

Electronic Payments

Electronic Records and Signatures Conference

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Legal requirements

- Electronic Funds Transfer Act and Reg. E
- NACHA Requirements
- Other Authentication requirements
- Recent e-Payment Developments

EFTA and Reg. E

- EFTA
 - Addresses “preauthorized transfers”
 - may be authorized only in writing
 - by the consumer
 - copy required to be provided to consumer
 - Does not address authorization requirements for one-time transfers

EFTA and Reg. E

- Reg. E
 - Refines rules applicable to preauthorized transfers, but retains requirement for written authorization
 - Adds requirement that writing be signed or similarly authenticated if transfer is a debit from a consumer's account
 - Telephone-initiated transfers not EFTs
 - Does not address authorization for one-time transfers

EFTA and Reg. E

- Commentary to Reg. E
 - “Signed or similarly authenticated” requirement can be met by
 - processes that comply with E-SIGN
 - digital signatures and codes
 - Payee signing on customer’s behalf after verbal authorization is not sufficient
 - Tape recording of customer’s verbal authorization is not sufficient
 - N.b.: Proposed revision to this Commentary.

NACHA Requirements

- Debits by companies from a consumer account requires prior authorization signed or similarly authenticated by the consumer.
 - processes that comply with E-SIGN are OK
 - digital signatures and codes are OK
- Requirement applies to debits from consumer accounts, one-time and recurring, except telephone initiated debits.
- One-time debits from consumer accounts may be authorized by the consumer over the phone.
 - Certain minimum information must be provided by consumer
 - Conversation must be taped or written confirm must be provided to consumer

Other authentication requirements

- **Bank Secrecy Act/ USA Patriot Act**
 - Suspicious transactions rules
 - Customer Identification Program requirements
- **Institution's Risk Management/Fraud Procedures**
 - ID and authorized user requirements depend on type of transaction attempted
 - Electronic funds transfers are high risk and require critical maintenance

Recent E-Payment Developments

- ARC check processing
- Check 21
- Fed proposal on electronic check conversion