

RISK Alert

ACTIONABLE INSIGHTS FOR BOND POLICYHOLDERS.



Alert Type

Awareness

Watch

Warning

Compliance Concerns with Wire Transfers and E-Signatures

With the growing trend to serve members remotely, credit unions may be considering electronic signatures on electronic wire transfer documents. The federal E-Sign Act and state UETA laws do not extend to Article 4A of the Uniform Commercial Code (UCC 4A) – meaning any liability shifting provisions contained in these electronic documents may not be legally enforceable.

Details

The growth in stay-at-home orders has forced credit unions to find ways to serve members remotely – including the use of electronic wire transfer agreements and/or wire transfer request forms that use electronic signatures.

There are no laws that allow electronic signatures on electronic wire transfer documents (e.g. wire transfer agreements and/or wire transfer requests forms). The federal E-Sign Act and state Uniform Electronic Transactions Act (UETA) laws do not extend to most transactions under the Uniform Commercial Code (UCC). Some individual sections of the UCC have been modified by many states to allow electronic signatures, such as Article 9 for Secured Transactions, or UCC 4-403 for check stop payment orders, which replaced the terms “sign” with “authenticate,” or “writing” with “record.” However, these type of changes have not been made under UCC 4A for Funds Transfer (UCC 4A still uses the terminology such as “signed a writing”). Refer to [Section 103\(a\)\(3\)](#) of the E-Sign Act and [Section 3\(b\)\(2\)](#) of UETA.

This is important because UCC 4A has provisions to hold a member liable for certain situations. Electronic wire transfer agreements and/or electronic wire transfer request forms containing these liability shifting provisions that are signed by members using electronic signatures would not be legally enforceable.

UCC 4A liability shifting provisions:

Unauthorized Wire Transfers: Credit unions can shift liability for unauthorized wires to members by adopting an agreed upon “security procedure” with the member in a signed wire transfer agreement for authenticating the member’s remote wire request provided the security procedure is a commercially reasonable security procedure to protect against unauthorized wire requests, and the credit union proves that it accepted the wire request in good faith and in compliance with the security procedure. In the absence of a signed wire transfer agreement with the member, the credit union would be liable for the loss.

Date: April 14, 2020

Risk Category: Compliance, Wire Transfer; E-signatures; Lending, Online Service

States: All

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Compliance Concerns with Wire Transfers and E-Signatures

[Refer to [UCC 4A-201](#), Security Procedure, [UCC 4A-202](#), Authorized and Verified Payment Orders and [UCC 4A-204](#), Refund of Payment and Duty of Customer to Report With Respect to Unauthorized Payment Order]

Misdirected Wire Transfers: Credit unions can shift liability for misdirected wires to members caused by incorrect wire transfer instructions provided by members (e.g., member transposes the beneficiary's account number). In order to shift liability to members, the wire transfer agreement and / or wire transfer request form must contain a notice indicating how wires settle at the beneficiary bank (i.e., on the basis of the beneficiary bank's routing number and beneficiary's account number even if the number identifies a different beneficiary bank or beneficiary name). Members must acknowledge the notice through their signature. [Refer to [UCC 4A-207](#), Misdescription of Beneficiary and [UCC 4A-208](#), Misdescription of Intermediary Bank or Beneficiary's Bank]

Many credit unions use a wire transfer request form that does not contain the necessary notice to hold members' liable for misdirected wires caused by incorrect wire instructions provided by members.

Risk Mitigation

Credit unions should consider these loss controls:

- If you have adopted a wire transfer agreement with members, avoid using an electronic agreement. These agreements should be signed in-person (wet signature) at a branch office.
- Ensure your wire transfer request form contains a liability shifting provision for misdirected wires caused by inaccurate instructions provided by members. Avoid using an electronic wire transfer request form.
- If necessary, fax the wire transfer request form to members with instructions to provide the beneficiary bank's routing number and beneficiary's account number and to sign and fax back to the credit union. This will provide evidence that the member provided incorrect wire instructions.
- Consider requiring members who do not have a signed wire transfer agreement on file to request large dollar wires in-person after verifying their identity with government-issued photo ID. You can establish a monetary threshold for this purpose.
- Deploy a strong method to authenticate members' remote wire transfer requests, such as strong out-of-wallet questions, or an identity verification solution that relies on strong out-of-wallet questions.
- When performing callback verifications ensure staff check the member's account to determine if the phone number was changed in the last six months.

Risk Prevention Resources

Access CUNA Mutual Group's [Protection Resource Center](#) at [cunamutual.com](#) for exclusive risk and compliance resources, like [Complying with the E-Sign Act Risk Overview](#) and [Wire Transfer Risk Overview](#) to assist with your loss control efforts. User ID and password required.



Access the Protection Resource Center for exclusive resources:

- [Loss Prevention Library](#) for resources & checklists
- [Webinars and Education](#)
- [RISK Alerts Library](#)
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The Protection Resource Center requires a User ID and Password.

Facing risk challenges?

[Schedule](#) a free personalized discussion with a Risk Consultant to learn more about managing risk.

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