



Hot Topics in Compliance: ESIGN

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June 18, 2019



Before we get started...

- Today's presentation slides can be downloaded at www.wolfandco.com/webinars/2019
- The session will last about 50 minutes, and we'll then have time for Q & A.
- Our audience will be muted during the session.
- Please send your questions in using the "Questions Box" located on the webinar's control panel.

About Wolf & Company, P.C.

- Established in 1911
- Offer Audit, Tax, and Risk Management services to over 250 financial institutions
- Offices located in:
 - Boston, Massachusetts
 - Springfield, Massachusetts
 - Albany, New York
 - Livingston, NJ
- Over 260 professionals



As a leading regional firm founded in 1911, we provide our clients with specialized industry expertise and responsive service.

Financial Institution Expertise

- Over 85 Risk Management Professionals:
 - IT Assurance Services Group
 - Internal Audit Services Group
 - Regulatory Compliance Services Group
 - WolfPAC® Solutions Group
- Provide services to over 250 financial institutions:
 - Approximately 90 FIs with assets > \$1B
 - Approximately 25 publicly traded FIs
 - Constant regulatory review of our deliverables
- Provide Risk Management Services in 27 states and 2 U.S. territories

Introduction



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Today's Objectives

As part of today's session we will discuss:

- How institutions are using ESIGN technologies and what examiners are saying
- What should be included in your ESIGN strategy
- Examples of what it looks like when done well
- Pitfalls to avoid

Outline

1. ESIGN Overview
2. Impacted Products and Services
3. ESIGN Disclosure and Consent Process
4. Additional Discussion Points
5. Questions



ESIGN OVERVIEW

What is ESIGN?

Electronic Signatures in Global and National Commerce Act

Signed into law in 2000

Applies to interstate and global commerce

Allows use of electronic records to satisfy written disclosures required by laws and regulation if the consumer consents; provides electronic signatures to have same validity as written ones

Uniform Electronic Transactions Act

Enacted in 47 states (all but New York, Illinois and Washington)

Establishes validity of electronic signatures/records at intrastate level

Typically supersedes E-SIGN, except for consumer consent provisions

Failure to properly adhere to ESIGN could result in major issues such as:

- Technical violation of law/regulation
- Increased liability and reimbursement over fees
- Extended time period for providing certain disclosures (ex. Closing Disclosure)
- Extended rescission period
- Extended period to report errors (EFT liability)

IMPACTED PRODUCTS & SERVICES

Where do institutions utilize ESIGN?

- Deposit Products
 - Online account opening
 - Online periodic statements (E-Statements)
 - Online banking enrollment
 - Online bill pay enrollment
 - Mobile banking enrollment
 - Periodic notices (ex. Changes in Terms)
 - Foreign Remittance Disclosures



Where do institutions utilize ESIGN?

- Lending Products
 - Online loan applications (ex. mortgages, equities, consumer)
 - Disclosure distribution (ex. 3 day disclosures, decision documents, closing disclosures)
 - Appraisal distribution
 - Online periodic statements
 - Periodic notices (ex. Changes in Terms)



ESIGN Exemptions

There are certain limited situations where regulations permit distribution of electronic disclosures without ESIGN consent.

- Certain ECOA application disclosure language
- ARM Program Disclosures and CHARM booklet
- HELOC application disclosures
- Credit card application and solicitation disclosures



ESIGN Exemptions

There are certain limited situations where regulations permit distribution of electronic disclosures without ESIGN consent.

- Disclosures for open and closed-end credit advertisements
- Certain HOEPA Disclosures
- Disclosures provided upon request under TISA



ESIGN Requirements

Institutions are not required to offer products in electronic form, but need to be cautious about the nature of the product and the manner in which the product is opened or applied for and may have to provide disclosures electronically in certain circumstances such as:

- Loan applications
- Online deposit account opening
- EFT access devices



ESIGN DISCLOSURE AND CONSENT PROCESS

ESIGN Timeline

1. Consumer provided statement of rights under ESIGN (“ESIGN Disclosure”)
2. Consumer consents in manner that reasonably demonstrates that they can access electronic disclosures
3. Institution may now provide the applicable disclosures electronically until such time that consumer withdraws consent or hardware/software requirements change



ESIGN Disclosure Content

The ESIGN disclosure is required to disclose certain information relating to the consumer's rights relating to paper and electronic documents, including the following:

1. Right of consumer to have record made available in paper form
2. Right to withdraw consent (including conditions, consequences, fees)
3. Description of scope of consent (single record, category of records)
4. Procedures in order to withdraw consent

ESIGN Disclosure Content

The ESIGN disclosure is required to disclose certain information relating to the consumer's rights relating to paper and electronic documents, including the following:

5. Procedures for updating electronic contact information (ex. email address)
6. How the consumer can obtain paper copy and if there are fees
7. Hardware/software requirements



ESIGN Consent

Consent **MUST** demonstrate that consumer can access the disclosure in the electronic format that it is to be provided in

This tends to be the area where institutions trip up the most; without properly following this step, the entire consent process is invalidated



ESIGN Consent

- How can the institution make the enrollment process compliant?
 - Add a control to ensure the disclosure has to be opened prior to completing enrollment
 - If the institution is limited technologically, add a code at the bottom of the disclosure and require that the consumer type the code in before being able to move forward with the enrollment process
 - Consider providing everything in web page format only (ex. account opening)

ESIGN Consent

- Common consent pitfalls:
 - Consumer can bypass ESIGN disclosure without opening it
 - System/vendor has no ability to demonstrate that consumer can access the document in the required format
 - Institution accepts the consent via a different manner than how the subsequent documents will be provided

ESIGN Consent

- Common consent pitfalls:
 - Obtaining consent in person, or with a device owned by the institution
 - Assuming the consumer emailing you is consent (it isn't)
 - Failing to reconfirm consent with consumer when systems change (ex. core system conversion)



Disclosures

The order of when electronic documents are provided in relation to consent is critical

With the exception of the ESIGN disclosure, consent must occur **BEFORE** any subsequent disclosures are provided



- How can the institution make the disclosure process compliant?
 - Establish a formal timeline for when disclosures are given
 - Ensure ESIGN disclosure is put at the front of the process
 - Avoid consolidation
 - Double check process any time vendor implements a change or upgrade

ESIGN Consent

- Common disclosure pitfalls:
 - ESIGN Disclosure and the other applicable electronic disclosures are all consolidated into a single document
 - ESIGN Disclosure and other documents provided on same page, but ESIGN disclosure isn't included before the others
 - ESIGN Disclosure appears on later screen, after other documents have already been provided
 - ESIGN Disclosure lacks certain content

ADDITIONAL DISCUSSION POINTS

Additional Discussion Points

- Online/Mobile Banking
 - While inherently electronic in nature, ESIGN consent still applies
 - Disclosures typically required under Regulation E when consumer “contracts” for the service
 - Historically has not been an examiner concern, but keep an eye on based on recent scrutiny



- Validity of Electronic Signatures
 - Under E-SIGN, electronic signatures have same validity as wet signatures (interstate and global transactions)
 - Check state law for ability to utilize electronic signatures within your particular state



Additional Discussion Points

- Business customers/transactions
 - ESIGN Consumer consent provisions technically only required for “consumers”
 - Varying options for business customers
 - Follow consumer consent provisions
 - Obtain permission/consent in other form
 - From a liability standpoint, the institution should obtain some sort of consent from customer

Additional Discussion Points

- More ESIGN governance Strategies to consider:
 - Keep up with industry trends and enforcement
 - New Product & Service Development
 - Change Management Processes
 - Monitoring & Testing
 - Written Policies & Procedures

- ESIGN Act

<https://www.govinfo.gov/content/pkg/PLAW-106publ229/pdf/PLAW-106publ229.pdf>

- Uniform Law Commission - UETA

<https://www.uniformlaws.org/committees/community-home?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034>

- Federal Reserve Consumer Compliance Outlook
Fourth Quarter 2009

https://consumercomplianceoutlook.org/2009/fourth-quarter/q4_02/

Questions?



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