
ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

(E-SIGN ACT)

REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policy/Procedures	Adopt a policy and procedures regarding the use of electronic records, receipt of affirmative consent from members to use electronic format, and disclosures that must be issued to members before consent.
Coverage	The E-Sign Act provides for the use of electronic records and signatures in commerce.
Disclosures	<p><u>Consent to electronic records (§101(c)(1))</u> If a credit union is required to provide, or make available, a written record of a transaction, the credit union may use an electronic record to provide, or make available this record, if:</p> <ul style="list-style-type: none">(a) The member has consented to the electronic format and has not withdrawn this consent;(b) The member is provided, before consenting to the format, with a clear and conspicuous statement<ul style="list-style-type: none">• informing the member that he/she has the right to receive the record(s) in paper form. Also, that they may withdraw their consent and any consequences of withdrawing the consent (fees or termination of account, for example)• informing the member of the scope of the consent, whether it is for a single transaction, or categories of records to be provided in an ongoing relationship• describing the procedures the member must use to withdraw consent, and to update information needed to contact the member electronically

- informing the member of the method to request and obtain a paper copy of an electronic record after giving consent and any associated fees.

(c) The member—

- is provided with a statement of hardware and software requirements for access to and retention of electronic records
- consents, or confirms his/her consent electronically in a manner demonstrating the member can access the information in the electronic form the credit union will use.

(d) after receiving member consent, if the hardware and software requirements for accessing or retaining electronic records change, creating a material risk that the member may not be able to access or retain subsequent electronic records, the credit union

- provides the member with a notice of the changes, and the right to withdraw the consent without charging a fee for the withdrawal, and without imposing any condition or consequence not previously disclosed.
- again complies with subparagraph (c).

Accuracy and accessibility (§ 101(d))

Legally imposed records retention requirements are met by retaining an electronic record of the required information. The electronic record must:

- (a) accurately reflect the information set forth in the record to be retained; and
- (b) remain accessible to all persons who are entitled to access it for as long as legally required in a form that is capable of being accurately reproduced for later reference.

Prior Consent (§ 101(c)(5))

The consumer disclosures subsection of the E-Sign

	<p>Act does not apply to any records that are provided or made available to a member who has consented prior to the effective date of Subchapter I of the E-Sign Act to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.</p> <p><u>Oral communications (§ 101(c)(6))</u> An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of the consumer disclosures subsection of the E-Sign Act except as otherwise provided under applicable law.</p>
Training	Ensure that all departments are aware of all aspects of the E-Sign Act.
Updating	Update policies and procedures to reflect provisions of the E-Sign Act.
Internal Review	Conduct an internal review at least annually to assess compliance with the E-sign Act and conformity of the credit union's practices with its policies and procedures.