgage finance process – origination, title insurance, servicing, investment, fraud detection and prevention, and property preservation. Virtually all mortgage originators and servicers are MERS members, and MERS functionality – the ability to generate a MERS MIN and communicate with the MERS® System – is part of every major mortgage origination and mortgage servicing software platform. And most importantly, an estimated 60 percent of all active mortgages – over 30 million – are already registered on and actively tracked by the MERS® System. Taken altogether, this broad market presence and deep market penetration, coupled with a tremendous embedded base of information, provides a significant boost towards the creation of a mortgage loan registry as envisioned by the FHFA. The MERS® System is unique in this capability.

Conversely a 'non-MERS' solution would need to define the standards and platform, integrate with lenders and industry loan processing systems, fund initial development and ongoing operations, and build the database from scratch. This would likely take years longer and cost multiples of leveraging the existing industry solution.

In summary, today there are many sources for information about property and property-related financial transactions tracked on many different data systems by many different regulators:

- public land records systems record property ownership, meets and bounds, and liens against property; this information is mirrored on the national title plants;

- state and local governments have their information systems;

- loan originators, loan servicers, securitizers and investors all generate, maintain, and/or track information regarding mortgage loans;
- credit agencies track information regarding borrowers, including loan applications and performance;
- HUD and other Federal regulators gather information regarding the housing market from their regulated entities; and
- local governments often maintain information for property preservation efforts.

Each of these data systems and sources maintains different, yet related, information based upon their distinct business or regulatory purposes. And no single system could hope to efficiently satisfy these disparate missions. Rather, it is preferable to develop standards, processes, and mechanisms that allow all these parties to efficiently identify and relate common information regarding individual loans on all of these platforms. We believe MERS is the key for doing that.