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## Section 1 General

### 1.1 Statement of Purpose

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[Sample Client] designed these policies and procedures to safeguard its legal responsibility to comply with applicable residential lending laws and regulations. The [board of directors](#) and senior management, through a sound [Compliance Management System](#), ensure the integration of these policies and procedures into the overall framework for product design, delivery and administration across the residential lending origination and service life cycle. Management and employees utilize these policies and procedures to guide their daily responsibilities to effect mitigation of regulatory compliance risk within their job roles.

### 1.2 Objective

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The guidance in this guide applies throughout [Sample Client]'s operations with the objective to mitigate regulatory risk and [consumer](#) harm within the standards of [Sample Client]'s compliance program. [Sample Client] requires employees, contractors, and [third-party vendors](#) to comply with these policies and procedures.

### 1.3 State Law and Agency Guidelines

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Federal law may alter, affect, or preempt state laws that are inconsistent with the federal law. Preemption applies only to the extent of the inconsistency. A state law is not inconsistent if it is more protective of a consumer. Wherever state law or local regulations overlap and provide greater consumer protections than federal law or the requirements set out in this guide, [Sample Client] will comply with the more protective law or regulation and will consult with the appropriate legal counsel to set forth [Sample Client]'s policies and procedures for compliance.

In some instances, agencies may overlay guidelines that expand upon the requirements of federal law. [Sample Client] must be cognizant of agency guidelines and incorporate those guidelines into [Sample Client]'s policies and procedures.

## Section 2 Summary

The Electronic Signatures in Global and National Commerce Act (E-Sign Act) and the Uniform Electronic Transaction Act (UETA) establish legal authority and procedures for [electronic signatures](#). The Consumer Financial Protection Bureau allows the disclosures required to be given in writing by several other regulations to be provided to the applicant in electronic form, subject to compliance with the [consumer](#) affirmative consent and other applicable requirements of the E-Sign Act.

### 2.1 Coverage

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#### 2.1.1 Uniform Electronic Transactions Act (UETA)

The Uniform Electronic Transactions Act (UETA), developed and recommended for enactment in July 1999 by the Uniform Law Commission (ULC), provides a legal framework for the use of electronic signatures and records in government or business transactions. UETA makes [electronic records](#) and signatures as legal as paper and manually signed signatures in transactions relating to business, commercial, and governmental affairs.

UETA aims to promote uniform electronic transaction laws among the states. The District of Columbia, the Commonwealth of Puerto Rico, the US Virgin Islands, and all states except New York have adopted UETA. New York has not adopted the uniform act; however, New York has statutes which pertain to electronic transactions.

#### 2.1.2 Electronic Signatures in Global and National Commerce Act (E-Sign Act)

The E-Sign Act was enacted on June 30, 2000, to facilitate the use of electronic records and electronic signatures for [transactions](#) in or affecting interstate or foreign commerce to conduct business, consumer, or commercial affairs.

Unless prohibited by any statute, regulation or rule of law, the E-Sign Act generally provides for the following in a transaction:

- A signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form.
- A contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

### 3.1.2 Notice of Technology Requirements

Prior to obtaining consent to use an electronic record, [Sample Client] must provide a consumer with a statement of the hardware and software requirements for access to and retention of electronic records.

Whether the consumer consents or confirms consent electronically, [Sample Client] must ensure the consumer can reasonably access information in the electronic form that will be used to provide the information that is the subject of the consent.

If a change in hardware or software needed to access or retain electronic records creates a material risk the consumer will not be able to access or retain subsequent electronic records subject to the consent, [Sample Client] must provide the consumer with the following:

- A statement of the revised hardware and software requirements for access to and retention of electronic records
- The right to withdraw consent without the imposition of any condition, consequence, or fee for such withdrawal

When [Sample Client] provides the notices for a change in hardware or software needed to access or retain electronic records, the consumer is required to provide a new affirmative consent or to withdraw consent to use of electronic records. Withdrawal of consent does not deny the effectiveness of any electronic signatures made prior to the withdrawal of consent.

## 3.2 Electronic Promissory Notes Secured by Real Estate

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The E-Sign Act establishes technological and business process standards for [electronic promissory notes](#) secured by real estate (eNotes). To treat an electronic version of a promissory note as the equivalent of a paper promissory note, [Sample Client] must conform to the E-Sign Act's requirements for [transferable records](#).

[Sample Client] must ensure any transferable record is created, stored, and assigned in a way that complies with all the following E-Sign Act requirements:

- Ensures there is one single authoritative copy that is unique, identifiable, and unalterable
- Identifies the person asserting control as the person to whom the transferable record was issued, or the person to whom the transferrable record was most recently transferred

## Section 5 Servicing Compliance

### 5.1 Consumer Consent

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[Sample Client] servicing does not require a borrower to use [electronic signatures](#). However, during loan servicing, certain disclosures including mortgage transfer disclosures may be provided to the consumer in electronic form, subject to compliance with the [consumer](#) consent and other applicable requirements of the E-Sign Act.

Refer to [Consumer Disclosures and Consent](#) in this guide for requirements.

### 5.2 EFT Authorizations

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[Sample Client] servicing must obtain appropriate [preauthorization](#) for electronic fund transfers for mortgage payments from the consumer through use of written or electronic signatures. If [Sample Client] processes any EFT using information from a check to initiate a transfer from a consumer's account, [Sample Client] must comply with the EFTA requirements to obtain the consumer's authorization—whether through appropriate notice for each transaction or notice on a mortgage payment coupon book with all the required disclosures.

### 5.3 Documents Excluded from Using E-Signatures

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[Sample Client] servicing must prohibit the use of electronic signatures for any notice of “default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual.” [Sample Client] must provide these notices in writing, delivered in accordance with applicable federal and state laws.

## Appendix 1 Definitions

### Board of Directors

An executive committee that supervises the activities of an organization. As it relates to a Compliance Management System (CMS), the board is ultimately responsible for developing and administering a CMS that ensures compliance with federal consumer financial laws and addresses and minimizes associated risks of harm to consumers. In a non-depository consumer financial services company, that ultimate responsibility may rest with a board of directors in the case of a corporation or with a controlling person or some other arrangement. Some institutions may be governed by firm-wide standards, policies, and procedures developed by a holding company or other top-tier corporation for adoption, use, and modification, as necessary, by subsidiary entities.

### Clear and Conspicuous

Readily understandable. In the case of written and electronic disclosures, the location and type size also must be readily noticeable and legible to consumers, although no minimum type size is mandated. In the case of oral disclosures, the disclosures also must be given at a volume and speed sufficient for the consumer to hear and comprehend them.

### Compliance Management System (CMS)

A comprehensive system that drives an institution's compliance responsibilities; communicates those responsibilities to employees; ensures that responsibilities for meeting legal requirements and internal policies and procedures are incorporated into business processes; reviews operations to ensure responsibilities are carried out and legal requirements are met; and takes corrective action and updates tools, systems, and materials, as necessary.

### Consumer

As it pertains to the E-Sign Act, an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and the legal representative of such an individual.

### Electronic Fund Transfer (EFT)