

RD AN No. 4776 (1980-D)
September 23, 2014

TO: State Directors
Rural Development

ATTENTION: Housing Program Directors,
Guaranteed Loan Specialists,
Area Directors and Area Specialists

FROM: Tony Hernandez /s/ *Tony Hernandez*
Administrator
Housing and Community Facilities Programs

SUBJECT: Single Family Housing Guaranteed Loan Program
Electronic Signatures

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify that USDA Rural Development will accept electronic signatures in conjunction with the Single Family Housing Program (SFHGLP), unless otherwise prohibited by law or regulation, as described in this AN. This guidance is limited to lenders. Agency staff will continue to follow internal policy.

COMPARISON WITH PREVIOUS AN:

No previous AN has been issued on this subject.

EXPIRATION DATE:
September 30, 2015

FILING INSTRUCTIONS:
Preceding RD Instruction 1980-D

BACKGROUND:

The Electronic Signatures in Global and National Commerce (ESIGN) Act Pub. L. 106-229 (June 30, 2000), 114 Stat. 464, codified at 15 U.S.C. 7001-7006, encourages federal agencies to accept electronic signatures.

The program regulations at 7 CFR 1980-D, as well as 7 CFR 3555, the rule which will replace 7 CFR 1980-D on December 1, 2014, do not expressly prohibit or consent to electronic signatures. The regulations require that lenders submit signed documents to the Agency, such as the mortgage or deed of trust, the promissory note, etc. The regulations also require that lenders perfect and maintain a first lien position and an enforceable promissory note. This AN clarifies that lenders may use electronic signatures as long as the lender perfects and maintains a first lien position, an enforceable promissory note, and meets all other agency requirements.

IMPLEMENTATION RESPONSIBILITIES:

Lenders may accept all documents associated with originating or servicing a loan which are signed electronically. The Agency recognizes that electronic signatures include digital signatures as a subset. The electronic signature and date must be clearly observed when the document is viewed either electronically or if printed. The acceptance of electronic signatures by lenders is voluntary. Those lenders who choose to accept electronic signatures must meet the standards and requirements set forth in the ESIGN Act as well as all other applicable federal and state regulations and guidelines. Lenders must still adhere to all program regulations, guidance and agreements as usual. Lenders are charged with the same responsibility of due diligence with electronically signed documents as they are with paper documents.

Two methods are available to transmit credit documents to Rural Development:

An automated lender loan closing system is available to electronically submit guarantee fees, upload loan closing documents and electronically submits loan closings. The Agency expects that all lenders will submit loan closing transactions electronically by October 1, 2014.

Lenders who wish to submit documents electronically must do so with an eAuthentication account, information about which is available at <https://www.eauth.usda.gov/mainPages/eauthWhatIsAccount.aspx>. Submission of post-closing documents will require a Level II e-Authentication. Submission of pre-closing documents will require a Level I e-Authentication and will be available in the spring of 2015. Additional information regarding automated lender loan closings may be found at the USDA LINC Training and Resource Library (located in the Lender Loan Closing/Administration section) at the following location: <https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do>

Those lenders who have not yet set up the electronic process and deliver credit documents via e-mail must be able to either submit PDF or TIF versions of the electronically signed documents to the agency, and must follow file retention requirements and make the

electronically signed documents available for agency review as necessary. This method must be encrypted or protected to ensure personally identifiable information is secure. Information regarding electronic delivery by state can be found at the USDA LINC Training and Resource Library (located in the Loan Origination section) at the URL noted above.

If any electronically signed document eventually is deemed unenforceable (e.g. the promissory note, mortgage or deed of trust) and is connected to any fraud, misrepresentation or negligent servicing, the lender bears the risk that any loss claim submitted in relation with the unenforceable document will be denied or reduced in accordance with applicable regulations. The lender's failure to collect on the promissory note or enforce the security instrument because of its electronic signature will be treated as negligent servicing under SFHGLP regulations.

Failure to comply with any Federal statute or regulation could result in the denial of a loan guarantee or claim, withdrawal of lending authority and/or debarment from Federal programs.

Questions regarding this AN may be directed to the Single Family Housing Guaranteed Loan Division at 202-720-1452.