
INFORMATIONAL MEMORANDUM



April 15, 2024

To: Chief Executive Officers
All Farm Credit System Institutions

From: Kevin J. Kramp, Director
Office of Regulatory Policy

Subject: Compliance with the Electronic Signatures in Global and National Commerce Act and Regulations B, M, and Z

The Farm Credit Administration is issuing this informational memorandum to highlight recent changes made to FCA regulations regarding the [Electronic Signatures in Global and National Commerce Act](#) (E-SIGN).

On December 11, 2023, we published a [final rule](#) on cyber risk management in the Federal Register. This rule amended our regulations at 12 C.F.R. Part 609 and rescinded our existing rules on E-SIGN. The final rule, including the rescission of our E-SIGN provisions, becomes effective January 1, 2025.

We provide this information to remind Farm Credit System institutions of their continuing responsibility to comply with the statutory provisions of E-SIGN and related provisions within the consumer credit regulations B, M, and Z. Our rescission of the E-SIGN provisions from Part 609 does not release you from that responsibility.

Also, please note that reviewing this informational memorandum is not a substitute for reviewing E-SIGN requirements.

Final rule on cyber risk management

The FCA board approved the final rule on cyber risk management on September 25, 2023. The rule revises the regulations at Part 609 to include new sections to reflect developments in cyber risk and evolving business practices. It requires every System institution to have a well-developed cyber risk management program and technology plan. The rule codifies our existing expectations on cyber risk management practices, corporate governance, and internal control systems for conducting business in an electronic environment.

Also, the rule rescinds those sections of Part 609 that discuss the statutory requirements of E-SIGN, including certain E-SIGN provisions within Regulations B, M, and Z. The E-SIGN provisions within Part 609 were largely there to remind System institutions that they must

comply with the E-SIGN statutory provisions. Our removal of those reminders does not absolve your institution from complying with E-SIGN.

All System institutions are still required to comply with the requirements under E-SIGN, as well as related requirements within Regulations B, M, and Z. FCA examiners will continue to examine your institution for compliance with E-SIGN and those applicable E-SIGN provisions within Regulations B, M, and Z.

E-SIGN statutory requirements

Enacted in June 2000, E-SIGN made it easier to conduct business in an electronic environment. With some exceptions, E-SIGN permits the use of, and establishes the legal validity of, electronic contracts, electronic signatures, and records maintained in electronic form. It governs business, consumer, or commercial transactions between two or more persons. Using electronic methods to conduct business is optional; however, all parties to a transaction must agree before it can be used.

Consumer transactions

E-SIGN contains extensive consumer disclosure provisions that apply whenever another consumer protection law, such as the Equal Credit Opportunity Act, requires the disclosure of information to a consumer in writing. "Consumer" means an individual who obtains products or services through transactions. Those products or services include credit that is used primarily for personal, family, or household purposes.

You must follow E-SIGN's specific procedures to make the required consumer disclosures electronically. E-SIGN's special disclosure rules for consumer transactions do not apply to business transactions. Under E-SIGN, some System loans qualify as consumer transactions, while others are business transactions. You will need to distinguish between the two types of transactions when determining how to comply with E-SIGN.

Exceptions

E-SIGN does not permit electronic notification for certain notices under credit agreements secured by, or under rental agreements for, primary residences. These notices include the following:

- Default
- Acceleration
- Repossession
- Foreclosure
- Eviction
- Right to cure

These notices must be in paper format. The law also requires paper notification to cancel or terminate life insurance. Thus, you are not allowed to use electronic notification to deliver some notices, particularly those that must be provided under the borrower rights provisions at [12 C.F.R. Part 617](#), subparts [A](#), [D](#), [E](#), and [G](#).

Promissory notes

E-SIGN establishes special technological and business process standards for electronic promissory notes secured by real estate. To treat an electronic version of such a promissory note as the equivalent of a paper promissory note, you must conform to E-SIGN's detailed requirements for transferable records. A transferable record is considered an electronic record if it meets all of the following conditions:

- It would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing.
- The issuer of the electronic record has expressly agreed it is a transferable record.
- It relates to a loan secured by real property.

Effect on state and federal law

E-SIGN preempts most state and federal statutes or regulations that require contracts or other business, consumer, or commercial records to be in a non-electronic form. These statutes and regulations include the Farm Credit Act of 1971, as amended (Act), and its implementing regulations.

Under E-SIGN, an electronic record or signature generally satisfies any provision of the Act, or its implementing regulations, that requires such records and signatures to be written, signed, or provided in paper form. Unless an exception applies or a necessary condition under E-SIGN has not been met, an electronic record or signature should normally satisfy any applicable provision of the Act or its implementing regulations.

Document integrity and signature authentication

Your institution must verify the legitimacy of any e-commerce communication, transaction, or access request. Document integrity helps ensure that the same document is provided to all parties. Signature authentication helps verify the identities of all parties "signing" the document.

Records retention

Your institution is allowed to maintain its records electronically even if they were originally paper records. The stored electronic record must accurately reflect the information in the original record. The electronic record must be accessible and capable of being reproduced by all persons entitled by law or regulations to review the original record. Also, certain records must still be protected from unauthorized access. Balloting material, in particular, must be protected, whether in paper or electronic form, as required by [§ 611.340](#).

For more information

If you have any questions, please contact one of the following:

- Jane Virga, Assistant General Counsel, Office of General Counsel, at virgaj@fca.gov or (703) 883-4071
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