

SUBJECT: Electronic Signatures and Records

Introduction.....	1	Errors	5
Executive Summary	1	Security Issues	6
Wisconsin Law	1	Attributing Electronic Signatures.....	6
Federal Law	2	Providing Information in “Writing”	6
Compliance With State and Federal Laws.....	3	Sending & Receiving Electronic Records	6
Wisconsin Law.....	3	Electronic Record Retention	7
Key Concepts	3	Electronic Recording of Real Estate Documents.....	7
What UETA Applies To.....	4	Federal Law	8
What UETA Does Not Apply To	4	Consumer Disclosures and Consent.....	8
Electronic Promissory Notes.....	5	Other Consumer Disclosure Rules	9
Electronic Agents and Automated Transactions	5		

INTRODUCTION

This release applies to both state and federally chartered credit unions. It describes state and federal laws that: govern the enforceability of documents signed electronically; allow for electronic record retention; and require certain disclosures for electronic consumer transactions.

EXECUTIVE SUMMARY

Wisconsin credit unions are subject to both state and federal laws that govern the enforceability of documents signed electronically. Both laws say that a contract or signature cannot be denied legal effect *just* because it is in electronic form.

The state law (known as the Uniform Electronic Transactions Act or UETA) generally preempts the federal law (known as the Electronic Signatures in Global and National Commerce Act or E-SIGN). However, E-SIGN has several important consumer protection and disclosure provisions that the state law lacks. For that reason, credit unions have to comply with the E-SIGN consumer protection requirements, even though E-SIGN is otherwise preempted in Wisconsin.

Wisconsin Law

UETA does not *require* anything to be done electronically; it only *allows* parties to conduct transactions electronically if they agree to. For UETA to apply, each party to a transaction must agree to conduct it electronically. The agreement can be determined by the parties’ conduct and the surrounding circumstances. However, if the credit union wants to handle a transaction electronically, it may include a provision in the agreement that says all parties consent to contract electronically.

Under UETA, a signature, contract or record may not be denied legal effect or enforceability *just* because it is in electronic form. An electronic record or an electronic signature satisfies any law that requires a record to be in writing or to contain a signature. Even notarization can be electronic. Record retention can be done electronically, as well. In other words, under UETA, the medium that is used to create, present or retain a contract or signature does not affect whether it is legally enforceable or valid. Many documents that must be in writing or must be signed by all parties can be entered into electronically and still have the same legal effect as if the documents were signed in pen and ink.

UETA does not necessarily apply to all writings and signatures. It only applies to “electronic records” and “electronic signatures” that relate to business, commercial (including consumer) or government “transactions.” The law defines these terms. UETA first applied to electronic records and signatures that were created, generated, sent, received or initially stored on or after April 20, 2004.

UETA does not cover certain records and transactions, so they must still be done in writing to the extent another law requires it. Two exceptions are most significant for credit unions:

1. UETA does not apply to transactions under Wisconsin's Uniform Commercial Code – except for sales and leases of goods, which are governed by Chapters 402 and 411 of the Wisconsin Statutes. Fortunately, Article 9 of the Uniform Commercial Code has its own provisions that allow for electronic signatures on documents like security agreements. For details on the rules that affect security interests on credit union collateral, see The League's *ii Release No. B060*.
2. UETA does not allow for electronic notices of “default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual.”

UETA allows for the creation and enforcement of promissory notes electronically. It does this by providing for certain instruments called “transferable records.” These provisions in UETA will allow Wisconsin to move toward paperless, electronic mortgages and other transactions. However, work remains to be done to establish procedures for recording these transactions.

Under UETA, electronic agreements may be valid and binding even if human beings are not involved in the transactions. For example, if a member conducts credit union transactions online, UETA considers the credit union's computer system to be its “electronic agent.” Under UETA, a transaction processed by an electronic agent is legally binding on the vendor (i.e., the credit union) and on the consumer if the consumer knows or has reason to know that his or her actions will cause the electronic agent to complete the transaction.

UETA says that if the parties agree to use a security procedure to detect unintended changes or errors, and if one party does not comply with the security procedure, the other party who does comply can avoid the effect of the error or change to the electronic record. If a transaction involves an individual on one side and an electronic agent on the other, the individual may avoid the effect of an erroneous electronic record if certain requirements are met.

UETA does not address important security issues such as forgery, hacking and fraud. Federal regulators say that credit unions should use identity authentication procedures to protect those who access their accounts via the Internet. For more information on the regulators' guidance, see The League's *ii Release No. 0171, “Authentication in Internet Banking.”*

Sometimes, transactions require that additional information (like notices or statements) must be provided in writing. UETA allows an electronic transmission to satisfy that requirement.

For UETA to apply, an acceptable format must be used to transfer records between parties. UETA says that an electronic record may not be enforceable if it is not in a form that can be retained and accurately reproduced for later reference by all parties, even though the parties had agreed to do the transaction electronically. UETA also has rules to define exactly when an electronic document is considered sent and received.

Under UETA, if a law requires a record to be retained, it may be retained electronically. The electronic record must accurately reflect the information in the original record and remain accessible for later reference. If the UETA record-retention requirements are satisfied, retaining a written record is not necessary.

The Wisconsin Statutes specifically allow credit unions to copy or image records the credit union must maintain. Credit unions generally can destroy original documents that have been retained electronically. However, the credit union should adopt a strong record disposal policy to address the steps it will take to ensure that records are disposed of properly (OCU approval of the policy is no longer required). The OCU advises that the credit union may want to keep certain “high priority” items like loan agreements in the original format for a time in case the credit union needs to rely on them. As a general matter, original documents should be retained until the statute of limitations for filing of a lawsuit expires, unless the credit union's legal counsel has reviewed the credit unions imaging and recordkeeping. The credit union needs to be sure that it has records that will be admissible under state and federal rules of evidence. The League encourages credit unions to review or spot check their imaging periodically to verify image quality before originals are destroyed.

In addition to UETA, Wisconsin has passed the Uniform Real Property Electronic Recording Act (URPERA). It authorized electronic recording and notarization of real estate documents.

Federal Law

The federal E-SIGN law went into effect in 2000. The E-SIGN consumer protection provisions allow the use of electronic records in consumer transactions only if certain conditions are met:

- The consumer must be given a “clear and conspicuous statement” disclosing certain information;
- The consumer must be given a statement of the software and hardware requirements needed to access and retain the electronic records; and

- The consumer must either electronically consent or electronically confirm his/her consent (though the consent can be withdrawn) in a way that “reasonably demonstrates” that the consumer can access information in an electronic form.

E-SIGN preserves the rulemaking authority of state and federal agencies to issue regulations. The Federal Reserve Board has amended five consumer financial services and fair lending regulations to clarify the requirements for providing consumer disclosures electronically. The mandatory compliance date is October 1, 2008. Any credit union that delivers disclosures or statements required under any of the following regulations must comply with the Fed’s rules:

1. Regulation B, Equal Credit Opportunity. For details, see The League’s *ii Release No. B041*.
2. Regulation E, Electronic Fund Transfers. For details, see The League’s *ii Release No. 0120*.
3. Regulation M, Consumer Leasing. For details, see The League’s *ii Release No. B006*.
4. Regulation Z, Truth in Lending. For details, see The League’s *ii Release No. B046* (Kwik-Cash), *ii Release No. B064* (on home equity lines of credit, like The League’s R.E.A.P. program) and *ii Release No. B042* (for closed-end credit).
5. NCUA Truth in Savings rules. For details, see The League’s *ii Release No. 0101*.

COMPLIANCE WITH STATE AND FEDERAL LAWS

Both the state UETA law and the federal E-SIGN law govern electronic signatures and records, but the federal law says that it will not pre-empt state laws on these matters (as long as the state law is consistent with the federal law, and Wisconsin’s is).

So, for Wisconsin credit unions, UETA governs electronic transactions, signatures and records in this state – with one exception. UETA law does not include consumer disclosure and protection provisions. Instead, it says that the consumer protections of E-SIGN apply. For that reason, credit unions have to comply with the E-SIGN consumer protection rules even though Wisconsin law governs other aspects of electronic signatures and records.

E-SIGN generally allows credit unions to use electronic records in consumer transactions – for example, by providing disclosures electronically – but only if the consumer consents. Details on the E-SIGN consumer disclosure and protection rules are provided later in this release.

WISCONSIN LAW

Wisconsin, like most states, has adopted the Uniform Electronic Transactions Act (UETA). It is in Chapter 137 of the Wisconsin Statutes.

UETA’s core purpose is to make it easier for people to make enforceable electronic transactions. UETA does not *require* anything to be done electronically; it only *allows* parties to conduct transactions electronically if they agree to.

For UETA to apply, each party to a transaction must agree to conduct it electronically, though they can always decline to conduct other transactions that way. (The parties can agree to waive or vary most of UETA’s provisions, but they cannot waive the right to refuse to conduct future transactions electronically.)

To decide whether an electronic signature or record is valid, the first question is whether the parties agreed. UETA says that the agreement can be determined by the parties’ conduct and the surrounding circumstances. Still, if the credit union wants to handle a transaction electronically, it may include a provision in the agreement that says all parties consent to contract electronically.

Key Concepts

UETA’s four most important provisions are these:

1. A signature or record may not be denied legal effect or enforceability just because it is in electronic form;
2. A contract may not be denied legal effect or enforceability just because an electronic record was used to create it;
3. An electronic record or an electronic signature satisfies any law that requires a record to be in writing or to contain a signature (although UETA contains some exceptions so that certain kinds of records must still be in writing); and
4. Record retention can be done electronically. When an original is required, an electronic record of the information is sufficient as long as the electronic record “accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record,” and “remains accessible.”

In other words, under UETA, the medium that is used to create, present or retain a contract or signature does not affect whether it is legally enforceable or valid. Many documents that must be in writing or must be signed by all parties can be entered into electronically and still have the same legal effect as if the documents were signed in pen and ink.

Even notarization can be electronic. If a law requires a signature to be notarized, UETA says that the requirement is satisfied if the notary's electronic signature, together with all other information required by law, is attached to or logically associated with the signature. A physical or electronic image of a notary stamp or seal is not required. (Wisconsin's Uniform Real Property Recording Act, discussed later in this release, allows for electronic recording of real estate documents and provides for electronic signatures and notarization of those documents, as well.)

In addition, UETA:

- Creates rules on how to attribute electronic signatures to parties;
- Makes electronic signatures and records admissible as evidence in court;
- Provides for a range of electronic promissory notes and negotiable instruments, whether or not secured by real estate;
- Allocates responsibility for errors in electronic communications;
- Provides more detail for complying with state laws that require information to be provided in writing; and
- Has rules for determining when messages are sent or received.

UETA first applied to electronic records and signatures that were created, generated, sent, received or initially stored on or after April 20, 2004.

What UETA Applies To

UETA only applies to "electronic records" and "electronic signatures" that relate to a business, commercial (including consumer) or government "transaction." Specifically, the law includes these definitions:

- "Electronic record." This means a record that is created, generated, sent, communicated, received, or stored by electronic means. UETA is "technology neutral" so it applies to all kinds of electronic media, including emails, faxes and scanned or digital images of documents.
- "Electronic signature." This means any "electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." This broad definition includes just about anything a party might do to show that he/she intended to adopt a sound, symbol or process as their signature. Examples of electronic signatures may include a person's name affixed to an email, a faxed signature, the entering of an ATM code, or clicking the "I Agree" button on a vendor's website. No certain technology is required. The parties can pick any electronic contracting system with functionality and security they feel is appropriate for the contract. It is assumed that a party's signature is attached to or located on a paper contract, but pen and ink signatures do not exist in an electronic environment. So, this definition says the signature must in some way be linked to, or connected with, the electronic record being signed.
- "Transaction." UETA defines this as an action or set of actions occurring between two or more persons relating to the conduct of business, commercial (including consumer), or governmental affairs.

What UETA Does Not Apply To

UETA specifically excludes certain records and transactions, so they must still be done in writing to the extent another law requires it. For example, Wisconsin law requires that wills and testamentary trusts (trusts created by provisions in a person's will) have to be in writing – so UETA does not allow for electronic versions of these documents.

UETA also does not apply to notices of "default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual."

In addition, UETA says that it does not apply to:

- Adoption, divorce or family law records;

- Court notices, orders or official court documents; and
- Notices of the termination or cancellation of health insurance or benefits or life insurance benefits, excluding annuities. This would include credit-related insurance.

UETA also does not apply to transactions under Wisconsin's Uniform Commercial Code – except for sales and leases of goods, which are governed by Chapters 402 and 411 of the Wisconsin Statutes. As a result, UETA would make an electronic agreement to buy a car enforceable, but it would *not* cover the security agreement needed to give the credit union a security interest in that car.

Fortunately, Article 9 of the Uniform Commercial Code has its own provisions that allow for electronic signatures. A “signature” on a “writing” is not required for a security agreement or other document to be valid. Instead, Article 9 requires “authentication” of a “record.” This means that a collateral owner can sign a tangible record (e.g., a security agreement typed on paper) or accept or adopt an electronic record (e.g., a security agreement that is electronically stored) to authenticate a security agreement. See Wis. Stat. §409.102(1)(bm) and §409.203(2)(c)(l).

For details on the rules that affect security interests on credit union collateral, see The League's *ii Release No. B060*.

Electronic Promissory Notes

UETA allows for the creation and enforcement of promissory notes electronically. It does this by providing for certain instruments called “transferable records.” UETA supports any kind of electronically signed record that would, if it were on paper, qualify as a note under Chapter 403 of the Wisconsin Statutes (i.e., a promissory note) or a negotiable record under Chapter 407 (i.e., a document of title like a warehouse receipt or bill of lading). The federal E-SIGN law also provides for transferable records but only notes secured by mortgages on real property; UETA is broader.

Express agreement by the issuer is necessary for an electronic record to be treated as a “transferable record.”

UETA sets out rigorous conditions for the creation of transferable records and gives the holders of such records the same legal rights as the holders of negotiable instruments under the Uniform Commercial Code. The holder of an electronic transferable record has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code. That includes the rights and defenses of a holder in due course, a holder to which a negotiable record has been negotiated, or a purchaser. In addition, delivery, possession, and endorsement are not required to obtain or exercise any rights under UETA.

The “transferable records” provisions in UETA will allow Wisconsin to move toward paperless, electronic mortgages and other transactions. However, work remains to be done to establish procedures for recording these transactions.

Electronic Agents and Automated Transactions

Under UETA, electronic agreements may be valid and binding even if human beings are not involved in the transaction.

For example, if a member conducts credit union transactions online, UETA considers the credit union's computer system to be its “electronic agent.” An electronic agent is “a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.” Under UETA, a transaction processed by an electronic agent is legally binding on the vendor (i.e., the credit union) and the consumer if the consumer knows or has reason to know that his or her actions will cause the electronic agent to complete the transaction.

Even “automated transactions” without any human involvement are enforceable (for example, where one computer system automatically orders goods from another computer system).

Errors

The UETA says that if the parties agree to use a security procedure to detect unintended changes or errors, and if one party does not comply with the security procedure, the other party who complies can avoid the effect of the error or change to the electronic record.

If a transaction involves an individual on one side and an electronic agent (as discussed previously) on the other, the individual may avoid the effect of an erroneous electronic record if two requirements are met:

1. The electronic agent must not have provided an opportunity to prevent or correct the error.

2. When the individual learned of the error, he/she promptly notified the other party, took reasonable steps to return or destroy any consideration that was received and did not use or receive any benefit or value from the received consideration.

If neither of the above rules applies, the legal effect of any errors will be determined by the parties' contract or by other applicable laws.

Security Issues

UETA does not address important security issues such as forgery, hacking and fraud. The parties to a transaction need to protect themselves from these potential abuses by requiring the use of security procedures like password encryption, algorithms or time and date stamps.

Federal regulators say that credit unions should use identity authentication procedures to protect those who access their accounts via the Internet. For more information on the regulators' guidance, see The League's *ii Release No. 0171, "Authentication in Internet Banking."*

Attributing Electronic Signatures

The definition of an electronic signature (discussed previously) has to do with *whether* a record has been signed. But UETA also addresses attribution of a signature – that is, *whose* signature appears on the record.

UETA says that an electronic record or signature is attributable to a person if it “was created by the act of that person.” This may be proven by any means, including surrounding circumstances, the fact that some technology or password was used to establish who attached the signature or the effectiveness of agreed-on “security procedure.” Digital signatures are not required, but the credit union should consider a formal authentication procedure to ensure that it can properly attribute an electronic signature to the party who made it.

Providing Information in “Writing”

Sometimes, transactions require that additional information (like notices or statements) must be provided in writing. UETA allows the use of an electronic transmission to satisfy that requirement. It says that if the parties have agreed to conduct a transaction electronically and if one person is legally required to provide additional information in writing to another, the party can provide the information electronically, so long as it can be retained by the recipient. In other words, the recipient must be able to print or store the electronic record.

UETA also recognizes that some laws might require more than simply a writing (or even a signed writing). For example, information may need to be displayed in a particular manner or transmitted by a specific method. UETA makes clear that if such additional requirements exist, they must be satisfied. In other words, if another law requires a record to be posted or displayed in a certain way or to be sent or transmitted by a specific method or to contain information that is formatted in a certain manner, then that record must be posted, sent or contain the information formatted as the other law requires.

Sending & Receiving Electronic Records

For UETA to apply, an acceptable format must be used to transfer the records between parties. UETA says that an electronic record may not be enforceable if it is not in a form that can be retained and accurately reproduced for later reference by all parties, even though the parties had agreed to do the transaction electronically. “If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.” Wis. Stats. §137.16(3).

UETA also has rules to define exactly when an electronic document is considered sent and received.

Unless the parties agree otherwise, UETA says that an electronic record is considered to be *sent* when three things are done:

1. The record is properly addressed to an information processing system designated by the recipient;
2. It is in a form capable of being processed by that system; and
3. It enters an information processing system outside the control of the sender or enters a region of the information processing system that is under the recipient's control.

Unless the parties agree otherwise, UETA says that an electronic record is presumed to be *received* when two things are done:

1. The record enters an information processing system that the recipient has designated; and

2. It is in a form capable of being processed by that system.

For example, an email does not have to be opened to be considered “received.” This is like the “mailbox rule” in Wisconsin for ordinary mail, which is considered sent and received when it is placed in the mail for delivery.

Electronic Record Retention

Under UETA, if a law requires a record to be retained, it may be retained electronically. The electronic record must accurately reflect the information in the original record and remain accessible for later reference. If the UETA record-retention requirements are satisfied, retaining a written record is not necessary.

Section 186.71 of the Wisconsin Statutes allows credit unions to retain records electronically or by other means, and then to dispose of the original records. For details and guidance, please see The League’s *ii Release No. 0149 – “Record Retention and Disposal.”* As a general matter, original documents should be retained until the statute of limitations for filing of a lawsuit expires, unless the credit union’s legal counsel has reviewed the credit unions imaging and recordkeeping. The credit union needs to be sure that it has records that will be admissible under state and federal rules of evidence.

UETA says that a party may use the services of a third party to comply with the UETA record-retention requirements.

As always, if your credit union relies on a third party service provider, the credit union’s contract with the service provider should require it to:

- Implement appropriate measures designed to meet the objectives of the Guidelines on Safeguarding Member Information;
- Disclose to the credit union any breach in security resulting from an unauthorized intrusion into the credit union’s member information system maintained by the service provider; and
- Take appropriate action to address unauthorized access or use of member information.

For more information, see The League’s *ii Release No. 0155, “NCUA Guidelines for Safeguarding Member Information & Responding to Unauthorized Access.”*

The contract should also prohibit the third party from disclosing or using any nonpublic personal information about members other than to carry out the purposes for which the credit union disclosed the information. For more information, see The League’s *ii Release No. 0152, “NCUA Privacy Rule.”*

Electronic Recording of Real Estate Documents

In addition to UETA, Wisconsin has passed the Uniform Real Property Electronic Recording Act (URPERA), which took effect June 3, 2006. It authorizes electronic recording and notarization of real estate documents. It is in Chapter 706 of the Wisconsin Statutes.

URPERA provides that:

- An electronic document may be used when a law requires that a document be an original, be on paper or another tangible medium, or be in writing.
- An electronic signature may be used when a law requires, as a condition of recording, that a document be signed.
- An electronic signature may be used when a law requires that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed or made under oath.

URPERA says that a register of deeds may use electronic documents and provide access to the documents electronically. Further, a register of deeds may convert paper documents and information into electronic form. However, a register of deeds who accepts electronic documents for recording must continue to accept paper documents as well and must place entries for both types of documents in the same index.

Finally, URPERA created the Electronic Recording Council, which is to adopt standards to implement the law. The Wisconsin Department of Administration must enact rules to implement those standards. For more information, visit the Electronic Recording Council online at: www.ercwis.wi.gov.

FEDERAL LAW

The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) went into effect in 2000. The state UETA law and federal E-SIGN law both say that neither contracts nor signatures will be denied legal effect solely because they are electronic in form. However, the federal law says that it will not pre-empt state laws on these matters. As a result, for Wisconsin credit unions UETA governs electronic transactions, signatures and records in this state – with one exception. The state’s UETA law does not include consumer disclosure and protection provisions. Instead, it says that the consumer protections of E-SIGN apply. The result is that credit unions have to comply with the E-SIGN consumer protection rules but not other aspects of E-SIGN.

For general information on other E-SIGN provisions, [login to InfoSight360](#) and search for their "Electronic Signatures (ESIGN)" topic, which includes a summary, compliance checklist, FAQs, and links to additional resources.

The full text of the E-SIGN statute is available [online](#) and NCUA offers [this overview](#).

Consumer Disclosures and Consent

E-SIGN consumer protection rules allow the use of electronic records in consumer transactions only if certain conditions are met:

- The consumer must be given a “clear and conspicuous statement” disclosing certain information.
- The consumer must also be given a statement disclosing the software and hardware requirements necessary to access and retain the electronic records.
- After getting the first two disclosures, the consumer must either electronically consent or electronically confirm his/her consent (though the consent can be withdrawn) in a way that “reasonably demonstrates” that the consumer can access information in an electronic form.

Each of the three requirements is described in more detail below.

Definitions

Under E-SIGN:

- Consumer. This means an individual who obtains, through a transaction, products or services that are used primarily for personal, family or household purposes. The term includes the legal representative of such an individual.
- Transaction. This includes a sale or lease of real estate, personal property and services.

Disclosures

Before a consumer can consent to receive disclosures, statements or notices electronically, E-SIGN requires the credit union to give a “clear and conspicuous” statement that informs the consumer about the following:

- Any right or option to have the record provided or made available on paper or in non-electronic form;
- The consumer’s right to withdraw consent to have the record provided or made available in an electronic form (and any conditions, consequences or fees in the event of such withdrawal);
- The procedures the consumer must use to withdraw consent;
- How after consent the consumer may request a paper copy of an electronic record, and whether any fee will be charged for such copy;
- The procedures the consumer must use to update his/her electronic contact information; and
- Whether the consent applies only to the transaction at hand or to identified categories of records that may be provided or made available during the course of the parties’ relationship. The American Bar Association advises that listing the “identified categories” of record means more than giving members a blanket statement that all future notices or disclosures will be given electronically:

It is important to list all possible categories of disclosures and other records, required by federal or state law to be in writing that may later be sent electronically to make the scope of the consumer’s consent to electronic receipt all

inclusive. It is unnecessary to list disclosures that do need not to be provided in writing. The language “identified categories” seems to rule out blanket consent to all writing requirements being met electronically.

Hardware and Software Requirements

In addition to the above disclosures, the credit union must give the consumer a description of the hardware and software requirements needed to access and retain electronic records.

If there is a change in hardware or software requirements that creates a “material risk” that the consumer will not be able to access or retain an electronic record of the transaction, the credit union must give the consumer a statement of:

- The revised hardware and software requirements for access to and retention of the electronic records; and
- The right to withdraw consent without the imposition of any fees or conditions not originally disclosed.

Consent

After receiving the disclosures described earlier and the information on hardware and software requirements, the consumer must consent electronically (or confirm his/her consent electronically) in a way that “reasonably demonstrates” he/she can access the information in the electronic form that the parties will use for the transaction.

Although not spelled out in the statute, America's Credit Unions explains that the consumer must first consent to receive records electronically, and then consent to the actual contract. If so, this must be clearly explained to the consumer so that he/she understands the reason for consenting more than once.

E-SIGN says that the legal validity or enforceability of a contract may not be denied solely because of the failure to obtain the consumer's consent or confirmation of that consent. If a consumer withdraws his/her consent, it is considered effective within a “reasonable period of time” (not defined in E-SIGN) after the credit union receives the withdrawal.

What about consent obtained before E-SIGN? E-SIGN's consumer disclosure provisions do not apply to records that have been provided or made available to a consumer who consented prior to June 30, 2000, to receive records in electronic form as permitted by any law or regulation.

Other Consumer Disclosure Rules

E-SIGN does not affect the content or timing of any disclosures or records required to be provided to consumers by various consumer protection laws, such as Truth in Lending, Truth in Savings, Equal Credit Opportunity Act, and so on. These still must be provided in the form and manner the other laws require.

E-SIGN preserves the rulemaking authority of state and federal agencies to issue regulations that are consistent with and do not add to the law's requirements.

Federal regulators also have the authority to exempt certain records from E-SIGN's consent provision, so long as the exemption is considered necessary to “eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.”

The Federal Reserve Board has amended five consumer financial services and fair lending regulations to clarify the requirements for providing consumer disclosures electronically. The mandatory compliance date is October 1, 2008. The Fed withdrew portions of 2001 interim final rules, simplifying the process for electronic regulatory disclosures.

Any credit union that delivers disclosures, notices or statements required under any of the following listed regulations must comply with the Fed's rules. For each of these, credit unions will generally need to comply with the consent requirements of E-SIGN before delivering disclosures or notices to consumers electronically. However, the rules do exempt certain disclosures from the consent requirements. The releases listed below provide details on the requirements that are particular to each rule.

- Regulation B, Equal Credit Opportunity. For details, see The League's *ii Release No. B041*.
- Regulation E, Electronic Fund Transfers. For details, see The League's *ii Release No. 0120*.
- Regulation M, Consumer Leasing. For details, see The League's *ii Release No. B006*.

- Regulation Z, Truth in Lending. For details, see The League's *ii Release No. B046* (Kwik-Cash), *ii Release No. B064* (on home equity lines of credit, like The League's R.E.A.P. program) and *ii Release No. B042* (for closed-end credit).
- NCUA Truth in Savings rules. For details, see The League's *ii Release No. 0101*.



League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

PEG/jb

© 2025 Wisconsin Credit Union League