

E-SIGN ACT: AT-A-GLANCE

As financial institutions adapt to meet the needs of consumers during the current pandemic event, below is a summary of requirements under the E-Sign Act to consider when addressing remote and online accessibility.

Summary of Primary Requirements of the E-Sign Act¹

Prior Consent, Notice of Availability of Paper Records

Prior to obtaining a consumer's consent, financial institutions must provide clear and conspicuous statement informing the consumer of any right or option to have records provided or made available on paper or in a non-electronic form, and the right to withdraw consent. Institutions must describe the procedures the consumer must use to withdraw consent; this should including any conditions, consequences, and fees in the event of such withdrawal.

Financial institutions must inform consumers that they may also request a paper copy of a record and whether any fee will be charged for that copy.

Consumers must be informed of transactions included in the agreement and any records that may be provided during the course of the institution's relationship with the consumer.

Hardware and Software Requirements

Prior to consenting to the use of an electronic record, a consumer must be provided with a statement of the hardware and software requirements for access to and retention of electronic records.

If the consumer consents electronically, or confirms his or her consent electronically, it must be in a manner that ***reasonably demonstrates*** the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.

If the hardware or software requirements needed to access the records electronically change after consumers have begun receiving electronic documents, financial institutions must notify consumers of the new requirements; give them the opportunity to withdraw their consent; and obtain their affirmative consent again.

General Considerations

Electronic disclosures should be made using a method best suited to the particular type of disclosure.

If the consumer uses electronic means to open an account or request a service, the disclosures must be provided before the account is opened or the service is requested by the consumer.

In response to a consumer request, disclosures should be made available in a reasonable amount of time and may be electronic if the consumer agrees.

Financial institutions *satisfy* the requirement to provide electronic disclosures in a form that the consumer can retain if the disclosures are provided in a standard electronic format that can be downloaded and saved or printed on a typical home personal computer.

¹ 15 U.S.C. § 7001; FDIC's Consumer Compliance Examination Manual; Consumer *Compliance Outlook - Moving from Paper to Electronics: Consumer Compliance Under the E-Sign Act (Fourth Quarter 2009)*.

Disclosures should be maintained on the website for a reasonable amount of time for consumers to access, view, and retain the disclosures.

The timing and content of disclosures required under other consumer protection laws and regulations should be carefully reviewed and complied with independent of compliance with the E-Sign Act.