

Frequently Asked Compliance Question

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Question

With much of the banking industry moving to an electronic model, under the Truth in Savings Act (“TISA”), for in-person account openings, would it be sufficient for our institution to provide our TISA account opening disclosures to customers through email instead of through paper?

Short Answer

In order to provide TISA disclosures electronically, financial institutions must adhere to both TISA and Electronic Signatures in Global and National Commerce Act (“ESIGN”) rules. Under TISA, disclosures must be provided prior to establishing the account or providing a service, whichever is earlier. Under ESIGN, the consumer must affirmatively consent to receive disclosures electronically prior to any electronic disclosures being dispersed. Financial institutions may only provide electronic disclosures in place of paper copies if both qualifications have been met.

Answer Details

Section 101(c)(1) of ESIGN requires that before electronic disclosures be provided, the institution provide a “clear and conspicuous” statement informing the consumer of various rights that they are afforded with respect to electronic disclosures. The consumer must then consent, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information (in this case the disclosures) that are subject to the consumer’s consent. Due to this consent requirement, the consumer would need to consent in electronic form, using a device that they would ordinarily be expected to access the electronic disclosures from. For example, having a consumer consent by signing a document in person would not be acceptable, nor would be consenting via the computer of an employee of the institution. An example of acceptable consent would be the consumer consenting via a home computer or mobile device. In order for the institution to comply with TISA and E-Sign, the institution must be able to demonstrate that the account opening workflow allows the institution to abide by the timing requirements of both TISA and E-Sign prior to providing the disclosures electronically.

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