



E-Signature Act Benefits Business And Consumers FTC Reports, So What Does It Mean To The Credit Professional?

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The Electronic Signatures in Global and National Commerce Act (The E-Sign Act) went into effect November 2000. The E-Sign Act makes an electronic signature (e-signature) as legally binding as ink-and-paper signatures, and can be used in legal proceedings. An e-signature is generally defined as a form of technology, including fingerprint readers, stylus pads and encrypted Asmart cards®, used to verify a party's identity so as to certify contracts that are agreed to over the Internet.

The Federal Trade Commission is the federal agency responsible for regulating the E-Sign Act. At the direction of Congress, the FTC has issued a report finding that the E-Sign Act is working for both business and consumers, after receiving input from 32 interested groups, ranging from computer companies and financial institutions to consumer groups and academics. The FTC recommends that no action should be taken by Congress to amend the E-Sign Act.

Given that the E-Sign Act is here and there are no plans to amend the law, what does it mean to the credit professional and the electronic credit department? Does documenting your electronic credit sale allow an e-signature to have the same legal effect as a handwritten signature from your customer on your credit application or P.O.? What is the legal status of e-signatures documenting your personal and corporate guarantees over the Internet? Do credit files stored electronically by have the same legal force as paper credit files in the event of a dispute with you customer? Has legislation caught-up with Internet technology?

The E-Signature Law

The effect of the E-Sign Act is a uniform and nationwide legal recognition that a vendor may engage in e-credit transactions across state lines and the e-contract is valid with all states.

Some of the relevant provisions of The E-Sign Act for the credit professional are: (1) Parties to the contract decide on the form of digital signature technology to validate the contract; (2) Businesses may use e-signatures on checks; (3) Businesses must require parties to the contract to make at least two clicks of a computer must to complete a deal; (4) The consumer decides whether to use an e-signature or handwritten signature; (5) Records of e-contracts may be stored electronically.

Verifying the E-Signature

A key question for the credit professional considering using e-signatures on contracts and checks, however, is having a reliable way to certify an e-contract, or authenticate an e-signature, to reduce the risk of fraud, or claims of unauthorized use of an e-signature. Technology to verify a person's identity, so-called digital identification devices, is solving these concerns.

The E-Sign Act And The Electronic Credit Department

The credit department is going "electronic" for a variety of reasons, including faster payments, reducing discrepancies with the customer, lower administrative costs, and the competition and customer requires.

An increasing number of credit departments are posting on their web pages various credit forms, including credit applications, guarantees, invoices and proofs of delivery, for retrieval by their customers.

How may the E-Sign Act affect the credit professional? Article 2 of the Uniform Commercial Code provides that with the sale of goods over \$500, there must be a signed writing. A signature is to certify the writing for

the sale of goods. With the traditional sale of goods over \$500, the credit professional memorializes the sale agreement with a signed credit application and signed invoices.

With the E-Sign Act, a credit professional may accept a completed credit application electronically, with e-signature, to form a binding contract, as opposed to the customer downloading the application from the vendor's web page, filling it out and signing it and faxing or mailing the completed credit application with handwritten signature. The credit professional may also receive completed guarantees in the same manner and form a binding contract.

Likewise, the E-Sign Act aids e-checks and e-payments as businesses may sign checks electronically. The FTC's recent report underscores that e-signatures are legally enforceable and e-signatures will continue their growing acceptance to document an e-credit sale. The electronic credit department continues to expand.

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