

§ 609.915

(d) *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 an electronic record that:

(1) Would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(2) The issuer of the electronic record has expressly agreed is a transferable record; and

(3) Relates to a loan secured by real property.

(e) *Effect on State and Federal law.* E-SIGN preempts most State and Federal statutes or regulations, including the Farm Credit Act of 1971, as amended (Act), and its implementing regulations, that require contracts or other business, consumer, or commercial records to be written, signed, or in non-electronic form. 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 in paper form. Therefore, unless an exception applies or a necessary condition under E-SIGN has not been met, an electronic record or signature satisfies any applicable provision of the Act or its implementing regulations.

(f) *Document integrity and signature authentication.* Each System institution must verify the legitimacy of an E-commerce communication, transaction, or access request. Document integrity ensures that the same document is provided to all parties. Signature authentication proves the identities of all parties. The parties to the transaction may determine how to ensure document integrity and signature authentication.

(g) *Records retention.* Each System institution may maintain all records electronically even if originally they were 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

12 CFR Ch. VI (1-1-04 Edition)

by all persons entitled by law or regulations to review the original record.

§ 609.915 Compliance with Federal Reserve Board Regulations B, M, and Z.

The regulations in this part require fair practices and meaningful disclosures for certain lending and leasing activities. System institutions must comply with Federal Reserve Board Regulations B (Equal Credit Opportunity), M (Consumer Leasing), and Z (Truth in Lending) (12 CFR parts 202, 213, and 226).

Subpart B—Interpretations and Definitions

§ 609.920 Interpretations.

(a) E-SIGN preempts most statutes and regulations, including the Act and its implementing regulations that require paper copies and handwritten signatures in business, consumer, or commercial transactions. E-SIGN requires that statutes and regulations be interpreted to allow E-commerce as long as the safeguards of E-SIGN are met and its exceptions recognized. Generally, an electronic record or signature satisfies any provision of the Act or its implementing regulations that require such records and signatures to be written, signed, or in paper form.

(b) System institutions may interpret the Act and its implementing regulations broadly to allow electronic transmissions, communications, records, and submissions, as provided by E-SIGN. This means that the terms address, copy, distribute, document, file, mail, notice, notify, record, provide, send, signature, sent, written, writing, and similar words generally should be interpreted to permit electronic transmissions, communications, records, and submissions in business, consumer, or commercial transactions.

§ 609.925 Definitions.

We provide the following definitions that apply to the Act and its implementing regulations:

(a) *Electronic* means relating to technology having electrical, digital, magnetic, wireless, optical, electro-magnetic, or similar capabilities.

(b) *Electronic communication* means a message that can be transmitted electronically and displayed on equipment as visual text. An example is a message displayed on a personal computer monitor screen. This does not include audio- and voice-response telephone systems.

(c) *Electronic business (E-business) or electronic commerce (E-commerce)* means buying, selling, producing, or working in an electronic medium.

(d) *Electronic mail (E-mail)* means:

(1) To send or submit information electronically; or

(2) A communication received electronically.

(e) *Electronic signature* means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. Electronic signature describes a category of electronic processes that can be substituted for a handwritten signature.

Subpart C—Standards for Boards and Management

§ 609.930 Policies and procedures.

The FCA supports E-commerce and wants to facilitate it and other new technologies and innovations to enhance the efficient conduct of business and the delivery of safe and sound credit and closely related services. Through E-commerce, System institutions can enhance customer service, access information, and provide alternate communication systems. At the same time, E-commerce presents challenges and risks that your board must carefully consider in advance. Before engaging in E-commerce, you must weigh its business risks against its benefits. You must also adopt E-commerce policies and procedures to ensure your institution's safety and soundness and compliance with law and regulations. Among other concerns, the policies and procedures must address, when applicable:

(a) Security and integrity of System institution and borrower data;

(b) The privacy of your customers as well as visitors to your Web site;

(c) Notices to customers or visitors to your Web site when they link to an affiliate or third party Web site;

(d) Capability of vendor or application providers;

(e) Business resumption after disruption;

(f) Fraud and money laundering;

(g) Intrusion detection and management;

(h) Liability insurance; and

(i) Prompt reporting of known or suspected criminal violations associated with E-commerce to law enforcement authorities and FCA under part 617 of this chapter.

§ 609.935 Business planning.

When engaging in E-commerce, the business plan required under part 618 of this chapter, subpart J, must describe the E-commerce initiative, including intended objectives, business risks, security issues, relevant markets, and legal compliance.

§ 609.940 Internal systems and controls.

When applicable, internal systems and controls must provide reasonable assurances that System institutions will:

(a) Follow and achieve business plan objectives and policies and procedures requirements regarding E-commerce; and

(b) Prevent and detect material deficiencies on a timely basis.

§ 609.945 Records retention.

Records stored electronically must be accurate, accessible, and reproducible for later reference.

Subpart D—General Requirements for Electronic Communications

§ 609.950 Electronic communications.

(a) *Agreement.* In accordance with E-SIGN, System institutions may communicate electronically in business, consumer, or commercial transactions. E-commerce transactions require the agreement of all parties when you do business.

(b) *Communications with consumers.* E-SIGN and Federal Reserve Board Regulations B, M, and Z (12 CFR parts 202, 213, and 226) outline specific disclosure requirements for communications with consumers.