

Request for Regulatory Concurrence with Temporary Alternative Processes Related to COVID-19

Current State

Stay-At-Home Executive Orders in Oregon, Idaho and Washington require the Bank to immediately develop alternative processes to those routinely carried out in the face-to-face setting at a Bank location or on customer premises. Such alternative processes must fully address numerous disclosure and contract execution practices. The banks does not offer online account origination and does not have E-SIGN compliant technology solutions in place except for in relation to certain aspects of mortgage transactions.

E-SIGN Act

Under current law electronically delivered documents and signatures obtained electronically are considered legally valid when the Bank obtains the consumer's consent for this type of delivery. Further, the law requires provision of certain disclosures to the consumer relative to required hardware and software and the ability to obtain paper copies. The Bank must retain evidence of the consumer's ability to access the disclosures in the format presented. The E-SIGN Act addresses the following:

- Consumers consent to electronic delivery of disclosures and are not forced to accept that format.
- Disclosures sent electronically are in a format the consumer can access using hardware and software in their possession, and such disclosures are actually received and viewed by consumers.
- Signatures collected electronically are legally valid.

Official Guidance and Industry Association Advocacy Underway

The FDIC has indicated prudent efforts by Banks to respond to COVID-19 needs will not be subject to examiner criticism. Additionally, the American Bankers Association is in conversation with regulators advocating for the easing of E-SIGN requirements given present circumstances. Notwithstanding such potential assurances, the Bank's alternative processes pose risk.

Risk

The risk associated with delivering disclosures electronically without E-SIGN compliance is that the disclosures may not be considered legally valid. For example, if a disclosure of the Right to Receive a Copy of an Appraisal required by Regulation B were to be sent electronically without E-SIGN compliance, the Bank may be cited in violation of E-SIGN for non-compliant electronic delivery and in violation of Regulation B because the non-compliant delivery method renders the disclosure invalid. This example, while specific to the E-SIGN Act and Regulation B, carries for any number of consumer protection regulations, including but not limited to Regulations CC, DD, E, Z and X depending upon the disclosure or document.

Proposed Temporary Alternative Processes in Response to COVID 19 Effective Immediately and until such time that social distancing mandates are terminated*:

Regulatory concurrence is requested on the following:

- The Bank will send disclosures and documents via secure e-mail. Prior to sending, the consumer's consent to email delivery will be obtained through e-mail correspondence. This correspondence will be retained.
- Upon receipt of a consumer's consent, the Bank will e-mail disclosures and documents. Emails containing disclosures and documents will be sent securely to protect consumer privacy. These e-mails will be retained.
- To retain evidence of consumer receipt and ability to access disclosures provided via email, consumers will be asked to respond to the email they received (containing such disclosures) confirming receipt and the ability to view the disclosures. This correspondence will be retained.
- Electronic delivery of disclosures and documents will be supplemented with paper delivery via mail (including U.S. Mail or an overnight carrier such as UPS or FedEx). The Bank will request paper documents with original signatures to further support the validity of electronically obtained signatures but accepts risk that consumers may not follow up with paper documents including wet signature.
- Procedures will be developed and appropriately communicated to employees who will engage in electronic delivery of disclosures and other documents.
- In the event regulators release guidance easing E-SIGN requirements related to COVID-19, the Bank will update procedures to conform to Guidance.

**Temporary alternative processes may be carried out after social distancing mandates are terminated in the event a customer remains under quarantine.*

Disclosures and Documents Ineligible for Temporary Alternative Processes

The temporary process does not apply to the following situations: Transactions secured by real property, except (i) to the extent outside counsel determines that original signatures are not needed at closing to ensure an enforceable, first-priority lien on the real estate or (ii) if the real property secured transaction is a renewal or modification that does not require an amendment to the real estate security instrument, Aircraft and marine vessel financing when the applicable U.S. Federal agency that maintains the lien registry for perfecting security interests for such collateral has a specified electronic signing and filing process during the COVID-19 outbreak, Transactions with state and local governments to the extent that the state or local government requires an alternative signing process during the COVID-19 outbreak.