

RD AN No. **4869** (1951-R, 4274-D, 4279-A, 4279-B, 4279-C, 4280-A, 4280-B, 4280-D, 4280-E, 4284-A, 4284-F, 4284-J, 4284-K, 4287-B, 4287-D, 4288-A, 4288-B, 4290-A)

July 11, 2019

TO: State Directors, Rural Development  
ATTN: Rural Business-Cooperative Service Program Directors  
SUBJECT: Electronic Documents, Signatures, and Records Guidelines  
Rural Business-Cooperative Service Programs

**PURPOSE/INTENDED OUTCOME:**

The purpose of this Administrative Notice (AN) is to notify Rural Business-Cooperative Service (RBS) Program Directors of the ability to accept electronically submitted documents and signatures in conjunction with its direct and guaranteed loan, grant, and payment programs, unless otherwise prohibited by law or regulation, as described in this AN. Electronically submitted documents and signatures that meet all requirements as noted below may be accepted and retained as part of the official Agency record. This AN does not address electronic signatures of Agency staff given said policies receive oversight by OCIO staff.

**COMPARISON WITH PREVIOUS AN:**

No previous AN has been issued on this subject.

**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.

EXPIRATION DATE:  
July 31, 2020

FILING INSTRUCTIONS:  
Preceding RD Instructions 1951-R, 4274-D, 4279-A, 4279-B, 4279-C, 4280-A, 4280-B, 4280-D, 4280-E, 4284-A, 4284-F, 4284-J, 4284-K, 4287-B, 4287-D, 4288-A, 4288-B, 4290-A

RBS programs do not expressly prohibit or consent to electronic signatures. Program regulations require that signed documents are submitted to the Agency.

For loans, regulations require that lenders perfect and maintain lien position and an enforceable Promissory Note, Loan Agreement as noted in the Letter of Conditions or Conditional Commitment, and program regulation. Borrowers must abide by required conditions and terms of the loan.

For grants, the regulations require grantees to execute the Rural Business-Cooperative Service Financial Assistance Agreement and abide by all requirements contained in the Letter of Conditions, and program regulation.

For payments, the regulations require payment recipients (producers) to execute the Advanced Biofuel Payment Program Contract and abide by all requirements contained within the Contract and program regulation.

This AN clarifies that the Agency will accept electronically submitted documents, which include electronically submitted signatures submitted by lenders, borrowers, grantees, payment recipients (producers), and any other person wishing to electronically interact with the Agency if the policies as set forth in this AN and all other requirements of the Agency are met.

#### **IMPLEMENTATION RESPONSIBILITIES:**

The Agency may accept all documents associated with originating or servicing a direct or guaranteed loan, grant or payment contract which are signed electronically. The acceptance and use of electronic signatures by lenders, borrowers, grantees and payment recipients (producers) is voluntary. The Agency recognizes that electronic signatures include digital signatures as a subset. The electronic signature, printed name, and date must be clearly observed when the document is viewed either electronically or if printed. Parties whom chose to submit and 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. Parties must still adhere to all program regulations, guidance and agreement as usual. Parties are charged with the same responsibility of due diligence with electronically-signed documents as they are with paper documents. Parties are not required to submit follow-up hard copy of original information to the Agency.

## **Accepting Forms and Documents Electronically**

Unless otherwise restricted, all RBS program forms and related documents may be accepted electronically when received via:

- Email, with attachments
- Fax
- Grants.gov
- LINC
- Any other existing or future electronic system supported by the Agency

Parties are not required to follow up with or retain an original, paper document or signature when forms are submitted in this manner; however, normal business practices are expected to be followed when obtaining signatures of applicants/borrowers/payment recipients and maintaining electronic records.

The burden is on the borrower, grantee, or producer to confirm Agency receipt of electronically funded documents by program deadlines and provide documentation of submission upon Agency request.

## **Accepting Electronic and Digital Signatures**

The Agency official will review to determine if a form has been properly electronically or digitally signed by the appropriate individuals. Unless otherwise restricted, acceptable electronic or digital signatures include:

- Scanned or Faxed images of documents containing handwritten signatures
- Digital signatures that provide a method to confirm the authenticity of the signature\*, which may include but are not limited to:
  - have been emailed by a party known to the Agency, from a recognized email address
  - identify the individual signing the document
  - identify the software vendor used to execute the digital signature (such as DocuSign)

**\*Note:** This can be accomplished by the sender providing an electronic file containing a validation indicator (such as a pop-up box), or through an additional document with verification information such as authentication details or an access password, signer information, document tracking references, IP addresses, etc.

### **Unacceptable electronic signatures include:**

- digital images of an individual's signature (jpg or similar) pasted in the signature block, without any digital signature validation
- typed names or initials in the signature line

If a party proposes to submit a document electronically signed in another manner, the Agency official shall contact the National Office through the State Office for guidance.

### **Automated System**

An automated system is available for a portion of the Agency's users to electronically submit status reports and to complete set up of pre-authorized debit accounts (PAD) to submit the initial guarantee fee, annual renewal fees and loan payments electronically.

Users who wish to submit the above referenced documents electronically must do so with a Level II eAuthentication account, information about which is available at <https://www.eauth.usda.gov/mainPages/eauthWhatIsAccount.aspx>.

If any electronically signed document eventually is deemed unenforceable (e.g. the promissory note, mortgage or deed of trust, financial assistance agreement, etc.) and is connected to any fraud, misrepresentation or negligent servicing, the lender/borrower (in the case of loans) 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/intermediary'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 RBS regulations. The grantee, borrower, or payment recipient bears the consequences of unenforceable documents in the case of grants, direct loans or producer payments.

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

If you have any questions regarding this AN, please contact Deb Yocum at (402) 499-1198, or Anthony Ashby at (202) 720-0661.

*/s/ Bette B. Brand*

Bette B. Brand  
Administrator  
Rural Business-Cooperative Service