

August 5, 2004

Shawn Sheykhi, Account Services Manager
Star One Credit Union
P.O. Box 3643
Sunnyvale, CA 94088

Re: Electronic Membership Applications.

Dear Mr. Sheykhi:

You have asked if a federally insured credit union using an electronic membership application may rely exclusively on the member's electronic signature. If that is permissible, you have also asked if the credit union may retain as its permanent file copy only the electronic version of the application. Yes, federal law generally provides that electronic documents and signatures have the same validity as paper documents and handwritten signatures.

You have indicated that your credit union will require a prospective member who completes the online application form at home to print and sign the completed form and mail it to the credit union, along with a photocopy of a valid driver's license. The credit union also intends to provide its own computer equipment for prospective members to access the online form in its branch offices. As with the forms completed from home, the credit union requires the applicant to print and sign the form, which a credit union employee verifies. In both circumstances, the credit union audits the application, images the signed forms, and retains the original documents in off-site storage.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), enacted by Congress in 2000, provides that a signature may not be denied legal effect or validity solely because it is in electronic form. 15 U.S.C. §7001(a)(1). The credit union has software and equipment permitting a prospective member who completes the form in the branch to sign the application form electronically. Accordingly, the credit union may rely on the electronic signature and need not require an applicant to print the form and sign it in handwriting.

We note that the E-Sign Act does not alter the credit union's obligation to implement member identification procedures as mandated by the Bank Secrecy Act and our regulations. 12 C.F.R. §748.2(b)(2). You have indicated that the credit union will continue to implement its member identification processes in accordance with these requirements. The credit union should ensure that its audit and verification procedures are sufficient where the member's signature is captured electronically.

The E-Sign Act also authorizes records to be retained in electronic format. 15 U.S.C. §7001(d)(1). So long as the electronic record is an accurate reflection of the information in the original document and remains, for any required time period, accessible to all persons entitled to access and is capable of being accurately reproduced, the electronic record satisfies recordkeeping requirements. *Id.* We

note, in this respect, that the requirement may be satisfied either with an electronic image of a hard copy record, or with an electronic record of the information itself. *Id.*

NCUA amended its Truth in Savings rule to implement the authority in the E-Sign Act. 66 Fed.Reg. 33159 (June 21, 2001). The amended rule provides that, subject to the requirements of the E-Sign Act and the requirements of the regulation, a federally insured credit union may provide by electronic communication any disclosure required by the rule to be in writing. 12 C.F.R. §707.10(b). For prospective member applications and account openings, a credit union must provide certain disclosures before it opens an account or provides a service. 12 C.F.R. §707.4(a). A credit union must provide the required disclosures before it opens an account or provides a service if a prospective member is not present at the credit union and uses an electronic communication to open an account or apply for a service. 12 C.F.R. §707.4(a)(ii). A link to the disclosures satisfies the timing rule if the member cannot bypass the disclosures before opening the account, or if the disclosures appear automatically on the screen. 12 C.F.R. Appendix C, §707.10(b)(3)(i). The credit union is not required to confirm that the prospective member has read the disclosure. *Id.* Disclosures must be in a form that the prospective member may keep. 12 C.F.R. §707.3(a). This retainability requirement is satisfied if the credit union delivers electronic disclosures in a format capable of being retained, either by printing or storing them electronically. 12 C.F.R. Appendix C, §707.10(b)(4).

If a prospective member is completing an account opening process using the credit union's own computer terminal, the credit union must ensure that its equipment and procedures satisfy these requirements. For example, the credit union must send the required disclosures to the member's e-mail address or post them at another location such as the credit union's web site, unless the credit union provides a printer that automatically prints the disclosures. 12 C.F.R. Appendix C, §707.10(b)(5).

Additional guidance on the E-Sign Act is in NCUA Regulatory Alert No. 01-RA-03, Electronic Signatures in Global and National Commerce Act (March 2001), available on our website. Finally, as your credit union is a state-chartered credit union, we suggest you consult with local counsel or your state supervisory authority regarding any applicable state law. The E-Sign Act permits, under limited exceptions, states to modify or limit its provisions. 15 U.S.C. §7002.

Sincerely,
/S/
Sheila A. Albin
Associate General Counsel