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Dear CU PolicyPro Clients,

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Content FAQs

Question: Under ESIGN, can a credit union now require its members to conduct business electronically?

Answer: No, the credit union may not require members to conduct business electronically. Engaging in electronic transactions is strictly voluntary. The member must first agree to enter into electronic transactions and affirmatively consent to receiving electronic records after receiving full disclosure of terms and conditions relating to the transaction.

Question: Does the credit union have to comply with ESIGN if the state has adopted the Uniform Electronic Transactions Act?

Answer: ESIGN generally preempts state E-Signature laws, except with regard to a state that has adopted the Uniform Electronic Transactions Act (UETA). If a state's legislature has made any exceptions to the scope of UETA, the federal statute will preempt these exceptions to the extent that they are inconsistent with ESIGN. However, if a state has adopted UETA as approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL), the state's law will govern electronic signature and records. Apart from UETA, the Act allows a state law to modify, limit or supersede the federal statute only if its provisions: are consistent with ESIGN; do not favor one specific technology for electronic signature or records; and make reference to the federal statute if enacted after June 30, 2000. Michigan has adopted UETA.

Question: What are requirements to maintain original documentation under ESIGN?

Answer: ESIGN permits documents that are converted into electronic files to be treated, for all legal purposes, with the same rights as the originals. There are questions from credit unions about whether these documents will stand up in a court of law. The answer to that is it depends. Under ESIGN these documents are supposed to have the same

rights as the originals, however this has not been widely tested in a court of law. In addition, some regulatory agencies may still request to see the original documents upon an examination. Credit unions who wish to convert their files to electronic documents are advised to make a business decision based on the potential legal consequences of doing so. For minor documents, a credit union may wish to convert these files to electronic versions. For more significant files, the credit union may wish to hold on the originals. The credit union attorney should be consulted for clarification.

Technical FAQ

Question: I am an admin level user, but I can't change my own access level. Why not?

Answer: The only thing you can't do as an admin in the system is to change your own access level. Because only admins can set up users, this prevents an admin from inadvertently leaving no admin users in the system and being unable to create/edit users.

If your access level needs to be changed from admin, another admin user must login and change it. You can also send a request to hksupport@cusolutionsgroup.com for assistance.

If you have any additional questions or need further assistance, please contact the support team at hksupport@cusolutionsgroup.com.

For more frequently asked questions, visit [the CU PolicyPro FAQs page](#) which includes all FAQs featured in previous newsletters, as well as many others!

Update your CU PolicyPro Bookmark!

If you have CU PolicyPro bookmarked, please check the link you are using and update it if necessary. Last year we moved CU PolicyPro to a new server and changed the official URL to <http://policypro.leagueinfosight.com>. Previous URLs linking to CU PolicyPro may have an expired security certificate which will give a security warning when you try to access the link. Updating your link to <http://policypro.leagueinfosight.com> will resolve this issue.

Monthly OPS Notes Release: E-Sign Act

The Electronic Signatures in Global and National Commerce Act ("ESIGN") is a United States federal law enacted to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring contracts entered into electronically and on paper have equal validity and legal effect.

An electronic signature (e-signature) is simply an electronic sound, symbol, or process, attached to or associated with a contract or other record that was executed by a person with the intent to sign the record. An electronic record (e-record) is a contract or other record created, generated, sent, communicated, received, or stored by electronic means. Other than providing these broad definitions, ESIGN does not specify any technical requirements for e-signatures or records. This means that credit unions can utilize any number of different technologies to facilitate "e-contracts" with their members. ESIGN makes clear that an oral

communication or a recording of an oral communication does not qualify as an electronic record, except as otherwise provided under applicable law.

The ESIGN Act requires that the credit union provide the member with a disclosure before engaging in any electronic signature activities. The disclosure must inform the member:

- Of their rights and options to receive the record in a paper or non-electric form;
- The hardware and software requirements for access to and retention of the electronic records;
- Their right to withdraw the consent to have the record provided or made available in an electronic form; and the conditions, consequences and fees which might apply in the event of such withdrawal;
- Whether the consent applies only to the particular transaction which created the obligation to provide the record, or to identified categories of records that may be provided or made available during the course of business with the credit union;
- That the member is responsible for maintaining the information needed for the credit union to contact the member electronically;
- The members right to obtain a paper copy of the electronic record and any fee charged for the copy; and
- The steps the member must take to withdraw consent for electronic transactions.

Before the member's consent can be relied upon by the credit union, the member must confirm his or her consent electronically, in a manner that reasonably demonstrates that they can access information in the electronic form that will be used to provide the information that is the subject of the consent.

If the credit union changes the hardware or software requirements to access the members records the credit union must inform members of the revised hardware and software requirements for access to and retention of the electronic records, and that the member has the right to withdraw their consent without the imposition of a fee or any other consequences.

There are several documents that are not covered by ESIGN and the member must still receive in a paper format. These include:

- Electronic notification for court orders, notices or official court documents.
- Electronic notification for notices of default, acceleration, repossession, foreclosure, eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a person's primary residence.

Before a credit union institutes an ESIGN program they should consult with an attorney to determine how state laws and court process may affect ESIGN ability in their state. The

2010 robo-signing mortgage debacle set court precedence in many states not to accept electronic documentation in the case of mortgage transactions.

This edition of OPS NOTES was prepared by the Michigan Credit Union League.

Questions?

If you have any questions regarding the CU PolicyPro content, or questions on how to use the system, please contact hrsupport@cusolutionsgroup.com.

If this information was forwarded to you, and you'd like to be on the distribution list to receive information and updates related to CU PolicyPro, contact hrsupport@cusolutionsgroup.com.

Thanks and have a great week!