

**Subject: Electronic Promissory Notes with Electronic Signatures
for the HPSL/NSL/LDS/PCL Programs.**

The U.S. Department of Health and Human Services (HHS) has developed an electronic version of the promissory notes (e-note) used in the following programs under Titles VII and VIII of the Public Health Service Act: Primary Care Loan (PCL); Health Professions Student Loan (HPSL); Loans for Disadvantaged Students (LDS); and Nursing Student Loan (NSL). The passage of The Electronic Signatures in Global and National Commerce Act (E-Sign Act) (Pub. L. 106-229, § 1, June 30, 2000, 114 Stat. 464, codified at 15 U.S.C. §§ 7001 -- 7006), makes it possible for schools to use electronic promissory notes and signatures in place of paper records and handwritten signatures to carry out these programs.

The following document establishes standards regarding this use of electronic signatures and implementation of certain provisions of the Electronic Signatures in Global and National Commerce Act (E-sign Act) as they apply to electronic transactions conducted by schools and borrowers in the above-listed programs. This document is based on the guidance used by the U.S. Department of Education for the FFEL and the Federal Perkins Loan Program.

A school whose processes for electronic signatures and related electronic records satisfy the standards in this document will not be subject to any liabilities or be required to reimburse its FCC revolving fund if the loan is determined to be legally unenforceable by a court based solely on the processes used for the electronic signature or related records. On the other hand, if the school's processes for a loan do not satisfy these standards and the loan is held by a court to be unenforceable based solely on the school's processes for an electronic signature or related records, HHS will determine on a case-by-case basis whether the school will be held responsible for the loss of the loan amount.

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Section 1: Definitions

Alteration means a change to the information in a record after it is signed.

Authoritative Copy means the copy of an electronic record that is designated by the lender or holder as the controlling reference copy.

Borrower means an individual to whom a loan is made under 42 C.F.R. Part 57.206 for the Health Professions Student Loan/Primary Care Loan/Loans for Disadvantaged Students Programs and 42 C.F.R. Part 57.306 for the Nursing Student Loan Program.

Covered Transaction means a transaction where a borrower is required to sign:

- A promissory note or loan application;
- A forbearance agreement;
- A request and sworn statement to discharge a loan;
- A new repayment agreement;
- A request to cancel a loan; or
- A request for a deferment on a loan.

Document or Record 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.

Electronic means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Electronic Record means a record created, generated, sent, communicated, received, and/or stored by electronic means.

Electronic Signature means an electronic symbol or process attached to, or logically associated with, a record and used by a person with the intent to sign the record.

E-Sign Act means The Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, § 1, June 30, 2000, 114 Stat. 464, codified at 15 U.S.C. §§ 7001 – 7006.

Student Loan File means the paper and/or electronic record of the promissory note, the loan origination or certification record, disbursement and disclosure records for the loan, and other documents or records associated with that loan that are customarily collected by a school.

System means a data processing system used to create, store, sign, retrieve and/or manage the documents or records that constitute the student loan file.

System Rules mean rules that apply to all the participants using a particular system. For example, such rules might cover issues relating to access rights, distribution of system risk, sending and receiving electronic records, intellectual property rights, and remedies for breach of the system rules.

Systems Administrator means the person or persons responsible for operating one or more of the systems used for processing or maintaining records of student loan transactions.

Trusted Third Party means a person other than the school who provides services intended to enhance:

- (a) The trustworthiness of the process for signing electronic records using electronic signatures; or
- (b) The integrity and reliability of the signed electronic records.

Section 2: Borrower Consent

Before a school may conduct an electronic transaction that requires information to be provided or made available in writing to a borrower, the borrower must affirmatively consent to use an electronic record (Section 101(c) of the E-Sign Act). The borrower's consent must be voluntary and based on accurate information about the transaction to be completed.

The consent process used by the school must be designed to establish that the borrower understands that electronic records will be used instead of paper documents. The school may not use coercion, deceptive practices, or misrepresentation to obtain the borrower's consent.

2.1 Parties Responsible for Obtaining Consent.

The school is responsible for obtaining all necessary consents.

2.2 Manner of Consent

Even where a borrower has consented in writing to conduct a transaction electronically, the borrower must also consent electronically in a manner that demonstrates that he or she has the capability to receive electronic communications from the school (Section 101(c)(1)(C) of the E-Sign Act).

The school's procedures for obtaining consent must include a reasonable demonstration of the borrower's ability to access information in the electronic records provided. For example:

- (a) The school may deliver sample electronic records to the borrower using the same technology and format that will be used when conducting the actual transaction. This would then be followed by an electronic acknowledgment from the borrower that the sample documents were successfully opened and reviewed; or
- (b) For an online session where the school intends to obtain a borrower's consent to conduct a single transaction electronically, such as executing an electronic promissory note, the session must be designed in a manner that requires the borrower to acknowledge that he or she has the necessary hardware and software to view, print, download, or otherwise access information necessary to complete the transaction.

Under Section 101(c)(6) of the E-Sign Act, a borrower may not consent to an electronic transaction through an oral communication or a recording of an oral communication.

2.3 Required Disclosures

In accordance with Section 101(c)(1) of the E-Sign Act, prior to giving consent, a borrower must receive from the school a clear and conspicuous disclosure of:

- (a) Any right or option he or she has to conduct the transaction on paper or in non-electronic form;
- (b) His or her right to have documents provided or made available on paper at no charge to the borrower;
- (c) His or her right to withdraw consent and the procedure for doing so. During an online session where the school seeks to obtain the borrower's consent to conduct a single transaction electronically (e.g., sign a promissory note), the borrower must be able to withdraw his or her consent during the session prior to completing the transaction. Alternatively, if the consent sought by the school will initiate one or a series of subsequent transactions, the borrower must be informed that any consent provided may be withdrawn at any time;
- (d) The consequences of withdrawing his or her consent to use electronic records;
- (e) The scope of the consent, i.e., whether the consent applies to a particular transaction or other transactions;
- (f) The procedure for obtaining paper copies of electronic records; and
- (g) The hardware and software requirements for accessing, printing, and retaining, as appropriate, electronic records used in the transaction or covered under the scope of the transaction.

2.4 Consent to Use an Electronic Promissory Note or Electronic Record for a Covered Transaction

In general, a school that wishes to conduct loan transactions with a borrower electronically must obtain the borrower's consent for those transactions.

In an online session where a borrower plans to execute a promissory note electronically, or electronically sign a document for another covered transaction, the school must design the session for that purpose only and in a manner that prevents the borrower from electronically signing the note or document until after the borrower consents to use that electronic note or document. The school must maintain a record that the consent was granted prior to the signing of the note or document.

2.5 Transferability of Consents

If a school obtains a borrower's consent to conduct transactions electronically, that consent generally does not transfer to another school. The new school must again obtain the borrower's consent, unless the loan:

- (a) Continues to be serviced by the same entity used by the prior school; and
- (b) Continues to be serviced under the same procedures disclosed by the prior school under Section 2.3.

Section 3: Electronic Signatures

An electronic signature is intended to replace the "wet signature" traditionally used to sign writings. The process that a school uses to allow a borrower to create an electronic signature must address the topics in this section.

3.1 Electronic Signature Processes for Covered Transactions

Processes that may be used as electronic signatures for executing electronic promissory notes and signing electronic documents for covered transactions include:

- (a) A shared secret, such as a personal identification number (PIN) or password uniquely associated with the borrower and known only to the borrower and the school (or third party responsible for maintaining the shared secret);
- (b) A unique credential or token provided to the borrower by a trusted third party, such as a public-private keypair, a cryptographic smartcard, or a one-time password device;
- (c) A computer file or number that corresponds to a biometric measurement uniquely associated with the borrower, such as a fingerprint or retinal pattern;
- (d) A signature image (a computer file that is created from the scanned image of the borrower's handwritten signature); or
- (e) A typed name, combined with (a), (b), (c), or (d).

Audio recordings of oral statements or conversations are not acceptable electronic signature processes.

3.4 Establishing Attribution for Covered Transactions

The following methods may be used to establish attribution for covered transactions:

- (a) Selection by the borrower, or assignment to the borrower of a PIN, password or other shared secret, that the borrower uses as part of the signature process, together with:

- (1) An express agreement by the borrower not to share or disclose the PIN, password, or secure access procedure to others;
 - (2) A procedure by which the borrower may notify other parties to the transaction that the shared secret has been compromised; and
 - (3) Effective school procedures to protect against disclosure of the shared secret to unauthorized parties.
- (b) Delivery of a credential to the borrower by a trusted third party, used either to sign the electronic record or to prevent undetected alteration after the electronic record is signed using another method, together with:
- (1) Implementation of reasonable hardware and software security permitting the borrower to restrict access to the credential;
 - (2) Systemic school protections against discovery or use of the credential used by the borrower;
 - (3) An express agreement by the borrower not to disclose the secure access procedure or voluntarily deliver any hardware device used in connection with the credential to a third party; and
 - (4) A procedure by which the borrower may notify other parties to the transaction that the credential has been compromised.
- (c) Measurement of some unique biometric attribute of the borrower and creation of a computer file that represents that measurement, together with school procedures to protect against disclosure of the associated computer file to unauthorized parties.
- (d) Capture of the borrower's handwritten signature as a digitized graphic representation, together with school procedures to protect against disclosure of the associated computer file to unauthorized parties.

3.5 Authenticating the Borrower's Identity

Before a school issues a shared secret or other credential that may be used by a borrower as part of a process to sign electronically a record for a covered transaction, the school must confirm the identity of the borrower by authenticating data provided by the borrower with data maintained by an independent source (e.g., by conducting data matches). Independent sources include, but are not limited to:

- (a) National commercial credit bureaus;
- (b) Commercially available data sources or services;
- (c) State motor vehicle agencies;
- (d) Government databases.

School databases are not independent sources.

At a minimum, the school must verify a borrower's name, social security number or driver's license number, and date of birth.

After the school completes the required data matches verifying the borrower's identity, it must provide the shared secret or other identity credential to the borrower via the U.S. Postal Service, as part of a secure online session, or in some other secure way. Unencrypted e-mail, by itself, is not considered secure enough for direct delivery of the secret or credential but may be used as part of a multi-step delivery of the secret or credential. For example, unencrypted e-mail may be used by the school to deliver a private key or a Web (URL) address to the borrower. The borrower could then use this private key or Web address to obtain from the school (over a session-encrypted link) the shared secret or identity credential that will be used to sign electronic documents.

Alternatively, the school may issue the shared secret or other credential to a borrower without conducting the data matches if the school has previously authenticated the borrower's identity in a manner that satisfies the requirements of this Section. For example, the school used information on paper documents (social security card) and/or photographic identification (driver's license) presented by the borrower to confirm his or her identity.

3.6 Intent to Sign an Electronic Record

The process used by a school for obtaining an electronic signature must be designed to demonstrate that the borrower intended to sign the record. Establishing intent includes:

- (a) Identifying the purpose for the borrower signing the electronic record (see Section 3.6);
- (b) Being reasonably certain that the borrower knows which electronic record is being signed; and
- (c) Providing notice to the borrower that his or her electronic signature is about to be applied to, or associated with, the electronic record.

For example, intent to use an electronic signature may be established by:

- (a) An online dialog box or alert advising the borrower that continuing the process will result in an electronic signature;
- (b) An online dialog box or alert indicating that an electronic signature has just been created, and giving the borrower an opportunity to confirm or cancel the signature; or
- (c) A click-through agreement advising the borrower that continuing the process will result in an electronic signature.

3.7 Establishing the Purpose for the Signature

The system or process used by a school must provide the borrower the purpose or reason for his or her signature. The purpose of the signature may be:

- (a) Apparent within the context of the transaction;
- (b) Described to the borrower in the electronic record itself; or
- (c) Described in a separate notice, explanation, or statement provided to the borrower at or before the time of signing.

3.8 Required Display of the Terms and Conditions of a Promissory Note or Other Document

During the online session where a borrower intends to execute a promissory note electronically or electronically sign a document for a covered transaction, all terms and conditions of the note (including the Statement of Borrower's Rights and Responsibilities) or document, must be displayed to the borrower by means of a required click through page. The session must be designed to require the borrower to acknowledge that he or she has read the terms and conditions of the promissory note (including the Statement of Borrower's Rights and Responsibilities) or document before the borrower is allowed to sign that note or document.

Section 4: Format of Electronically-Signed Records

Electronic records used for covered transactions must include all of the terms and conditions contained in the comparable paper records.

4.1 Printing and Viewing Electronically-Signed Records

A school's system must be able to reproduce electronic records when printed or viewed as accurately as if they were paper records. The school must enable the viewing or printing of electronic records using commonly available operating systems and software.

4.2 Self-Contained Records

Electronically signed records must contain all the information necessary to reproduce the entire electronic record and all associated signatures in a form that permits the person viewing or printing the entire electronic record to verify:

- (a) The contents of the electronic record;
- (b) The method used to sign the electronic record, if applicable; and
- (c) The person or persons signing the electronic record.

5. Integrity of Electronic Records

The school must ensure that electronic records signed by the borrower have not been altered.

5.1 Authoritative Copies

The school's system must be designed so that the signed electronic record is designated as the "authoritative" copy. Additional copies of that record used by the system, or accessed by the borrower or other program participant, should be copied from the authoritative copy.

5.2 Associating Electronic Records

The system used by the school must ensure that all electronic records that reflect activities relating to a student loan can be associated with the loan so that any particular transaction is identifiable, and accessible, as part of that loan history.

5.3 Tracking Changes and Updates to Electronic Records

The system used by a school must be structured to prohibit changes to the authoritative promissory note record. For other electronic records, the school's system must log and account for any changes to the records and must be structured so that changes can be made only by authorized individuals.

Section 6: Managing and Maintaining Electronic Records

The system used by a school must protect the processing and storage environment during the creation of electronic records and must protect the integrity of the stored records and the data contained in those records. The school's system must be at least as rigorous as the system used by the school for its non-Federal electronic processing and record storage.

6.1 Hybrid Records

Student loan records may involve the use of a combination of electronic records and paper records which become part of the student loan file. For hybrid records:

- (a) The school is responsible for maintaining appropriate cross references from the paper student loan file to the associated electronic records, and from the electronic records to the paper student loan file; and
- (b) Any paper record that is part of the student loan file may be scanned and digitized by the school, noted as an imaged copy of the original, added to the electronic record file, and, except for the promissory note or loan application, be disposed of, if desired. In no event may a signed paper promissory note or loan application be destroyed unless all obligations under that note have been discharged in full.

Section 7: Accessing Electronic Records

The system used by a school must be designed to control access to electronic records and provide that access in a manner that can be tracked and monitored in accordance with system rules.

7.1 Access Rights and Restrictions

The school's processing and storage system must be designed to restrict access rights to borrowers or other parties depending on their role or involvement in the loan transaction. The access control must be capable of restricting access to transactions, records, or data for different classes of users.

7.2 Providing Access

After the borrower executes a covered transaction, he or she must be given reasonable and timely access to the authoritative copies of the electronic records or copies of the authoritative copies. The school must:

- (a) Provide access for the borrower to view, download, and/or print copies of the electronic loan records; and
- (b) Inform the borrower how he or she may obtain paper copies of the electronic records.