



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

January 30, 2014

Mortgagee Letter 2014-03

To: **All FHA-Approved Mortgagees**

Subject: **Electronic Signatures**

Purpose This Mortgagee Letter (ML) announces that FHA will accept electronic signatures conducted in accordance with the performance standards outlined in this ML on documents requiring signatures included in the case binder for mortgage insurance, servicing and loss mitigation documentation, FHA insurance claim documentation, and on HUD's Real Estate Owned (REO) Sales Contract and related addenda unless otherwise prohibited by law.

This policy applies to FHA Single Family Title I and II forward mortgages and Home Equity Conversion Mortgages.

Effective Date The policies set forth in this Mortgagee Letter are effective immediately.

Legal Authority The Electronic Signatures in Global and National Commerce (ESIGN) Act Pub. L. 106-229, § 1 (June 30, 2000), 114 Stat. 464, codified at 15 U.S.C. §§ 7001-7006. The ESIGN Act encourages agency acceptance of electronic signatures. The ESIGN Act also grants agencies with interpretive authority the ability to specify performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained.¹

Affected Topics ML 95-50; ML 01-01; ML 10-14; HUD Handbook 4155.1 1.B.1.k, *Policy on Use of Electronic Signatures on Third Party Documents*. Electronic signatures meeting the requirements of this ML will now be treated as equivalent to handwritten signatures. Nothing in the Mortgagee Letter affects existing FHA requirements as to who is authorized to sign any specific document.

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¹ ESIGN § 104(a)(3).

Third Party Documents

FHA's existing policy allowing electronic signatures on third party documents for forward mortgages and HECMs pursuant to Mortgagee Letter 2010-14 remains in effect and is unchanged by the ML. Third party documents as defined in ML 10-14, are those documents that are originated and signed outside of the control of the mortgagee, such as the sales contract.

Authorized Documents

Unless otherwise prohibited by law or excepted below, FHA will accept electronic signatures on the documents referenced below (collectively referred to as "Authorized Documents"), provided that the mortgagee complies with standards outlined in this ML.

- ***Mortgage Insurance Endorsement Documents:*** Electronic signatures will be accepted on all documents requiring signatures included in the case binder for mortgage insurance except the Note. As of December 31, 2014, FHA will accept electronic signatures on the Note for forward mortgages only. FHA will not accept electronic signatures on HECM notes.
- ***Servicing and Loss Mitigation Documentation:*** Electronic signatures will be accepted on any documents associated with servicing or loss mitigation services for FHA-insured mortgages.
- ***FHA Insurance Claim Documentation:*** Electronic signatures will be accepted on any documents associated with the filing of a claim for FHA insurance benefits, including the Form HUD-27011, "Single Family Application for Insurance Benefits."
- ***HUD Real Estate Owned Documents:*** Electronic signatures will be accepted on the HUD REO Sales Contract and related addenda.

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Authorized Documents
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At this time, the use of electronic signatures is voluntary; however, mortgagees who choose to use e-signature must fully comply with the standards outlined in this ML.

Definition of Electronic Signature

The ESIGN Act defines electronic signatures as “any electronic sound, symbol, or process attached to or logically associated with a contract or record and executed or adopted by a person with the intent to sign the record.”² Mortgagees should follow this definition of electronic signature with the exception that FHA will not accept an electronic signature that is solely voice or audio.

FHA recognizes that electronic signatures include digital signatures as a subset.

Associating an Electronic Signature with the Authorized Document

The process for electronically signing Authorized Documents must ensure the document is presented to the signatory before an electronic signature is obtained. The electronic signature must be attached to, or logically associated with, the document that has been electronically signed.

ESIGN Act Compliance

A mortgagee’s electronic signature technology must comply with all requirements of the ESIGN Act, including those relating to disclosures, consent, signature, presentation, delivery, and retention and any state law applicable to the transaction.

Intent to Sign

The mortgagee must be able to prove that the signer certified that the document is true, accurate, and correct at the time signed.

Mortgagees are reminded that electronic signatures are only valid under the ESIGN Act if they are “executed or adopted by a person with the intent to sign the record.” Establishing intent includes:

- Identifying the purpose for the borrower signing the electronic record,
 - Being reasonably certain that the borrower knows which electronic record is being signed, and
 - Providing notice to the borrower that his or her electronic signature is about to be applied to, or associated with, the electronic record.
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² ESIGN §106(5).

Intent to Sign
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Intent to use an electronic signature may be established by, but is not limited to:

- An online dialog box or alert advising the borrower that continuing the process will result in an electronic signature,
 - An online dialog box or alert indicating that an electronic signature has just been created and giving the borrower an opportunity to confirm or cancel the signature, or
 - A click-through agreement advising the borrower that continuing the process will result in an electronic signature.
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Single Use of Signature

Mortgagees must require a separate action by the signer, evidencing intent to sign, in each location where a signature or initials are to be applied.

This provision does not apply to documents signed by mortgagee employees or mortgagee contractors provided the mortgagee obtains the consent of the individual for the use of his/her electronic signature. This consent must be documented and maintained by the mortgagee.

Authentication

Authentication refers to the process used to confirm an individual's identity as a party in a transaction.

Before a mortgagee submits the case for endorsement, the mortgagee must confirm the identity of the individual by authenticating data provided by the individual with data maintained by an independent source.

Independent sources include, but are not limited to:

- National commercial credit bureaus
- Commercially available data sources or services
- State motor vehicle agencies
- Government databases

At a minimum, the mortgagee must verify an individual's name and date of birth, and either the social security number or driver's license number.

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Attribution

Attribution is the process of associating the identity of an individual with his or her signature.

Mortgagees must maintain evidence sufficient to establish that the electronic signature may be attributed to the individual purported to have signed.

The following methods are acceptable means of establishing attribution:

- Selection by or assignment to the individual of a PIN, password, or other shared secret, that the individual uses as part of the signature process
 - Delivery of a credential to the individual by a trusted third party, used either to sign electronically or to prevent undetected alteration after the electronic signature using another method
 - Knowledge base authentication using “out of band/wallet” information
 - Measurement of some unique biometric attribute³ of the individual and creation of a computer file that represents the measurement, together with procedures to protect against disclosure of the associated computer file to unauthorized parties
 - Public key cryptography⁴
 - Combinations of the above
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Credential Loss Management

Mortgagees must have a system in place to ensure the security of all issued credentials. One or more of the following acceptable loss management controls should be used:

- Maintaining the uniqueness of each combined identification code and password, such that no two individuals have the same combination of identification code and password
 - Ensuring that identification code and password issuances are periodically checked, recalled, or revised
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³ A method of verifying an individual’s identity based on measurement of the individual’s physical feature(s) or repeatable action(s) where those features and/or actions are both unique to that individual and measurable.

⁴ A cryptographic technique that enables users to securely communicate on an insecure public network and reliably verify the identity of a user via digital signatures.

Credential Loss Management
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- Following loss management procedures to electronically de-authorize lost, stolen, missing, or otherwise compromised identification code or password information, and to issue temporary or permanent replacements using suitable, rigorous controls
 - Use of transaction safeguards to prevent unauthorized use of passwords or identification codes
 - Detection and reporting of any attempts at unauthorized use of the password or identification code to the system security unit
 - Combinations of the above.
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Integrity of Records

Mortgagees must ensure that documents signed electronically cannot be altered. The documents must be tamper sealed to ensure their validity. Industry standard encryption must be used to protect the individual's signature and the integrity of the documents to which they are affixed.

If changes to the document are made, the electronic process must be designed to provide an "audit trail" showing all alterations, the date and time they were made, and identify who made them.

The mortgagee's system must be designed so that the signed document is designated as the Authoritative Copy.

Quality Control

Mortgagees must update their Quality Control Plan to ensure they meet all requirements and perform oversight of the electronic signature process (4060.1 Chapter 7).

Record Retention

FHA's record retention requirements are the same for both ink and electronic signatures.

Mortgagees are reminded that they "must maintain their origination case binders in either hard copy or electronic format for a period of two years from the date of endorsement. Servicing lenders must maintain the case binder for a period of two years beyond the life of the loan." (4155.2 8.B.1.f). For servicing case binders, "the documents required to be retained as originals and the remaining paper documents or acceptable imaged versions are retained for a minimum of the life of the loan plus three years, and any additional time required due to payment of a claim." (4060.1 7-12Y).

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Record Retention
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Additionally, mortgagees must follow applicable record retention requirements imposed by applicable federal and state laws and regulations.

Mortgagees must ensure all electronic signatures meet the record retention requirements stated by FHA. The audit log as well as any computer systems (including hardware and software), controls, and documentation must be readily available for, and subject to, FHA inspection for the same periods as records signed in ink.

A mortgagee's system must be able to reproduce electronic records as accurately as if they were paper records when printed or viewed. These records must be made available to FHA upon request.

Information Collection Requirements

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0059 and 2502-0429. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Questions

Please inquire about information provided in this Mortgagee Letter by contacting the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may reach this number by calling the Federal Information Relay Service at (800-877-8339). For additional information on this Mortgagee Letter, please visit www.hud.gov/answers.

Signature

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