

Practice Update

# CFPB Issues Statement on Flexible Approach to Electronic Credit Card Disclosures

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On June 3, 2020, the Consumer Financial Protection Bureau (CFPB) issued a [statement](#) announcing temporary supervisory and enforcement flexibility during the COVID-19 pandemic for credit card issuers regarding electronic provision of certain Regulation Z disclosures otherwise required to be provided to the consumer in writing.

## Current Electronic Written Disclosure Requirements

Regulation Z (12 CFR § 1026.5(a)(1)) requires creditors provide certain written disclosures to consumers. The Electronic Signatures in Global and National Commerce Act (E-SIGN Act) (15 U.S.C. § 7001(c)(1)) allows for written disclosures to be provided electronically if the issuer can satisfy three conditions: (1) the issuer has obtained the consumer's affirmative consent to the electronic disclosure, (2) the issuer provides certain disclosures about their rights and the electronic disclosure process to the consumer prior to obtaining the consumer's consent, and (3) the consumer consents electronically in a manner that reasonably demonstrates the consumer can access information in the electronic form the issuer will use to provide the required disclosure.

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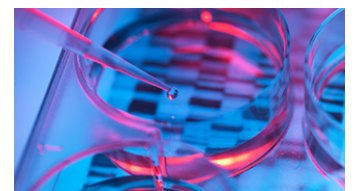
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## Supervisory and Enforcement Flexibility

The CFPB expressed concern in its statement that the E-SIGN requirements could make it difficult for consumers to obtain relief quickly where its rules require written disclosures, the COVID-19 pandemic is causing high call volumes, and the barriers imposed by the E-SIGN Act prevent the issuer from providing electronic disclosures. To address this, the CFPB will take a flexible supervisory and enforcement approach regarding card issuers' electronic disclosures required to be in writing for account opening disclosures and temporary rate or fee reduction disclosures mandated under the provisions governing extensions of non-home secured, open-end credit in Regulation Z.

The CFPB statement applies to phone calls where a card issuer seeks to:

1. Open a new credit card account for a consumer,
2. Provide certain temporary reductions in APRs or fees applicable to an existing account, or
3. Offer a low-rate balance transfer.

In those instances, the CFPB does not intend to cite a violation in an examination or bring an enforcement action against an issuer that cannot obtain a consumer's E-SIGN consent to receive electronic disclosures during a phone call—so long as the issuer obtains the consumer's oral consent to electronic delivery of the written disclosures and oral affirmation of the customer's ability to access and review the electronic written disclosures. The CFPB expects issuers to take reasonable steps during phone calls to verify consumers' electronic contact information, and does not intend to apply this flexibility to other requirements of Regulation Z.

Finally, the CFPB referred issuers to its prior FAQ's regarding regulatory flexibilities for open-end credit (not home-secured) that may help issuers assist customers. We previously issued an [alert](#) on the FAQ's.

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