



Compliance Corner

FEDERAL RESERVE BANK OF PHILADELPHIA

Prepared for institutions supervised by the Consumer Compliance & CRA Unit

Welcome to **Compliance Corner**, the section of SRC *Insights* dedicated to consumer compliance and CRA issues at state member banks and bank holding companies. We hope that you will find the expanded coverage of compliance issues informative, and we encourage you to recommend topics for future articles.

E-Sign Act Permits Electronic Delivery of Contracts, Signatures, Disclosures, and Records

by Eddie L. Valentine, Supervising Examiner

The Electronic Signatures in Global and National Commerce Act (the "E-Sign Act") was signed into law on June 30, 2000, and provides a general rule for the electronic delivery of contracts, signatures, disclosures and records for transactions in interstate or foreign commerce. The E-Sign Act (15 U.S.C. 7001 *et seq.*) generally provides that electronic documents and signatures have the same validity as paper documents and handwritten signatures. This article will focus on the consumer consent provisions found in section 101(c)(1) of the E-Sign Act.

No Implementing Regulations

The E-Sign Act became effective on October 1, 2000, with the exception of the record retention requirements that were phased in on March 1,

2001. However, the E-Sign Act does not require the establishment of any new implementing regulations. Instead, the Board of Governors of the Federal Reserve System will incorporate the provisions of section 101(c)(1) into existing regulations.

On March 29, 2001, the Federal Reserve Board issued interim final rules to establish uniform standards for the electronic delivery of federally mandated disclosures under five consumer protection regulations:

- Regulation B - *Equal Credit Opportunity Act*
- Regulation E - *Electronic Fund Transfers Act*
- Regulation M - *Consumer Leasing Act*

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CIRCULATE TO:

- Compliance Officer
- Compliance Manager
- Compliance Staff
- _____
- _____
- _____

- Regulation Z - *Truth in Lending Act*
- Regulation DD - *Truth in Savings Act*

Under the Board's interim final rules, financial institutions, creditors, lessors, and others may deliver disclosures electronically if they obtain consumers' consent in accordance with the requirements of the E-Sign Act. Consistent with proposed rules issued in August 1999, the Board's interim final rules also provide guidance on the timing and delivery of electronic disclosures to ensure consumers have adequate opportunity to access and retain the information.

Pre-October 1, 2000 Agreements Are Exempt

Agreements to deliver information electronically that were reached with consumers before October 1, 2000 are exempt from the consumer consent provisions of section 101(c)(1) of the Act. However, any agreements made with new or existing customers on or after October 1, 2000 are subject to the requirements of section 101(c)(1), which generally supersede consumer consent procedures relating to electronic disclosures that might have been set forth in other regulations.

Consumer Consent Provisions

Section 101(c) of the E-Sign Act details the consumer consent provisions that apply when using an electronic record to provide or make available certain information that must otherwise be made available to a consumer in writing. The Board of Governors has determined that this section applies to certain consumer disclosures required under Regulations B, E, M, Z, and DD.

Specifically, section 101(c)(1) would allow a financial institution to issue electronic records to a consumer to satisfy any statute or regulation that requires such information to be in writing, after first obtaining the consumer's affirmative consent. However, before a consumer can provide affirmative consent, the consumer must be provided with the following information:

- Any right or option to receive a disclosure in paper form.
- Whether the consent applies only to a particular transaction or to categories of transactions that might be provided during the course of the parties' relationship.
- The right to withdraw consent to have records provided electronically, including any conditions, consequences, or fees associated with doing so. The institution must describe the procedures for withdrawing consent and for updating information needed to contact the consumer electronically, including an updated e-mail address.
- How the consumer may obtain a paper copy of the electronic record upon request, and if a fee could be charged for the request.
- The hardware and software requirements for access to and retention of the electronic information.

In addition, if the institution has subsequent requirements for hardware or software changes, it must:

- Disclosure the new requirements.

- Allow the consumer the option to withdraw consent without imposing fees or other consequences.

The consumer must provide the required affirmative consent electronically. The electronic consent should also 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.

Compliance Responsibilities

Financial institutions should review any products delivered through electronic means and their supporting systems to ensure compliance with applicable provisions of the Act and the interim final amendments to Regulations B, E, M, Z, and DD. If you have any questions regarding the consumer consent provisions of the E-Sign Act or the amendments to the noted regulations, please contact Supervising Examiner Eddie L. Valentine (eddie.valentine@phil.frb.org) at (215) 574-3436 or Connie Wallgren, Manager, Consumer Compliance/CRA Examinations Unit, (connie.wallgren@phil.frb.org) at (215) 574-6217. ■

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Test Your Compliance Knowledge

ACROSS

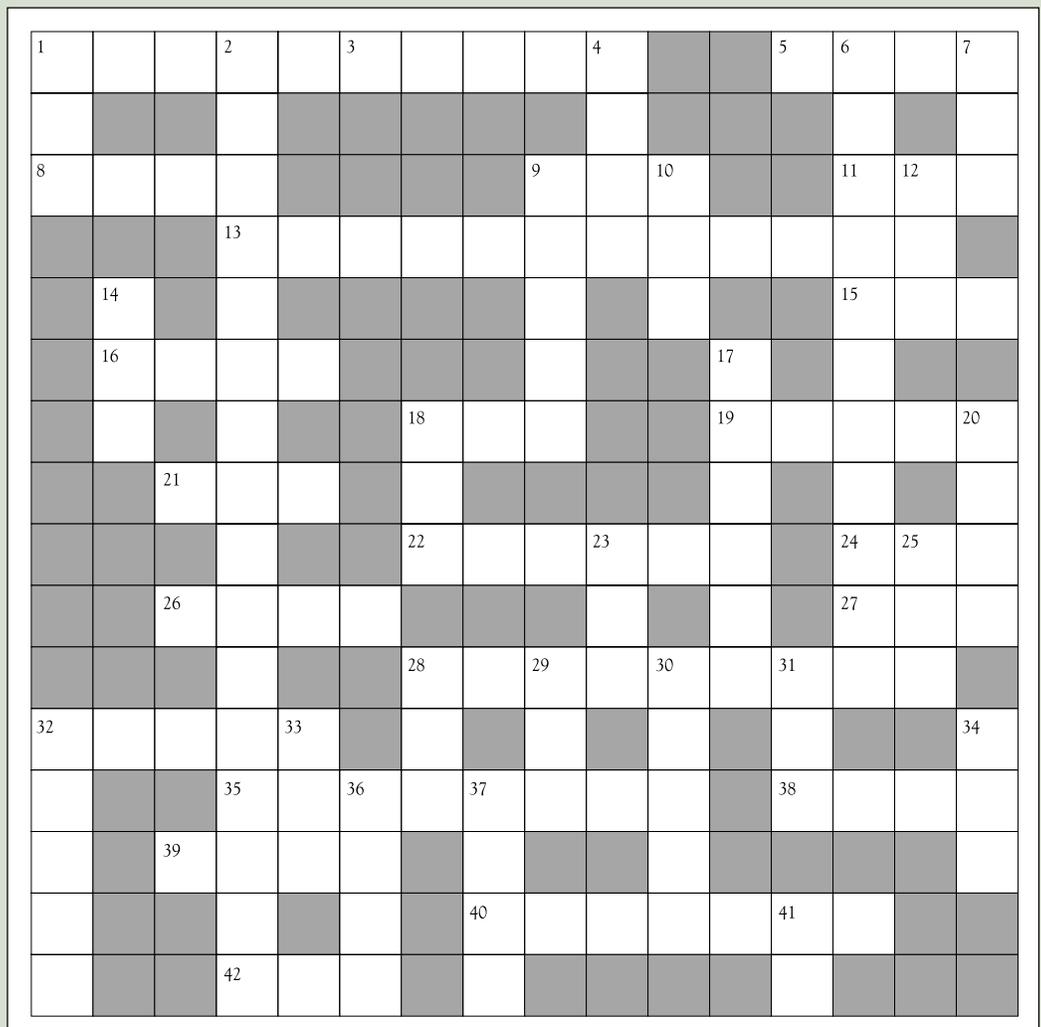
- 1 Adherence to banking regulations
- 5 One belonging to the same group
- 8 The largest, oldest stock exchange in the US
- 9 Goal
- 11 Charge for services performed
- 13 The process of removing or diminishing regulations or restrictions
- 15 Recommended Daily Allowance (abbr.)
- 16 The act governing electronic transfers (abbr.)
- 18 The end result
- 19 A combination
- 21 The act that requires a bank to maintain a public file including a report on its performance under the act
- 22 The recipients of monies paid
- 24 To flow out or diminish
- 26 The act far from being GLIB
- 27 Ask — what your country can do for you...
- 28 What the workplace and a good stock portfolio have in common
- 32 Usually the largest portion of a bank's assets
- 35 One who plays a critical role in the oversight of a bank
- 38 The act that promotes the granting of credit to credit-worthy individuals
- 39 To quote a provision of a regulation
- 40 The Bank _____ Act
- 42 The net difference between loans and deposits maturing in one year or less

DOWN

- 1 Against
- 2 Subprime or high cost

- credit made in an unscrupulous or abusive manner
- 4 Intentionally bad or wicked
- 6 The function that the Fed shares with a police department
- 7 Net income divided by total equity (abbr.)
- 9 Independent examination of a bank's books and records
- 10 To deface
- 12 To complete
- 14 National currency of Japan
- 17 Deceptive or improper practices
- 18 A short period of sleep
- 20 Everyone from consumers to governments is burdened by this
- 23 The night before a holiday
- 25 A young man
- 28 A cube used to gamble
- 29 Formerly in military service
- 30 Harder to find
- 31 Emotion often associated with 2 Down
- 32 Key rate offered by major London banks (abbr.)
- 33 Relax and — awhile
- 34 Home Mortgage Disclosure Act's Loan Application Register (abbr.)
- 36 What you do after you have sown
- 37 The safest liquid commodity
- 41 The regulation that restricts the time a bank can hold a deposit

Answers on page CC2



Referral of RESPA Violations to the Department of Housing and Urban Development (HUD)

Federal Reserve examiners have authority under the Federal Reserve Act to examine state member banks for compliance with the Real Estate Settlement Procedures Act (RESPA), implemented by HUD's Regulation X. When examiners find violations of RESPA and Regulation X during the course of a compliance examination, they will cite the violation in the report of examination and direct the state member bank to correct the practice.

The Board of Governors of the Federal Reserve System has established a process for referring violations of

certain sections of RESPA and Regulation X to HUD. Specifically, violations of the following sections of RESPA and Regulation X will be forwarded to HUD for consideration of appropriate enforcement actions.

Anti-Kickback Provisions

RESPA and Regulation X prohibit compensated referrals of real estate settlement business. Any violation of these sections, 12 U.S.C. 2607 and 24 CFR 3500.14, is subject to the enforcement provisions outlined in 24 CFR 3500.19.*

Affiliated Business Arrangements

An affiliated business arrangement is not a violation of Section 8 of RESPA (12 U.S.C. 2607) or Section 3500.14 of Regulation X (24 CFR 3500.14) if the conditions set forth in Section 3500.15 of Regulation X are satisfied. If the conditions are not satisfied, the enforcement provisions outlined in Section 3500.19 of Regulation X may go into effect.

Title Companies

Section 3500.16 of Regulation X (24 CFR 3500.16) requires any seller of a property to be purchased with the assistance of a federally related mortgage loan to comply with Section 9 of RESPA (12 U.S.C. 2608). Section

9 prohibits a seller of property that will be purchased with the assistance of a federally related mortgage loan from requiring the buyer to purchase title insurance from any particular title company as a condition of the sale. Violations of Section 3500.16 are deemed to violate Section 9 of RESPA and shall be sanctioned by HUD as appropriate.

Escrow Accounts

A servicer's failure to submit escrow account statements meeting the requirements of Section 3500.17 of Regulation X (24 CFR 3500.17) is also in violation of Section 10(d) of RESPA (12 U.S.C. 2609). For each violation, the HUD Secretary may assess a civil money penalty, which may be doubled if there is evidence of intent.

Mortgage-Servicing Transfers

Various disclosure requirements and other responsibilities pertaining to mortgage-servicing transfers are outlined in Regulation X (24 CFR 3500.21). HUD may assess different levels of damages and costs for violations of these requirements, depending upon whether actions involve an individual or a class action.

If you have any questions regarding RESPA, Regulation X, and referrals to HUD, or any other compliance examination issue, please contact Connie Wallgren, Manager, Consumer Compliance/CRA Examinations Unit, (connie.wallgren@phil.frb.org) at (215) 574-6217. ■



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The views expressed in this newsletter are those of the authors and are not necessarily those of this Reserve Bank or the Federal Reserve System.

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Compliance Corner is published quarterly and is distributed via *SRC Insights* to institutions supervised by the Federal Reserve Bank of Philadelphia. *SRC Insights* is available on the Federal Reserve Bank's web site at www.phil.frb.org. Suggestions, comments, and requests for back issues are welcome in writing, by telephone (215-574-3760), or by e-mail (Cynthia.Course@phil.frb.org). Please address all correspondence to: Cynthia L. Course, Federal Reserve Bank of Philadelphia, SRC - 7th Floor, Ten Independence Mall, Philadelphia, PA 19106-1574.

* See U.S. Code via GPO Access at www.access.gpo.gov/uscode/uscmaint.html and Code of Federal Regulations via GPO Access at www.access.gpo.gov/nara/cfr/cfr-table-search.html.