



SIMMONS PERRINE
MOYER BERGMAN PLC

Banking & Finance Webinar

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Welcome!

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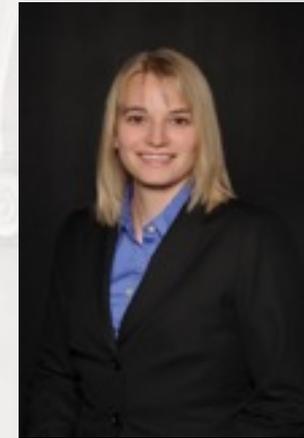
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Overview of Qualified 501(c)(3) Bonds

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Agenda

- I. Municipal Bonds Generally
- II. Qualified 501(c)(3) Bonds;
- III. Participants in a 501(c)(3) Bond;
- IV. Bank Qualified v. Non-Bank Qualified Bonds;
- V. Advantages of 501(c)(3) Bonds;
- VI. Other Types of Private Activity Bonds.

Municipal Bonds Generally



Municipal Bonds

- A debt instrument issued by a local or state government or quasi-government entity.
- The issuance and sale of a bond is the act of borrowing money.
- The bond evidences the debt and establishes an obligation to pay a stated amount at a given time with interest.
- Typically, interest payments of such qualified municipal bonds are exempt from federal income tax to the recipient of such payments.

Types

- Two primary types of bonds issued:
 - Governmental Bonds – Issued by the municipality to be used in funding government projects (*e.g.*, funding roads, new government buildings, other governmental utilities, etc.)
 - Conduit Bonds (otherwise referred to as private activity bonds) – Issued in order to loan the bond proceeds to a third party authorized to use such proceeds.
 - 501(c)(3) Bonds are a type of Conduit Bond.

Conduit Borrowing

- A “Qualified Private Activity Bond” is a conduit bond that qualifies under one of the Code’s exceptions for tax-exempt treatment.
 - In contrast, a non-qualified private activity bond is a private activity bond that is not tax-exempt (*i.e.*, the interest earned is taxable income).
- These bonds are typically a limited obligation for the issuer and there is no risk to the credit or revenues of the issuer in the event of default.
 - In other words, the municipality issuing the bond is not liable for paying the debt evidenced in the bond and if there is a default under the bond the municipality will not be obligated to pay such debt.

Private v. Public Issuances

- Municipal bonds when issued are either privately placed or sold in a public issuance.
- Private placement is where the bond, or series of bonds, is issued and sold to one buyer or a relatively small number of select buyers.
 - Many times, this involves one bank buying the issued bond.
- Public Issuance is where a series of bonds are issued and sold publicly on the open market to numerous buyers.
 - Public Issuances are typically more complicated to issue than private placement, involving more parties to the transaction and implicate numerous security laws.
- For purposes of this presentation, we are focused on private placement.

Qualified 501(c)(3) Bonds



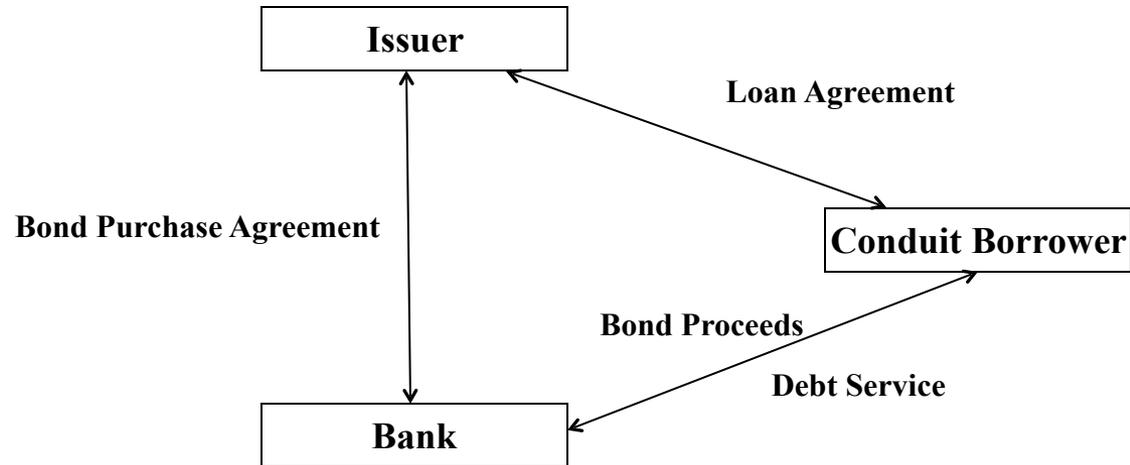
Qualified 501(c)(3) Bonds

- A Qualified 501(c)(3) Bond is a tax-exempt municipal bond issued by a municipality for the purpose of loaning the proceeds to a 501(c)(3) non-profit organization to be used for certain permitted uses that qualify the bond for tax-exempt status.

Issuance of a Qualified 501(c)(3) Bonds

- Typical steps to issuance:
 - 501(c)(3) non-profit organization has a project (*e.g.*, construction of a new facility) it wishes to finance using municipal bonds.
 - 501(c)(3) approaches a bank regarding such a bond and works out the financing (*i.e.*, terms of the bond including interest rate and other terms)
 - Issuer capable and willing to issue the bond takes all steps necessary to issue the bond.
 - Municipality issues the bond which is sold to the bank.
 - The Municipality loans the bond proceeds to a 501(c)(3) non-profit organization for use in the designated project and bank agrees that municipality is not liable for the debt represented in the bond.

Private Activity Bond with Private Placement



- Issuer is the Municipality that issues the bond and loans the proceeds to the borrower.
- Conduit Borrower is the party to which the Issuer loans the proceeds of the Bond and who will own/use the facilities being built with bond proceeds.
- Bank is the entity that purchases the bonds from the Issuer.

Tax Requirements of Qualified 501(c)(3) Bonds

➤ Permitted Use:

- Bond proceeds are used to finance property owned by a 501(c)(3) organization or a governmental unit.
- Facilities constructed with qualified 501(c)(3) bond proceeds cannot have use by a trade or business of any person other than a 501(c)(3) organization or government entity (*e.g.*, use of bond proceeds to construct a food court in a large facility to be operated by private businesses).

➤ Issuance Compliance:

- 501(c)(3) organization must authorize the use of bond proceeds within the organization (*i.e.*, resolution passed by board of directors)
- Issuer must comply with the TEFRA notice and hearing process – bonds are subject to public notice, hearing and approval.

Other Restrictions

- Maturity of Bond: Maturity of bond must not be greater than 120% of the economic life of the asset purchased.
 - Can work to limit the equipment and fixtures to be financed.
- Land: No restriction on the purchase of land.
- Issuance Costs: Only 2% of bond proceeds may be used towards the costs of issuing the bonds.
- Reimbursement of Expenditures: If it is intended for Bond proceeds to reimburse the borrower for project costs expended prior to issuance, other than certain preliminary expenditures, then a reimbursement resolution must be executed within 60 days of the expense being paid and meet the minimum standards imposed under the IRC.

Other Restrictions

- Yield (Arbitrage) Restrictions: Bond proceeds cannot be invested in an investment with a higher yield than the bond issue, except in a few exceptions. If bond proceeds are invested in higher yields not meeting an exception, then rebate payments are owed to the IRS.
- Private business use test. Restricts the funded project's use by private businesses. Complied with if no more than 5 percent of the proceeds of the issue are to be used for any private business use.
 - Bond is not “qualified” for tax-exempt status unless at least 95% of the bond proceeds are used to finance or refinance a permissible project for the 501(c)(3) entity.
 - Example: A 501(c)(3) builds a new facility with tax-exempt bond proceeds and intends to lease space in the facility financed to a private business. Such a lease impacts this test.

Retain Tax-Free Status

- Just because a bond is tax-exempt at issuance, does not guarantee that it will retain such status.
 - Changes in circumstances of the 501(c)(3) (*i.e.*, revocation of 501(c)(3) status) or change in facts related to project financed may impact the exempt status of a 501(c)(3) bond.
- In order for interest payments to remain tax-exempt, the bond proceeds must be used as required under the Tax Code and must continue to comply with the permitted use during the life of the bond.
 - 501(c)(3) uses qualified private activity bond with a 20 year term to build a new facility to carry-out its exempt purpose. In year 5, the 501(c)(3) sells the facility to a private business. The change in ownership will endanger the bond's tax-exempt status.

Participants in a 501(c)(3) Bond



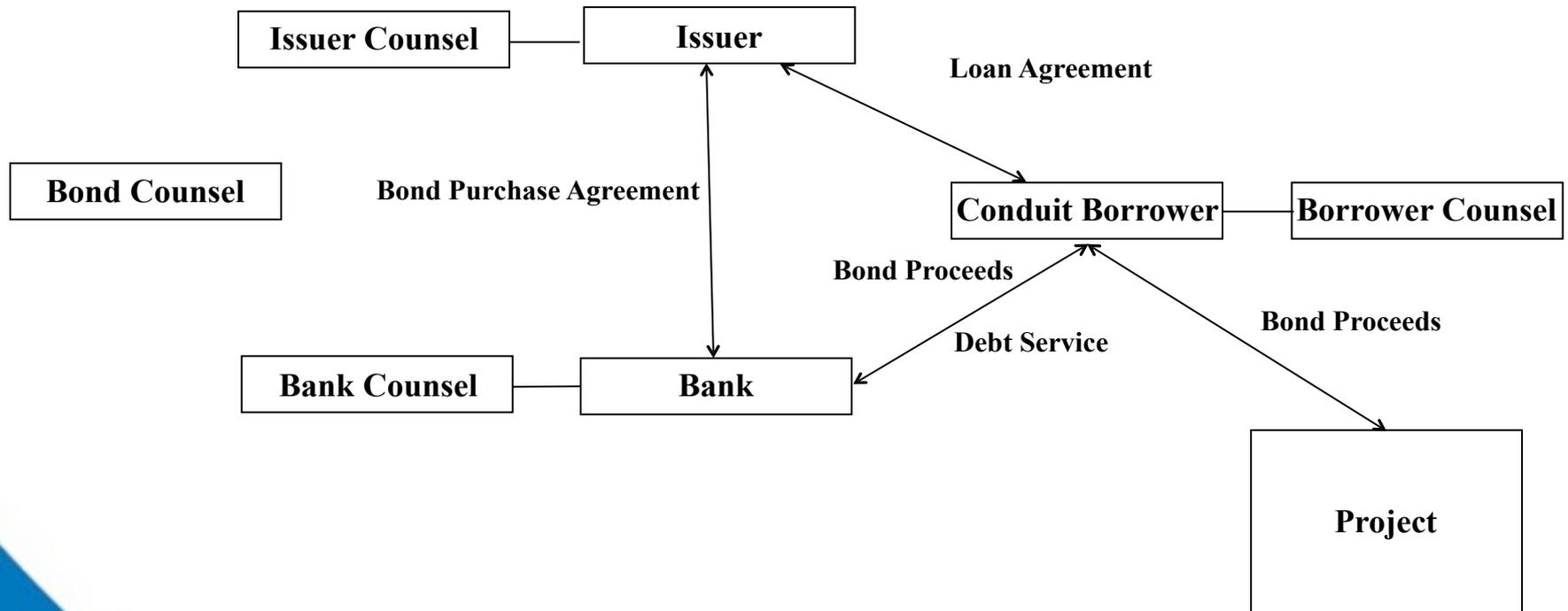
Participants Involved in Transaction

- In a private placement of a conduit bond, at minimum there are three parties:
 1. Issuer – the municipality issuing the bond on behalf of the conduit borrower.
 2. Conduit Borrower – the 501(c)(3) organization borrowing the bond proceeds from the issuer and financing the project with the bond proceeds.
 3. Bank – the bank purchases the bond upon issuance and is the bond holder during the life of the bond.

Attorneys Involved in Transaction

- In a conduit borrowing situation, there are at minimum four roles that counsel have:
 1. Bond Counsel – the attorney that prepares the legal opinion concerning the municipal bond issuance opining that the bonds have been validly issued and are tax-exempt.
 2. Issuer Counsel – the attorney that represents the issuer in the transaction.
 3. Borrower Counsel – the attorney that represents the borrower in the transaction.
 4. Bank Counsel – the attorney that represents the bank in the transaction.
- Bond Counsel can sometimes be the same attorney as Issuer or Borrower's Counsel.

Parties Involved in Private Activity Bond with Private Placement



Other Potential Participants

- Depending on the type of bond and the means of issuing the bond, there can also be other parties involved.
- Trustee:
 - In some bond transactions, a trustee is involved.
 - Trustee acts in a fiduciary capacity for the benefit of the bond holders in enforcing the terms of the bond.
 - Also collects the interest payments and distributes such payments to the bond holders.
 - Exercises bond holders rights in the event of default.
- Underwriter
 - Primary role is to sell the bonds.
 - Used in public issuance of bonds.

Bank Qualified v. Non-Bank Qualified Bonds

Tax Reform Act of 1986

- The Tax Reform Act of 1986 limited the deduction of the carrying cost (interest expense incurred to purchase or hold securities) of tax-exempt municipal bonds.
- The impact on Banks was to reduce the tax-exempt benefit of investing in such bonds.
- There are exceptions to this general rule.

Bank Qualified Bonds

- Banks may deduct 80% of the carrying cost of a “qualified tax-exempt obligation” for certain bonds, otherwise referred to as bank qualified bonds.¹
- To qualify, the bonds must:
 1. Not be a private activity bond (other than qualified 501(c)(3) bonds);
 2. Be issued by a “qualified small issuer” for a public purpose;
 - A qualified small issuer is an issuer that issues no more than \$10 million of tax-exempt bonds during any given calendar year.¹
 3. Be designated as qualified tax-exempt obligations.



1 – See USC § 265(b)(3)

Non-Bank Qualified Bonds

- Bonds that do not meet these requirements are called non-bank qualified bonds and the bank holding such bonds are not entitled to deduct, for tax purposes, any of the carrying costs associated with such securities.
- A qualified 501(c)(3) bond may or may not be bank qualified.

Municipal Advisor



Classification as Municipal Advisor

- New regulations have been imposed by the Securities and Exchange Commission (“SEC”) pursuant to authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act and Section 15B of the Securities Exchange Act of 1934 on participants that qualify as a “municipal advisor.”
- The SEC final rule creates a new category of participants in a municipal financing called “municipal advisors.”
- Effective July 1, 2014, the new rule requires that municipal advisors be registered with the SEC and comply with certain additional restrictions.

Classification as Municipal Advisor

- SEC rule defines a “municipal advisor” as “a person that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to structure, timing, terms, and other similar matters concerning such financial products or issues; or undertakes a solicitation of a municipal entity or an obligated person.”
 - A conduit borrower (*i.e.*, the 501(c)(3) organization in a 501(c)(3) bond) qualifies as an obligated person under this rule.
 - Advice includes a recommendation that is particular to the specific facts of the municipality/obligated person. Providing general factual information is less likely to be considered advice.

Banks and Avoiding Classification as Municipal Advisor

- The SEC Final Rule does carve out banks from being qualified as a municipal advisor to the extent the bank provides advice with respect to the following:
 1. Any investments that are held in a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;
 2. Any extension of credit by a bank to a municipal entity or obligated person, include the issuance of a letter of credit, the making of a direct loan, or the purchase of a municipal security by the bank for its own account;
 3. Any funds held in a sweep account that meets the requirements of section 3(a)(4)(B)(v) of the Exchange Act; or
 4. Any investment made by a bank acting as indenture trustee.

Classification as Municipal Advisor

- The Municipal Securities Rulemaking Board (“MSRB”) has also released guidance with regard to the basic duties and responsibilities a municipal advisor owes.
- The new SEC rule and MSRB guidance significantly alters the course of dealing in the municipal bond process for individuals that qualify as municipal advisors.

Advantages of Qualified 501(c)(3) Bonds



Current Trends

- Bank holdings of municipal bonds has increased drastically over the last few years.
- As of early 2013, banks held more than 10% of the outstanding municipal bonds, nearly double its 5.9% market share in 2007.¹

1 – See http://www.bondbuyer.com/issues/121_59/banks-holders-municipal-debt-1037847-1.html; http://www.bondbuyer.com/issues/121_184/commercial-banks-have-been-increasing-their-muni-bond-holdings-1044231-1.html; http://www.bondbuyer.com/issues/122_203/banks-accumulate-record-muni-holdings-as-growth-slows-1056666-1.html.

Why Use Qualified 501(c)(3) Bonds

➤ Tax Exempt Status:

- A qualified 501(c)(3) bond has tax-exempt status for federal income tax purposes related to the interest earned on such bonds;
- Given the tax-exempt status of the bonds, buyers are willing to accept a lower interest rate payment;
- The 501(c)(3) therefore has a lower interest rate on the debt financed.

The Appeal of Tax-Exempt Bonds

- A simple example to illustrate:
 - A borrower wishes to finance a \$10M project that could qualify to use a qualified private activity bond to finance. Financing the project under a conventional loan would result in an interest rate of 6%. The Bank financing the project has a taxable rate of 33%.
- Assuming all things are equal, the interest rate on a tax-exempt bond would be 4.02% ($6\% * (1-.33)$).

The Appeal of Tax-Exempt Bonds

Annual Interest Example:

Taxable:	\$10,000,000 x 6.00%	=	\$600,000
Tax-Exempt:	\$10,000,000 x 4.02%	=	<u>\$402,000</u>
			\$198,000

	<u>Taxable Bond</u>	<u>Tax-Exempt</u>
Income:	\$600,000	\$402,000
Less Tax:	<u>(\$198,000)</u>	<u>N/A</u>
After Tax Income:	\$402,000	\$402,000

- The savings to the borrower in the first year alone would be \$198,000 and the Bank would net the same amount as it would under a conventional loan.

Other Benefits to Bank

- **Provide Value to Customers** – There may be instances where a customer is looking to construct a new facility and is unaware that all or portion of it could be financed through the use of municipal bonds. Such financing could offer significant savings to the customer while not impacting the bank's bottom line.
- **Diversification of Investment Portfolio** – Bonds can be an important part of a diversified investment portfolio.

Potential Drawbacks

- **Higher Issuance Costs** – Bond issuance costs are higher than typical closing costs associated with a traditional loan.
- **More Complicated** – Additional complexity to close and can require more time to issue and close.
- **Lost Tax Deductions** – Depending on whether the bond is bank qualified or non-bank qualified, all or a portion of the bank's carrying costs related to the tax-exempt bond will not be able to be deducted for tax purposes.

When Does Financing Through Private Activity Bonds Make Sense?

- If there are savings to the borrower after accounting for the increased issuance costs associated with issuing the bonds when compared to the costs of financing through a traditional loan.
- Borrower, with the assistance of the bank, should analyze the debt service cost savings to determine if the savings justify the increased issuance costs.
 - Important to note, a maximum amount of 2% of the bond proceeds may be used to pay all or a portion of such issuance costs.
- It is likely worthwhile performing this analysis for any financing of \$500,000 or more that can meet the requirements to be a qualified private activity bond.

Other Types of Private Activity Bonds

Other Qualified Private Activity Bonds?

- As mentioned, the general rule is municipal bonds that are used to benefit private entities do not qualify for tax-exempt status. Below are the exceptions that are qualified private activity bonds that receive tax-exempt status.
- 501(c)(3) bonds are one of seven types of private activity bonds that may qualify for tax-exempt status.

Types of Qualified Private Activity Bonds?

1. Qualified 501(c)(3) Bonds – Bonds issued to finance a facility owned and utilized by a 501(c)(3) organization.
2. Exempt Facility Bonds – Bonds issued to finance specific types of facilities owned or used by private entities.
 - Examples: airports, docks, and certain other transportation-related facilities; water, sewer and certain other local utility facilities; solid and hazardous waste disposal facilities; certain residential rental projects; certain other types of facilities.
 - Certain types of facilities are subject to State Volume Bond Cap.

Types of Qualified Private Activity Bonds?

3. Qualified Mortgage Bonds – Bonds issued to fund mortgage loans to finance owner-occupied residential property.
 - Subject to State Volume Bond Cap.
4. Qualified Redevelopment Bonds – Bonds issued to finance certain acquisition, clearance, rehabilitation, and relocation activities for redevelopment purposes by a governmental entity in designated blighted areas.
 - Subject to State Volume Bond Cap.

Types of Qualified Private Activity Bonds?

5. Qualified Student Loan Bonds – Bonds issued to finance student loans for attendance at higher education institutions.
 - Subject to State Volume Bond Cap.
6. Qualified Small Issue Bonds – Bonds issued to finance manufacturing facilities.
 - Manufacturing facilities is narrowly defined as a facility used in the manufacturing or production of tangible personal property.
 - \$1M cap, taking into account certain prior issues, or an amount up to \$10M, taking into account certain capital expenditures incurred during the three years prior and the three years after issuance of the bond.
 - Subject to State Volume Bond Cap.

Types of Qualified Private Activity Bonds?

7. Qualified Veterans Mortgage Bonds – Bonds that are general obligations of a state, issued to fund mortgage loans to finance owner-occupied residential property for veterans.
 - The ability to issue such bonds is limited.
 - State Volume Cap – certain private activity bonds are capped at a state level and each state has a fixed amount that may be issued via such private activity bonds in any given year.

Types of Qualified Private Activity Bonds?

- Each of these qualified private activity bonds has its own unique requirements and different standards that must be met in order for it to qualify as tax-exempt.
- Beyond the seven qualified private activity bond transactions listed, the Federal government has and may in the future temporarily expand the use of tax-exempt bonds to other transactions, usually for a temporary period of time and with unique requirements to qualify (*e.g.*, Midwest Disaster Area Bonds).

Final Takeaways

- For 501(c)(3) non-profit organizations looking to finance new construction or improvements to real property, a tax-exempt municipal bond may offer the best form for financing the project.
- Significant savings may be available by using the qualified 501(c)(3) bond to finance the project.
- Numerous regulations apply to the use of 501(c)(3) bonds and there are many restrictions on the bond proceeds to ensure such proceeds qualify as tax-exempt.
- Take efforts to avoid classification as a “municipal advisor” when discussing potential financing using 501(c)(3) bonds.

Electronic Signatures

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Importance of Electronic Transactions to Banking

- According to the 2010 Consumer Billing and Payment Trends survey sponsored by Fiserv, Inc.:
 - 80% of households with Internet banked online
 - 40% of such households paid bills online
- According to 2013 Federal Reserve Board survey:
 - 33% of mobile phone users utilized mobile banking in the last year (up from 28% in 2012) and another 12% expect to use it in the next year
 - 17% of mobile phone users made a mobile payment in the last year (increased from 15% in 2012)
- According to National Mortgage Professional Magazine online, a 2010 survey conducted by Lieberman Research Group and sponsored by Mortgagebot LLC:
 - Banking professionals expected their volume of online loan applications to triple by 2013
 - Credit unions expected growth of about 55% (and in 2010 were already received 1/5 applications online) in the same time frame

Two Major Laws Governing Electronic Signatures in Iowa

1. Electronic Signatures in Global and National Commerce (“E-Sign”)
 - Federal law signed by President Clinton in 2000
 - Gave validity to electronic signatures and created uniformity
2. Iowa Uniform Electronic Transactions Act (“IUETA”)
 - Iowa’s enactment of the Uniform Electronic Transactions Act (“UETA”), also in 2000

*Note that other laws and regulations may apply. Also, our focus is e-signatures, not generally e-records (or “transferrable records”).

Categories of Electronic Signatures

- Electronic Signatures
 - Very broad term (encompasses a variety of methods)
 - E-Sign and UETA
- Digital Signatures
 - Uses some type of technology (such as public/private key infrastructure) to validate identity and ensure integrity of data

Iowa Uniform Electronic Transaction Act



IUETA

- Definition of “Electronic Signature” (Iowa Code §554D.103)
 - an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record
- Attribution and Effect (§554D.111)
 - An e-record/e-signature is attributable to a person if it was the act of the person, which may be shown in any manner, including showing the efficacy of any security procedure.
 - The effect of an e-record/e-signature attributed to a person is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including any agreement among the parties and otherwise as provided by law.
- Transactions remain subject to other applicable substantive law (§554D.104)

IUETA, continued...

- IUETA does not apply to transaction to the extent governed by laws governing the creation or execution of wills/codicils/ testamentary trusts or Iowa Code Ch. 554 (UCC), except articles 2 and 13 and §554.1306 (§554D.104)
 - Iowa’s UCC (Ch. 554) appears to have its own provisions regarding e-signatures/e-records, such as in Article 9, which defines “authenticate” to mean “(1) to sign; or (2) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.”
- Use of E-Records/E-Signatures (§554D.106)
 - IUETA does not require e-records/e-signatures
 - Applies only to transactions between parties that agree to use electronic means (determined by context and surrounding circumstances)
 - Agreeing to conduct one transaction electronically does not require that party to conduct other transactions electronically (can’t waive) and unless otherwise provided in chapter 554D, its provisions may be altered by agreement

IUETA continued

- Legal Recognition of E-records/E-Signatures/E-contracts (§554D.108)
 - A signature shall not be denied legal effect or enforceability solely because it is in electronic form.
 - Contracts can't be denied legal effect or enforceability solely because an e-record was used in formation.
 - If a law requires a written record, an e-record suffices.
 - If a law requires a signature, an e-signature suffices.
- If required to be notarized, acknowledged, verified, or made under oath such requirements are satisfied if the e-signature of the person authorized to perform those acts, (and all other information required by applicable law) is attached to or logically associated with the signature or record. (§554D.113).

Electronic Signatures in Global and National Commerce

E-Sign

- Definition of “Electronic Signature” (15 USC §7006(5))
 - Very similar to IUETA
- Validity of e-signatures in transactions in or affecting interstate or foreign commerce (§7001(a))
 - Signature, contract, or other record can’t be denied legal effect, validity, or enforceability solely because it is electronic
 - Contract can’t be denied legal effect, validity, or enforceability solely because a e-signature or e-record was used in formation
- Preservation of Rights/Obligations (§7001(b))
 - Does not impact any requirements of other statutes, regulations, or rules of law regarding rights and obligations under such law except for requirements that contracts/records be written, signed, or in non-electronic form
 - No requirement to use/accept e-signatures/e-records (with some government exceptions)

E-Sign, continued...

- Notarization and acknowledgement (§7001(g))
 - Very similar to IUETA
- Certain exemptions from §7001 (§7003)
 - As in IUETA, creation and execution of wills, etc. and UCC (except §1-107 and §1-206 and Articles 2 and 2A)
 - Laws regarding adoption, divorce, or other family law matters
 - Court orders/notices or official court documents in connection with court proceedings
 - Certain notices, including 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

E-Sign Consumer Disclosure Requirements

- If information relating to a transaction affecting interstate or foreign commerce is required to be provided or made available to a consumer in writing, e-record suffices if (§7001(c)):
 - A. Consumer affirmatively consents (and hasn't withdrawn consent)
 - B. Prior to consenting, the consumer is provided a clear and conspicuous statement
 - Informing consumer of 1) any right or option to get record in non-electronic form and 2) right to withdraw consent and any conditions, consequences (including termination of relationship), or fees resulting from such withdrawal
 - Informing consumer of whether consent applies 1) only to the particular transaction or 2) to identified categories of records
 - Describing procedures to withdraw consent and to update electronic contact information, and
 - Informing consumer 1) how, after consent, consumer may obtain a paper copy on request and 2) whether there are fees for such copy

E-Sign Consumer Disclosure Requirements continued

C. Consumer

- Prior to consenting is provided a statement of the hardware and software requirements to access and retain e-records, and
- Consents or confirms consent electronically in a manner that reasonably demonstrates that consumer can access information in the form to be used

D. After consent, if a change in hardware or software required to access or retain e-records creates a material risk that consumer will not be able to access or retain a subsequent e-record, the provider of the e-record

- Provides consumer with a statement of 1) the revised hardware and software requirements and 2) right to withdraw consent without fees and without impositions of any conditions or consequences not previously disclosed as provided above, and
- Complies with the requirements of C above.

*In its regulations, the Board of Governors of the Federal Reserve System has provided some guidance on this provision, including certain disclosures that can be made electronically without getting consent pursuant to E-Sign in certain circumstances.

E-Sign Preemption Provision

- Provides that state law can modify, limit, or supersede §7001 with respect to state law if that law (§7002(a)):
 - Enacts or adopts UETA, except that any exception to the scope of such law is preempted to the extent the exception is inconsistent with subchapters 1 or 2 of E-Sign or would not be permitted under §7002(a)(2)(A)(ii), or
 - Specifies the alternative procedures or requirements for use and/or acceptance of e-records and e-signatures for legal effect, validity, or enforceability if:
 - Such alternatives are consistent with subchapters 1 or 2 of E-Sign, and
 - Such alternatives do not require or accord greater legal status or effect to specific technology or technical specifications
 - If enacted or adopted after June 30, 2000, makes specific reference to E-Sign

Some Advantages of E-Signatures in Banking

- Improved Customer Experience
- Increase in Efficiency
 - Reduction in time
 - Reduction in paper
- Reduced Costs
 - Administrative costs
 - Costs associated with incorrect paperwork

Some Concerns with E-Signatures in Banking

- Enforceability – even if a signature meets the broad requirements of an “electronic signature” under E-Sign and IUETA do the circumstances of the signature or maintenance of the document risk enforceability?
 - Security of data – is the document protected from tampering?
 - Identity Verification – is the purported signee who he or she claims to be?
 - Comply with all substantive law?
- Security
- Cost/Logistics of Implementing System

Industry Practices

- Various banks appear to permit online applications for checking accounts or credit cards.
- U.S. Bank started offering e-signatures on consumer loans in its branches in September of 2011; expanded e-signature acceptance to the opening of deposit accounts in February 2013.
- As of 2013, JP Morgan Chase was expecting e-signatures to be used in mortgages, opening credit cards, and most other transactions requiring signatures by the end of this year.
- Requirements may vary depending on the transaction (from click to accept to stylus signings to highly secure digital signatures). For example, some entities have more specific requirements to accept e-signatures on documents relating to home loans. Fannie Mae and Freddie Mac purchase eMortgages (Fannie Mae purchased the first in 2000) but have specific requirements for e-documents and e-signatures.

Faxed/Scanned Signatures

- These are e-signatures under E-Sign and IUETA and fall under the provisions of those laws like any other e-signature.
- Whether a bank accepts such signatures may depend on the type of transaction (and its value) and the level of risk involved.
- Banks accept these kinds of signatures on some transactions. For example, several banks (including Bank of America, Chase, Wells Fargo, etc.) allow mobile deposits of checks where customers simply photograph the front and back of the check for deposit and destroy the original after a brief period (such as 5 days or 2 weeks). A number of banks and credit unions appear to accept faxed signatures on consumer loan applications (or have online applications).
- Note that for an electronic record to be treated like a paper negotiable instrument, it must meet the requirements of “transferable record.”

E-Records as Evidence

- One concern may be whether scanned copies of signatures are valid evidence in the event of litigation. IUETA (§ 554D.115) states that a record or signature shall not be excluded solely because it is electronic. Iowa Code §622.30(2) also provides:
 - If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry print, representation or combination thereof, of any act, transaction, occurrence or event and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, electronic imaging, electronic data processing, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original, the original may be destroyed in the regular course of business **unless held in a custodial or fiduciary capacity or unless its preservation is required by law**, except if the originals are records, reports, or other papers of a county officer they shall not be destroyed until they have been preserved for ten years. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original recording, copy, or reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.
- IUETA further provides for the retention of e-records (if it accurately reflects the information in the record after it was first generated in its final form as an e-record or otherwise and remains accessible) and if an original is required, an e-record so maintained suffices (§ 554D.114).
- Rules may vary in other states.

Questions?

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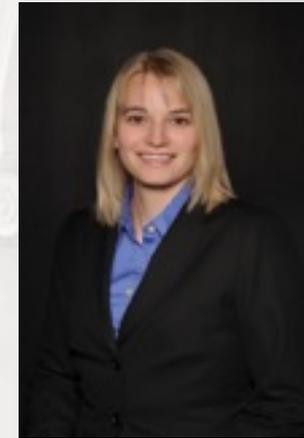
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