

**BEFORE THE FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580**

ESIGN Study)
Comment P004102)

**COMMENTS OF THE NATIONAL ASSOCIATION
OF CONSUMER AGENCY ADMINISTRATORS**

The National Association of Consumer Agency Administrators (“NACAA”) seeks to support public agencies responsible for ensuring a fair and informed marketplace. NACAA represents over 165 consumer agencies at all levels of government in both the United States and a number of other countries, providing direct constituent services for the resolution of consumer complaints, conducting consumer education, and otherwise advocating for the interests of consumers.

Consistent with these goals, NACAA submits the following comments in response to the request of the Federal Trade Commission and the National Telecommunications and Information Administration of February 13, 2001 for comments for the study of electronic consent by consumers, pursuant to the terms of section 101(c)(1)(C)(ii) of the Electronic Signatures in Global and National Commerce Act (“ESIGN” or “the Act”).

General Issues

1. **Confirmation of Consumer Consent.**

NACAA believes that the requirement of section 101(c)(1)(C)(ii), that businesses allow consumers an opportunity to provide consumer consent or confirmation to receiving records by

electronic means is both appropriate and necessary in electronic commerce. Consumers, many of whom are only just now adjusting to the use of electronic media for business transactions, need to be comfortable with the receipt of electronic records. For that reason, their consent should appropriately be sought. The requirement that the confirmation reasonably demonstrate that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent will, NACAA believes, provide assurance to the business as well as the consumer that the consumer is an active participant in the transaction. The requirement should pose no additional burden to business.

2. Statutory Changes, Improvements, Additional Issues for Study

NACAA is concerned, however, that the obligation to keep up with technology appears to rest with the consumer under the construct posed by the law. Pursuant to section 101(c)(1)(D), if changes in hardware or software requirements to access or retain electronic records are made, the consumer has the right to withdraw consent to receive such records. NACAA believes that it should be possible technologically to continue to access or retain such records indefinitely, or, failing that, consumers should be given the opportunity, for a window period with advance notice, to either download and print, or receive paper copies of, at the consumer's election, the appropriate records. NACAA would request that this change be made to the law to accommodate consumer needs.

NACAA's other concern with the electronic signature provisions is that leeway for parties to determine what constitutes an electronic signature provided by the law make it difficult for consumers to anticipate just what may constitute acceptance of a contract. Certainly technology changes rapidly, and what is appropriate today may not be acceptable tomorrow, with more and

more sophistication in the marketplace, allowing for better identification of individuals. However, at present, NACAA remains concerned that without a basic standard for what constitutes an electronic signature, many users of the same computer may be able to substitute themselves for others. NACAA has experience of consumer complaints where fraud has been perpetrated by family members, or visitors to a consumer's home. There do not appear to be assurances within the statute itself that address these concerns. There do also not appear to be provisions within the statute mandating data security, and mandating that data clearly is not subject to tampering.

NACAA also believes that records must demonstrate how and when a record was created, both the original offer, the consumer's filled-in version, and any agreed-to modifications, and by whom--both the consumer and the business, to prevent consumer fraud. Data integrity over time is also important for consumers and for businesses--and NACAA believes that integrity and exact duplication of information on older computer systems or platforms, or migrated to a new system, should also be mandated by the Act.

Conclusion

NACAA appreciates the opportunity to provide these comments to the Federal Trade Commission and National Telecommunications and Information Administration for its study of the consumer consent and confirmation provision of the Act. NACAA invites the FTC or NTIA to contact our association for further clarification of our position or to request that NACAA respond to any questions that either the FTC or NTIA may have regarding these comments.

Respectfully submitted,

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