



Bureau of Consumer Financial Protection
1700 G Street NW
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June 3, 2020

Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic

The Bureau of Consumer Financial Protection (Bureau) recognizes the serious impact the COVID-19 pandemic is having on the financial lives of many consumers and on the operations of many supervised entities, including credit card issuers subject to TILA (15 U.S.C. 1601 *et seq.*), which is implemented by the Bureau's Regulation Z (12 CFR part 1026).

The Bureau understands that during the pandemic, some credit card issuers are receiving far more phone calls from consumers than usual and may be operating with reduced staffing or servicing capability. Consumers may reach out to issuers seeking relief that issuers may not be able to provide without first providing certain written disclosures required by Regulation Z. For example, consumers may seek to open a new account or request a temporary reduction in APR or fees for an existing account.

Where underlying law, such as Regulation Z, requires a written disclosure to a consumer, the Electronic Signatures in Global and National Commerce Act (E-Sign Act)¹ allows the disclosure to be provided electronically subject to certain conditions, including consumers' consent—commonly known as “E-Sign consent.” Some firms have observed that obtaining E-Sign consent can result in longer telephone transactions, dropped or transferred calls, and additional calls. For example, an issuer's normal practice for obtaining E-Sign consent during a phone call might be to have a consumer, on the consumer's computer, click a link in an email sent from the issuer so that the consumer may provide consent. That may take time or cause disruption as the consumer shifts to another communications channel (the computer) without dropping the

¹ 15 U.S.C. 7001 *et seq.*

phone call. And if the consumer cannot access email during the phone call, the consumer would need to access the issuer's email later, potentially requiring the consumer to call the issuer a second time to finish the transaction, thereby reentering a phone queue. Obtaining E-Sign consent may thus delay assistance to consumers seeking relief.

In light of these considerations, the Bureau is issuing this statement of temporary and targeted flexibility for credit card issuers regarding electronic provision of certain disclosures required to be in writing during this pandemic. The Bureau intends that this supervisory and enforcement flexibility will facilitate credit card issuers' ability to quickly assist consumers during the pandemic.

Requirements for Electronic Provision of Written Disclosures

Regulation Z generally requires that credit card issuers provide disclosures to consumers in writing.² Where underlying law, such as Regulation Z, requires a written disclosure to a consumer, the consumer consent provisions of the E-Sign Act allow the disclosure to be provided electronically subject to several requirements, some of which are summarized herein. First, the issuer must obtain a consumer's affirmative consent to the electronic provision.³ Second, the issuer must provide certain disclosures to the consumer prior to obtaining the consumer's consent.⁴ And third, the consumer must "consent[] electronically, or confirm[] his or her consent electronically, in a manner that reasonably demonstrates 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."⁵ This third requirement, combined with another provision that states that oral communications are not electronic records for purposes of the E-Sign Act's consumer

² 12 CFR 1026.5(a)(1).

³ See 15 U.S.C. 7001(c)(1)(A) ("[I]f a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if (A) the consumer has affirmatively consented to such use and has not withdrawn such consent....").

⁴ 15 U.S.C. 7001(c)(1)(B) and (c)(1)(C)(i).

⁵ 15 U.S.C. 7001(c)(1)(C)(ii)

disclosure provisions, precludes entities such as card issuers from obtaining a consumer's consent orally to electronic delivery of written electronic disclosures.⁶

Supervisory and Enforcement Flexibility

These E-Sign requirements may make it harder for consumers to obtain relief quickly where the Bureau's rules require written disclosures so long as the pandemic is leading to unusually high call volumes at issuers and constraining their staff capacity. The Bureau is issuing this statement to mitigate that problem.

The Bureau will take a flexible supervisory and enforcement approach during this pandemic regarding card issuers' electronic provision of disclosures required to be in writing for account-opening disclosures and temporary rate or fee reduction disclosures mandated under the provisions governing non-home secured, open-end credit in Regulation Z. Specifically, this statement pertains to oral telephone interactions where a card issuer may seek to open a new credit card account for a consumer, to provide certain temporary reductions in APRs or fees applicable to an existing account, or to offer a low-rate balance transfer.⁷ In these instances, the Bureau does not intend to cite a violation in an examination or bring an enforcement action against an issuer that during a phone call does not obtain a consumer's E-Sign consent to electronic provision of the written disclosures required by Regulation Z, so long as the issuer during the phone call obtains both the consumer's oral consent to electronic delivery of the written disclosures and oral affirmation of his or her ability to access and review the electronic written disclosures.⁸

⁶ See 15 U.S.C. 7001(c)(6), which states: "An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection." Accordingly, a consumer's oral consent to electronic provision of a written disclosure does not satisfy the requirement in 15 U.S.C. 7001(c)(1)(C)(ii) that the consumer's consent or confirmation of consent "reasonably demonstrate" that the consumer can access the information in the disclosure.

⁷ See, e.g., 12 CFR 1026.5(b)(1)(i); 1026.9(c)(2)(v)(B)(1); 1026.55(b)(1).

⁸ Regulation Z section 1026.25 sets forth the record retention requirement for creditors subject to the regulation's requirements. It states that "[a] creditor shall retain evidence of compliance with this part...for two years after the date disclosures are required to be made or action is required to be taken." The Bureau expects that card issuers that choose to take advantage of the supervisory and enforcement flexibility set forth in this statement will retain evidence of compliance with this statement. For example, issuers should obtain and document consumers' oral consent to electronic delivery of the written disclosures and oral affirmation of their ability to access and review the electronic written disclosures. Many issuers document oral communications through retention of call recordings or notes connected to the consumer's account.

Further, the Bureau expects that issuers will take reasonable steps during the phone call to verify consumers' electronic contact information. For example, if during a phone call a consumer provides an issuer with the consumer's email address, the Bureau expects that the issuer will confirm the correctness of the consumer's email address, such as by clearly and understandably reading the email address back to the consumer so that the consumer can verify its correctness. In other instances, an issuer may already have an email address for the consumer on file. In these instances, the Bureau expects that during the phone call the issuer would clearly and understandably state that on-file email address to the consumer so that the consumer can verify its accuracy.

This statement provides issuers supervisory and enforcement flexibility regarding electronic provision of certain Regulation Z disclosures identified above. The Bureau does not intend to apply this flexibility to other requirements of Regulation Z.

The Bureau has also issued FAQs focusing on existing regulatory flexibilities for open-end credit (that is not home-secured) that may be useful for assisting customers.⁹

⁹ See https://www.consumerfinance.gov/documents/8818/cfpb_faqs_open-end-rules-covid-19_2020-05.pdf.