



**National  
Consumer Law  
Center**

*Fighting Together  
for Economic Justice*

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**NCLC.ORG**

October 21, 2024

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Re: Recommendations for guidance on how sellers can satisfy requirements for written disclosures under TILA and other statutes through electronic records

Dear Director Chopra:

As rooftop solar transactions have expanded, there have been escalating stories of solar panel sellers making false promises orally while manipulating the delivery of electronic documents to prevent consumers from seeing the required disclosures and real contract terms. The purpose of this letter is to formally request that the CFPB issue guidance to clarify how electronic records can be delivered to consumers in home solicitation sales.

The Truth in Lending Act (TILA), the Electronic Funds Transfer Act (EFTA), FTC rules, and state laws, all require that important information must be delivered to consumers “in writing” to ensure that consumers can see and retain these notices. The federal E-Sign Act allows electronic delivery of disclosures that are required by law to be provided in writing, but mandates special protections to ensure that consumers actually can receive and retain those disclosures when they are provided electronically.

When a solar transaction takes place in a consumer’s home, the contract and disclosures that are required to be provided in writing are often provided through electronic records, rather than on paper. Many consumers have complained that they never saw these electronic records when the salesperson was in their home. In these cases (noted *infra*), consumers insist that they were deceived about the terms of the transactions, and that, had they known the terms, they would not have agreed to them. (See attached Appendix for a list of recent cases describing this phenomenon.)

While the federal E-Sign Act includes specific provisions designed to protect consumers from this fraudulent behavior, those protections are routinely ignored. This letter outlines the problems in these home solicitation sales and recommends that the CFPB issue guidance clarifying how sellers in home solicitation sales must ensure that TILA and other disclosures required by federal law to be in writing are provided electronically without deception and in compliance with federal law.

- [Section I](#) describes the ways electronic media are used to further deceptions in the marketplace, especially in home solicitation sales.
- [Section II](#) explains the critical information that consumers are *not* getting when sellers fail to comply with the E-Sign Act's requirements for delivering written disclosures in electronic form.
- [Section III](#) sets out the explicit terms of the federal E-Sign Act, which includes specific requirements to prevent these deceptions.
- [Section IV](#) explains that the CFPB has authority to issue this guidance to ensure that the electronic delivery of TILA, EFTA, and other federally required disclosures complies with the E-Sign Act pursuant to the CFPA, and the E-Sign Act.
- [Section V](#) provides recommendations for guidance regarding electronic disclosures in home solicitation sales to ensure that consumers can access and retain disclosures required to be in writing, and shows how this guidance falls within the CFPB's authority under TILA, the CLA, the EFTA, and the CFPA's UDAAP provisions.
- [Section VI](#) demonstrates that the proposed guidance complies with the E-Sign Act's requirements for issuance of agency guidance.

We also attach an [appendix](#) of 25 relevant, recent cases illustrating the problems described in this letter.

## **I. Deceptions are facilitated through electronic transactions.**

Unfair and deceptive practices in home solicitation sales have caused problems for decades. The deception in these transactions has historically been so significant that, 50 years ago, the FTC<sup>1</sup> adopted a special rule giving consumers a 3-day right to cancel these transactions, and all states now have similar laws, some of which grant longer cancellation periods.<sup>2</sup>

As illustrated by the reported cases in the Appendix, in recent years unscrupulous door-to-door sellers have significantly expanded the extent of their deceptions, facilitated by the electronic delivery of important disclosures and notices and the forging of electronic signatures. While the historical

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<sup>1</sup> [12 C.F.R. pt. 429](#).

<sup>2</sup> See National Consumer Law Center, Federal Deception Law § 2.5.2 (4th ed. 2022), *updated* at [www.nclc.org/library](http://www.nclc.org/library).

problems with sales involving products such as replacement windows and siding continue, problems with sales of solar panels and other energy-related products and services have exploded.<sup>3</sup> These problems are illustrated by what happened to Mary Ann Jones, 83, who was the victim of such a scam, as described in a recent *Time* magazine article:

In 2022, she says, a door-to-door salesman from the company Solgen Construction showed up at her house on the outskirts of Fresno, Calif., pushing what he claimed was a government program affiliated with her utility to get her free solar panels. At one point, he had her touch his tablet device, she says, but he never said she was signing a contract with Solgen or a loan document with GoodLeap. Unbeknownst to Jones, the salesman used "yoursolarguyjosh@gmail.com" as her purported email address. That of course, was not her email address. She's on a fixed income of \$960 a month, and cannot afford the loan she says she was tricked into signing up for; she's now fighting both Solgen and Goodleap in court.<sup>4</sup>

Many of the deceptions are successful because the sellers purport to comply with laws requiring *written* contracts and disclosures by providing the required documents in electronic format. However, the electronic records containing those documents are not delivered and signed as intended by

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<sup>3</sup> See, e.g., Justin Klawans, *The Week*, *Homeowners are Getting Burned by Solar Panel Scammers* (Aug. 22, 2024), <https://theweek.com/environment/solar-panel-scammers-homeowners>; Alana Semuels, *How Solar Sales Bros Threaten the Green Energy Transition*, *Time Magazine*, Nov. 21, 2023, <https://time.com/6337766/solar-sales-bros-door-to-door/>. See also Press Release, Center for Responsible Lending, *Widespread Residential Solar Energy Adoption Threatened by Industry Sales and Financing Model That Repeats Disastrous Predatory Subprime Mortgage Lending Practices* (Jul. 30, 2024), <https://www.responsiblelending.org/media/widespread-residential-solar-energy-adoption-threatened-industry-sales-and-financing-model>; Press Release, Office of Minnesota Attorney General, *Attorney General Ellison takes actions to protect consumers from deceptive conduct in the solar industry* (Jul. 17, 2024), [https://www.ag.state.mn.us/Office/Communications/2024/07/17\\_Solar.asp](https://www.ag.state.mn.us/Office/Communications/2024/07/17_Solar.asp).

<sup>4</sup> Alana Semuels, *The Rooftop Solar Industry Could Be on the Verge of Collapse*, *Time Magazine*, Jan. 25, 2024, <https://time.com/6565415/rooftop-solar-industry-collapse/>; see also, *Jones v. Solgen Constr., L.L.C.*, 318 Cal. Rptr. 3d 313 (Cal. Ct. App. 2024).

federal law. Instead, they are delivered and executed on the seller's tablet or laptop,<sup>5</sup> or even the consumer's smartphone.<sup>6</sup>

A common tactic used by these fraudulent sellers is to set up a new email address for the consumer.<sup>7</sup> The seller emails the disclosures required by state and federal law to the fake email address along with the contract and accesses the email on the seller's tablet or laptop.<sup>8</sup>

Then, while verbally misrepresenting the details of the transaction to the consumer, the seller asks the consumer to touch the screen once or twice, or make a mark on the screen.<sup>9</sup> The consumer's

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<sup>5</sup> See, e.g., *Grimmett v. Sunlight Fin. L.L.C.*, 2023 WL 6449447 (S.D. W. Va. Oct. 3, 2023) (consumer told to click on sales agent's touchscreen); *Losoya v. GoodLeap, L.L.C.*, 2023 WL 9280252, at \*1 (S.D. Tex. Aug. 29, 2023) (agent asked consumer to sign salesperson's tablet that showed only a signature line); *Purnell v. GoodLeap, L.L.C.*, 2023 WL 2761131 (E.D. Pa. Mar. 31, 2023) (consumer signed salesperson's tablet, which did not display any contractual terms); *Griffin v. Vivint Solar, Inc.*, 2021 WL 2186408 (D.N.M. May 28, 2021) (salesperson presented tablet with only a portion of agreement visible on screen); *Shackleford v. Vivint Solar Developer L.L.C.*, 2020 WL 3488913, at \*2 (D. Md. June 25, 2020) (salesperson asked plaintiff to sign digital box on his tablet); *Jones v. Solgen Constr., L.L.C.*, 318 Cal. Rptr. 3d 313 (Cal. Ct. App. 2024) (salesperson directed consumer to put her finger on his electronic tablet, but did not convey she would be signing any documents, and then he left without giving her any paperwork); *Knight v. Vivint Solar Developer, L.L.C.*, 243 A.3d 956 (N.J. Super. Ct. App. Div. 2020) (plaintiff signed on "signature line" of salesperson's otherwise blank iPad screen); *Cleveland v. Power Home Solar, L.L.C.*, \_\_\_ N.E.3d \_\_\_, 2024 WL 2835218, at \*7 (Ohio Ct. App. June 4, 2024) (sales agent produced electronic copy of agreement on tablet and obtained consumers' signatures on arbitration provision by having them sign electronically and without giving them a chance to review it; "The Agreement is a preprinted form contract which was wholly electronic and viewable only on the electronic tablet of the PHS representative during the course of the sale.").

<sup>6</sup> See, e.g., *de Moura Castro by Hilario v. Loanpal, L.L.C.*, 715 F. Supp. 3d 373, 387 (D. Conn. 2024) (alleging that salesperson had control over one plaintiff's phone so was able to "surreptitiously sign the documents without Plaintiffs' knowledge or consent").

<sup>7</sup> See, e.g., *Migliore v. Seibert*, 2024 WL 1327947 (D.N.J. Mar. 28, 2024) (plaintiff alleged that documents appeared to have been sent to an email address that did not belong to her and were also signed by a user of that email address), *appeal filed* (3d Cir. Apr. 19, 2024); *de Moura Castro by Hilario v. Loanpal, L.L.C.*, 715 F. Supp. 3d 373 (D. Conn. 2024); *McDuffie v. Sunnova Energy Corp.*, 2021 WL 9182420 (C.D. Cal. Oct. 13, 2021); *Manfredi v. Vivint Solar Developer L.L.C.*, 2021 WL 8441831 (C.D. Cal. Sept. 24, 2021); *Brown v. Vivint Solar, Inc.*, 2020 WL 1332010 (M.D. Fla. Mar. 23, 2020) (alleging that salesperson added an extra "0" to plaintiff's email address, thus recording it incorrectly, and that salesperson altered address so she would not receive any email revealing that he had submitted a credit application in her name); *Knight v. Vivint Solar Developer, L.L.C.*, 243 A.3d 956, 959 (N.J. Super. Ct. App. Div. 2020) (salesperson admitted that he intentionally listed a variation of the plaintiff's email address on the purchase agreement, thereby acknowledging that document was not emailed to plaintiff).

<sup>8</sup> See, e.g., *de Moura Castro by Hilario v. Loanpal, L.L.C.*, 715 F. Supp. 3d 373, 387-388 (D. Conn. 2024) (alleging that, by creating a false email address for one of the consumers, the salesperson ensured that "she would not receive a copy of any contract, and invalid[ated] the effectiveness of any purported security procedures associated with the e-signatures" (internal citation omitted)); *Jones v. Solgen Constr., L.L.C.*, 318 Cal. Rptr. 3d 313 (Cal. Ct. App. 2024).

<sup>9</sup> See, e.g., *Migliore v. Seibert*, 2024 WL 1327947 (D.N.J. Mar. 28, 2024) (plaintiff alleged that documents appeared to have been sent to an email address that did not belong to her and were also signed by a user of

touch or mark on the screen is then used by the seller (or its assignee) as an electronic signature to satisfy multiple purposes, including the consent to receive electronic disclosures, acknowledgement that required disclosures have been provided, and agreement to the terms of the contract.<sup>10</sup>

When this happens, the consumer cannot catch the seller's misrepresentations because they never actually see the contract or disclosures before their electronic signature is attached,<sup>11</sup> and often not until weeks later, when they are contacted by the creditor.<sup>12</sup> Typically, consumers agree that they touched the screen, and some say they intended to provide an electronic signature, but believed they were agreeing to terms very different from those actually included in the electronic record.<sup>13</sup>

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that email address), *appeal filed* (3d Cir. Apr. 19, 2024); *de Moura Castro by Hilario v. Loanpal, L.L.C.*, 715 F. Supp. 3d 373, 387 (D. Conn. 2024).

<sup>10</sup> The Electronic Signature Audit Trails, created by the software that captures the electronic signature (such as DocuSign) allows a single electronic click made by a person to be applied as a signature in multiple places in an electronic record. Reviews of these audit trails often show that the documents were emailed to the consumer at an email address created by the seller, or that the IP address used by the electronic device when the document was signed applies to the seller, not the consumer.

<sup>11</sup> *See, e.g.*, *Grimmett v. Sunlight Fin. L.L.C.*, 2023 WL 6449447 (S.D. W. Va. Oct. 3, 2023) (consumer clicked on sales agent's touchscreen without being given opportunity to read contract, and though he later asked for copies of financing documents he was not given them and thus did not know any contractual terms); *Mondello v. Power Home Solar, L.L.C.*, 2023 WL 6311463, at \*5 (N.D. Ohio Sept. 28, 2023) (plaintiffs subjected to summary of loan agreement at a "rapid pace," they never learned of arbitration clause from sales representative, and they felt pressured to agree to loan agreement in order to receive advertised credits and discounts); *Puskas v. GoodLeap, L.L.C.*, 2023 WL 10947154, at \*1 (M.D. Fla. June 5, 2023) (salesperson told plaintiffs that electronic contract "mirrored the sales pitch" he had presented and that he did not give them time to read contract in depth at time they signed); *Purnell v. GoodLeap, L.L.C.*, 2023 WL 2761131 (E.D. Pa. Mar. 31, 2023) (consumer signed salesperson's tablet, which did not display any contractual terms, believing she was agreeing only to panel installation); *Griffin v. Vivint Solar, Inc.*, 2021 WL 2186408 (D.N.M. May 28, 2021) (alleging that salesperson engaged in "high pressure sales tactics" and did not give plaintiff or her now-deceased husband a chance to review); *Cleveland v. Power Home Solar, L.L.C.*, \_\_\_ N.E.3d \_\_\_, 2024 WL 2835218, at \*7 (Ohio Ct. App. June 4, 2024) (sales agent produced electronic copy of agreement on tablet and obtained consumers' signatures on arbitration provision without their knowledge and consent by having them sign electronically and without giving them a chance to review).

<sup>12</sup> *See, e.g.*, *Bride v. GoodLeap, L.L.C.*, 2024 WL 3972994 (W.D. Mo. Aug. 28, 2024) (plaintiff saw contract for first time when GoodLeap sent welcome email to plaintiff's husband); *Martinez v. Sunnova Energy Corp.*, 2024 WL 3005903 (C.D. Cal. May 3, 2024) (after receiving phone calls claiming he owed \$918 on an energy bill, consumer paid \$918 to utility only to learn later that outstanding bill was actually due to defendant on an alleged contract for a twenty-five-year loan totaling \$48,272.37); *Migliore v. Seibert*, 2024 WL 1327947 (D.N.J. Mar. 28, 2024) (plaintiff received in mail "Summary of Key Loan Terms" and "Solar Energy System Long-Term Loan Agreement Promissory Note" purporting to obligate her to pay \$99,749.82, and while all documents showed electronic signatures in plaintiff's name, she denied ever signing them), *appeal filed* (3d Cir. Apr. 19, 2024); *Jones v. Solgen Constr., L.L.C.*, 318 Cal. Rptr. 3d 313 (Cal. Ct. App. 2024) (shortly after panels were installed, plaintiff received calls from GoodLeap even though she had never heard of company, and soon learned that she had unwittingly signed a twenty-five-year loan contract).

<sup>13</sup> *See, e.g.*, *Bride v. GoodLeap, L.L.C.*, 2024 WL 3972994 (W.D. Mo. Aug. 28, 2024) (after plaintiff's husband provided electronic signature while plaintiff was not present, husband received a welcome email from defendant attaching a contract with different terms from those discussed and allegedly bearing plaintiff's

In some cases, the consumer intended to provide an electronic signature, but did not receive any record of the contract and did not know the actual terms.<sup>14</sup> In other cases, the consumer alleged that

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signature); *Losoya v. GoodLeap, L.L.C.*, 2023 WL 9280252, at \*1 (S.D. Tex. Aug. 29, 2023) (plaintiff used finger to sign agent’s electronic tablet, believing that doing so would simply begin process of getting estimate, but later “discovered to her horror” that her signature and initials had been forged on two loan contracts for \$59,412.30 and \$65,222.67); *Purnell v. GoodLeap, L.L.C.*, 2023 WL 2761131 (E.D. Pa. Mar. 31, 2023) (plaintiff signed electronic tablet, believing she was agreeing only to installation, but later learned of loan contract for \$18,900 with twenty-year term); *West v. Solar Mosaic L.L.C.*, \_\_\_ Cal. Rptr. 3d \_\_\_, 2024 WL 4499313, at \*6 n.6 (Cal. Ct. App. Oct. 16, 2024) (contract allegedly signed on elderly plaintiff’s behalf on daughter’s smartphone, but he did not understand transactions being entered into in his name, *i.e.*, demolition and reconstruction of bathroom plus solar panels; “all that matters in this analysis is whether Harold understood what was happening here, and the trial court found the recorded conversation did not demonstrate any awareness on Harold’s part that [daughter] had just entered into a loan agreement on his behalf”); *Jones v. Solgen Constr., L.L.C.*, 318 Cal. Rptr. 3d 313, 319 (Cal. Ct. App. 2024) (plaintiff unwittingly entered into contract for installation of system with Solgen and twenty-five-year loan contract for \$52,564.28 with financing company after salesperson asked her to put her finger on his tablet but did not convey she would be signing any documents; plaintiff later told finance company that “she did not sign up for a loan with GoodLeap, but instead believed that she was being offered a government program to lower her utility bill” and that she “did not know any e-mails from GoodLeap were in her e-mail’s inbox, was not informed that e-mails would be coming, and would not have known what to do even if she had been informed that e-mails were coming”); *Knight v. Vivint Solar Developer, L.L.C.*, 243 A.3d 956 (N.J. Super. Ct. App. Div. 2020) (plaintiff signed on “signature line” of salesperson’s otherwise blank iPad screen, and shortly after panel installation noticed “outrageous withdrawals” from her checking account that she could not afford; plaintiff claimed there were no check boxes on iPad and salesperson never showed her nor mentioned any arbitration clause, and never gave plaintiff hard copy of agreement).

<sup>14</sup> *Bride v. GoodLeap, L.L.C.*, 2024 WL 3972994 (W.D. Mo. Aug. 28, 2024) (plaintiff’s husband received welcome email from defendant attaching contract with different terms from those discussed and allegedly bearing plaintiff’s signature); *Grimmett v. Sunlight Fin. L.L.C.*, 2023 WL 6449447 (S.D. W. Va. Oct. 3, 2023) (consumer clicked on agent’s touchscreen without being given opportunity to read contract, and was not given requested financing documents and thus did not know any contractual terms); *Mondello v. Power Home Solar, L.L.C.*, 2023 WL 6311463, at \*5 (N.D. Ohio Sept. 28, 2023) (plaintiffs who were subjected to summary of loan agreement at a “rapid pace” never learned of arbitration clause from sales representative and felt pressured to agree to loan agreement in order to receive advertised credits and discounts); *Eugene v. GoodLeap, L.L.C.*, 2023 WL 6609357, at \*2 (S.D. Fla. Sept. 22, 2023) (consumer not allowed to read contract in depth at time of signing, and salesperson’s representation that contract mirrored sales pitch turned out to be “patently false”); *Losoya v. GoodLeap, L.L.C.*, 2023 WL 9280252, at \*1 (S.D. Tex. Aug. 29, 2023) (plaintiff used finger to sign agent’s tablet, believing that doing so would simply begin process of getting estimate, but later “discovered to her horror” that her signature and initials had been forged on two loan contracts for \$59,412.30 and \$65,222.67); *Puskas v. GoodLeap, L.L.C.*, 2023 WL 10947154, at \*1 (M.D. Fla. June 5, 2023) (salesperson told plaintiffs that electronic contract “mirrored the sales pitch” he had presented and did not give them time to read contract in depth at time they signed it); *Purnell v. GoodLeap, L.L.C.*, 2023 WL 2761131 (E.D. Pa. Mar. 31, 2023) (plaintiff signed tablet, believing that she was agreeing only to installation, but later learned of loan contract for \$18,900 with twenty-year term); *Griffin v. Vivint Solar, Inc.*, 2021 WL 2186408 (D.N.M. May 28, 2021) (salesperson engaged in “high pressure sales tactics” and did not give plaintiff or her now-deceased husband a chance to review agreement, nor did he disclose that defendant would put a lien on home, which it eventually did; tablet presented only a portion of the agreement visible on the screen, which husband signed with his finger); *West v. Solar Mosaic L.L.C.*, \_\_\_ Cal. Rptr. 3d \_\_\_, 2024 WL 4499313, at \*6 n.6 (Cal. Ct. App. Oct. 16, 2024) (contract allegedly signed on elderly plaintiff’s behalf on daughter’s smartphone, but he did not understand transactions being entered into in his name, *i.e.*, demolition and reconstruction of bathroom plus solar panels; “all that matters in this analysis is whether Harold

they never signed anything, or that they provided certain personal information but did not provide an electronic signature, and yet a signature was either forged or fraudulently inserted into a contract.<sup>15</sup>

Sometimes these transactions are accomplished through the consumer's smartphone, rather than the seller's hardware, but the seller was interacting with the smartphone, not the consumer.<sup>16</sup> When these disclosures or the contract terms are long and complex, it is questionable whether they can be

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understood what was happening here, and the trial court found the recorded conversation did not demonstrate any awareness on Harold's part that [daughter] had just entered into a loan agreement on his behalf"); *Jones v. Solgen Constr., L.L.C.*, 318 Cal. Rptr. 3d 313 (Cal. Ct. App. 2024) (salesperson directed consumer to put her finger on his electronic tablet, but did not convey she would be signing any documents, and then he left without giving her any paperwork); *Cabatit v. Sunnova Energy Corp.*, 274 Cal. Rptr. 3d 720 (Cal. Ct. App. 2020) (salesperson told plaintiffs they need not read agreement because he would go over details, but that they had to sign and initial before any work could take place; plaintiff wife signed even though she did not understand most of what he said, and plaintiffs never received copy of agreement until daughter obtained it following dispute regarding panels); *Knight v. Vivint Solar Developer, L.L.C.*, 243 A.3d 956 (N.J. Super. Ct. App. Div. 2020) (plaintiff signed on "signature line" of salesperson's otherwise blank iPad screen, and shortly after installation noticed "outrageous withdrawals" from her checking account that she could not afford; salesperson never showed her nor mentioned arbitration clause, and never gave her hard copy); *Cleveland v. Power Home Solar, L.L.C.*, \_\_\_ N.E.3d \_\_\_, 2024 WL 2835218 (Ohio Ct. App. June 4, 2024) (sales agent produced electronic copy of agreement on tablet and obtained consumers' signatures on arbitration provision without their knowledge and consent by having them sign electronically and without giving them a chance to review it).

<sup>15</sup> *Martinez v. Sunnova Energy Corp.*, 2024 WL 3005903 (C.D. Cal. May 3, 2024) (plaintiff's electronic signature allegedly inserted into contract for twenty-five-year loan totaling \$48,272.37); *Migliore v. Seibert*, 2024 WL 1327947 (D.N.J. Mar. 28, 2024) (plaintiff received in mail documents showing electronic signatures in her name and purporting to obligate her to pay \$99,749.82 though she denied ever signing), *appeal filed* (3d Cir. Apr. 19, 2024); *de Moura Castro by Hilario v. Loanpal, L.L.C.*, 715 F. Supp. 3d 373, 387 (D. Conn. 2024) (alleging that salesperson had control over one plaintiff's phone so was able to "surreptitiously sign the documents without Plaintiffs' knowledge or consent"); *McDuffie v. Sunnova Energy Corp.*, 2021 WL 9182420 (C.D. Cal. Oct. 13, 2021) (after panels were installed on plaintiff's home without consent, defendants forged his signature on an agreement to automatically debit his bank account; plaintiff never informed of contract's existence); *Manfredi v. Vivint Solar Developer L.L.C.*, 2021 WL 8441831 (C.D. Cal. Sept. 24, 2021) (when plaintiff eventually received alleged twenty-year contract, she noticed her name was spelled incorrectly, it contained an email address and phone number that were not hers, and it bore her forged signature); *Fabian v. Renovate Am., Inc.*, 255 Cal. Rptr. 3d 695 (Cal. Ct. App. 2019) (alleging that salesperson "signed" plaintiff's name on a financial agreement during telephone call, that she was never presented with any documents, and that defendant incorporated loan payments into her mortgage payments); *Solcius, L.L.C. v. Meraz*, 2023 WL 2261414 (Tex. App. Feb. 27, 2023) (alleging that installation was completed before he received any contract to sign despite his requests to review proposed terms, and he claimed he never signed electronic contract, thereby implying defendants signed on his behalf).

<sup>16</sup> *See, e.g., de Moura Castro by Hilario v. Loanpal, L.L.C.*, 715 F. Supp. 3d 373, 387 (D. Conn. 2024) (alleging that salesperson had control over one plaintiff's phone so was able to "surreptitiously sign the documents without Plaintiffs' knowledge or consent").

reasonably appreciated on the relatively small screen of a smartphone. Thus, they may not meet requirements that they be provided in a “clear and conspicuous” manner.<sup>17</sup>

Often, the victims are senior citizens, consumers of color, or consumers who live on low incomes, and have no familiarity with electronic transactions.<sup>18</sup> Others who fall victim to these scams are elderly or disabled, or have limited English proficiency.<sup>19</sup>

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<sup>17</sup> See, e.g., 12 C.F.R. § 1026.5(a)(1)(i) (TILA requirement that disclosures be provided “clearly and conspicuously”); 15 U.S.C. § 7001(c)(1)(B) (E-Sign’s requirement that all disclosures relating to a consumer’s consent to receive electronic records must be with a “clear and conspicuous” statement); California Dep’t of Consumer Affairs, Consumer’s Rights to Cancel Home Solicitation Contracts: Legal Guide K-9, [https://www.dca.ca.gov/publications/legal\\_guides/k\\_9.shtml](https://www.dca.ca.gov/publications/legal_guides/k_9.shtml) (California’s requirement that notices of the right to cancel a home solicitation sale must be “conspicuous”).

<sup>18</sup> See, e.g., *Martinez v. Sunnova Energy Corp.*, 2024 WL 3005903 (C.D. Cal. May 3, 2024) (plaintiff was a 78-year-old Spanish speaker with the equivalent of a second-grade education and was technologically illiterate); *de Moura Castro by Hilario v. Loanpal, L.L.C.*, 715 F. Supp. 3d 373 (D. Conn. 2024) (defendants represented to homeowners that solar panels would be free because they were senior citizens; husband had Parkinson’s Disease, which rendered him “legally blind” and unable to “sign documents, speak coherently, or care for himself,” and wife had “no understanding of how to even use DocuSign”); *Losoya v. GoodLeap, L.L.C.*, 2023 WL 9280252 (S.D. Tex. Aug. 29, 2023) (plaintiff was a 79-year-old widow with third-grade education who uses an oxygen tank to breathe and was limited in ability to read and write); *Purnell v. GoodLeap, L.L.C.*, 2023 WL 2761131 (E.D. Pa. Mar. 31, 2023) (81-year-old widow alleged that defendants marketed “free” solar panels and caused her to enter into contract and loan agreement without her knowledge or consent); *West v. Solar Mosaic L.L.C.*, \_\_\_ Cal. Rptr. 3d \_\_\_, 2024 WL 4499313, at \*4 (Cal. Ct. App. Oct. 16, 2024) (contract allegedly signed on daughter’s smartphone on behalf of elderly father who lived on retirement and Social Security benefits, but he did not understand transactions being entered into in his name; “Harold [the husband-plaintiff] was in his 90’s, suffered from dementia, did not use a computer, mobile phone, or e-mail, and was unable to answer simple questions such as his birthdate and telephone number without assistance and significant delay. The evidence strongly suggests Harold lacked the technical facility to open his daughter’s e-mail on what was presumably her mobile phone, create a digital signature, electronically click through and execute the loan agreement in seven locations, and submit those signatures, all in the space of 23 seconds, and it unquestionably demonstrates the existence of a factual dispute as to whether Harold actually executed the electronic signatures on the loan documents.”); *Jones v. Solgen Constr., L.L.C.*, 318 Cal. Rptr. 3d 313 (Cal. Ct. App. 2024) (plaintiff was an 81-year-old woman who lived on Social Security payments of less than \$1,000 per month); *Cabatit v. Sunnova Energy Corp.*, 274 Cal. Rptr. 3d 720 (Cal. Ct. App. 2020) (plaintiffs had no computer and no internet access).

<sup>19</sup> See *Losoya v. GoodLeap, L.L.C.*, 2023 WL 9280252 (S.D. Tex. Aug. 29, 2023) (plaintiff was a 79-year-old widow with third-grade education who used an oxygen tank to breathe and was limited in ability to read and write); *West v. Solar Mosaic L.L.C.*, \_\_\_ Cal. Rptr. 3d \_\_\_, 2024 WL 4499313 (Cal. Ct. App. Oct. 16, 2024) (husband-plaintiff in whose name contract was allegedly signed was in his 90s and suffered from dementia); *Jones v. Solgen Constr., L.L.C.*, 318 Cal. Rptr. 3d 313 (Cal. Ct. App. 2024) (plaintiff was an 81-year-old woman who lived on Social Security payments of less than \$1,000 per month).



## II. Consumers miss critical information when sellers fail to comply with E-Sign’s requirements.

The result of the tactics described above is that consumers do not get information required by law. This information is often critical—so critical that if consumers were to actually receive these documents, they would be highly unlikely to agree to the contracts.

In door-to-door sales, there are several important notices and disclosures that, by law, must be provided to the consumer in writing, either before the contract is signed or contemporaneous with the signing. These include:

- *The federal Truth in Lending Act (TILA)* requires written disclosures about the total cost of the financing (disclosing the finance charge, the total of payments, and the APR), and the payment schedule, in a clear and conspicuous format.<sup>20</sup>
- *The federal Consumer Leasing Act (CLA)* requires clear and conspicuous disclosures about the costs of a lease transaction, which must be provided in writing in a form the consumer may keep.<sup>21</sup>
- *The federal Electronic Funds Transfer Act (EFTA)* requires that automatic debts can be authorized only by a writing signed by and provided to the consumer.<sup>22</sup>
- *The FTC’s Home Solicitation Sales rule<sup>23</sup> and state counterparts<sup>24</sup>* require the consumer to be given written notice of the right to cancel a home solicitation sale within three days (or more under some state laws) after the contract is signed.
- *State Retail Installments Sales Acts (RISAs)* require the seller to give the consumer a full written copy of the contract, including the costs of sales and services purchased, the costs of financing, and the full terms of the contract.<sup>25</sup>
- *State home improvement contract laws* often require that the consumer be given a written contract containing specific disclosures.<sup>26</sup>

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<sup>20</sup> See, e.g., Reg. Z, 12 C.F.R. §§ 1026.5(a) (open-end disclosures), 1026.17(a)(1) (closed-end disclosures).

<sup>21</sup> See, e.g., Reg. M, 12 C.F.R. § 1013.3(a).

<sup>22</sup> 12 C.F.R. § 1005.10(b).

<sup>23</sup> 16 C.F.R. part 429. See also National Consumer Law Center, Federal Deception Law § 2.5.1 (4th ed. 2022), updated at [www.nclc.org/library](http://www.nclc.org/library).

<sup>24</sup> National Consumer Law Center, Federal Deception Law § 2.5.2 (4th ed. 2022), updated at [www.nclc.org/library](http://www.nclc.org/library).

<sup>25</sup> See, e.g., N.C. Gen. Stat. § 25A-28.

<sup>26</sup> See National Consumer Law Center, Consumer Warranty Law § 19.9.4 (6th ed. 2021), updated at [www.nclc.org/library](http://www.nclc.org/library).

III. The federal [Electronic Signatures in Global and National Commerce \(E-Sign\) Act](#) imposes specific prerequisites before electronic records can legally satisfy writing requirements.

The E-Sign Act requires that *before* disclosures required to be provided in writing can be provided to a consumer in an electronic format, the following multiple steps must occur:

1. *Affirmative consent.* The consumer must affirmatively consent to receive electronic records, which consent must not have been withdrawn.<sup>27</sup>
2. *Clear disclosures.* Disclosures about what this consent covers must be provided to the consumer in a clear and conspicuous manner, including whether the consumer can request the disclosure in paper format and how to do so, how to withdraw consent for electronic records, and whether the consent applies to only one or multiple transactions.<sup>28</sup>
3. *Statement to enable access and retention of electronic records.* A statement must be provided to the consumer describing the hardware and software requirements for access to and retention of the electronic records.<sup>29</sup>
4. *Reasonable demonstration of access to electronic information.* The consumer must consent electronically “*in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent . . .*”<sup>30</sup>

As the statute requires, these E-Sign disclosures—including the fourth critical step—must take place *before* the electronic record containing the disclosures required to be in writing can be sent to the consumer. Step # 4—requiring that the consumer’s consent to receive electronic records must itself demonstrate that the consumer can access the electronic record—is, in our experience and as described in the caselaw, frequently ignored by door-to-door sellers.

The failure to comply with the E-Sign Act’s demonstration requirement is the precipitating factor that allows so many consumers to be deceived in these transactions. Congress required the entire consent process in E-Sign explicitly to prevent electronic media from being used as the means of deceiving consumers.

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<sup>27</sup> 15 U.S.C. § 7001(c)(1)(A).\

<sup>28</sup> 15 U.S.C. §§ 7001(c)(1)(B)(i)-(iv).

<sup>29</sup> 15 U.S.C. § 7001(c)(1)(C)(i).

<sup>30</sup> 15 U.S.C. § 7001(c)(1)(C)(ii) (emphasis added).

Members of Congress explained that consumers must demonstrate, not just affirm, that they have access to the equipment and programs necessary to receive, open, and read the relevant electronic documents. Senator Wyden stressed this requirement when Congress passed the E-Sign Act:

Most importantly, the consumer must consent electronically or confirm his or her consent electronically in a manner that reasonably demonstrates that the consumer can access the information in the electronic form that will be used to provide the information. This is critical. “Reasonably demonstrates” means just that. It means the consumer can prove his or her ability to access the electronic information that will be provided. It means the consumer, in response to an electronic vendor enquiry, actually opens an attached document sent electronically by the vendor and confirms that ability in an e-mail response.<sup>31</sup>

Senator Wyden added: “‘Reasonably demonstrates’ means just that. It means the consumer can prove his or her ability to access the electronic information that will be provided.”<sup>32</sup>

Senator Leahy explained that this requirement affords the consumer three protections:

- It ensures that the consumer has reasonable access to a computer and the internet to be able to access information provided electronically.
- It ensures that the consumer’s means of access to electronically provided information includes the software to read the electronic records provided.
- It underscores to the consumer the fact that, by electronically consenting, the consumer is agreeing to receive the described information electronically in the future.<sup>33</sup>

Speaking on the floor of the Senate, Senator Leahy emphasized the importance of these requirements to protect against deceptions:

[This bill] avoids facilitating predatory or unlawful practices. . . . [It] will ensure informed and effective consumer consent to replacement of paper notices and disclosures with electronic notices and disclosures, so that consumers are not forced or tricked into receiving notices and disclosures in an electronic form that they cannot access or decipher.

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I maintained that any standard for affirmative consent must require consumers to consent electronically to the provision of electronic notices and disclosures in a

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<sup>31</sup> See 146 Cong. Rec. S5216 (daily ed. June 15, 2000) (statement of Senator Wyden) (emphasis added), <https://www.congress.gov/congressional-record/volume-146/issue-75/senate-section/article/S5215-2>.

<sup>32</sup> *Id.*

<sup>33</sup> 146 Cong. Rec. S5219–S5222 (daily ed. June 15, 2000) (statement of Senator Leahy) (emphasis added).

manner that verified the consumer’s capacity to access the information in the form in which it would be sent. Such a mechanism provides a check against coercion, and additional assurance that the consumer actually has an operating e-mail address and the other technical means for accessing the information.<sup>34</sup>

In addition to these disclosure requirements, E-Sign specifies standards that must be met as a condition of the validity of an electronic signature. When a person touches an electronic screen and checks a box, or writes their name, that action qualifies as a signature that binds them only if all aspects of that activity meet E-Sign’s definition for an electronic signature. That definition requires that the “electronic sound, symbol, or process” must be “attached to or logically associated with a contract or other record . . .” And most importantly, it must be “executed or adopted by a person with the intent to sign the record.”<sup>35</sup> This means that if the consumer could not see the terms of the contract they were supposedly signing, that they could not have had the intent to sign that contract.

**IV. The CFPB has authority to issue guidance to ensure that the electronic delivery of disclosures regarding solar transactions complies with the E-Sign Act and is not unfair, deceptive, or abusive.**

The E-Sign Act explicitly allows federal regulatory agencies to interpret the E-Sign Act’s key requirements if the agency is responsible for rulemaking under some other statute.<sup>36</sup> An agency’s interpretations may be regulations.<sup>37</sup> In addition, if it has authority to issue guidance, it may interpret E-Sign’s requirements through guidance of general applicability.<sup>38</sup>

Sections IV(A) through (C), *infra*, spell out the CFPB’s authority under various statutes that it administers to issue guidance regarding compliance with the E-Sign Act. Section V, *infra*, then sets forth the guidance we urge the CFPB to issue, and Section VI, *infra*, shows how the proposed guidance is consistent with the statutes that authorize this guidance and complies with the E-Sign Act’s separate requirement that agencies’ regulations, orders, and guidance be consistent with E-Sign, not add new requirements to E-Sign, and be supported by certain findings.

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<sup>34</sup> *Id.* (emphasis added).

<sup>35</sup> 15 U.S.C. § 7006(5) (emphasis added).

<sup>36</sup> 15 U.S.C. § 7004(b).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

**A. The CFPB has authority to issue guidance regarding electronic delivery of Truth in Lending disclosures.**

The first source of the CFPB's authority to issue the guidance we seek is the Truth in Lending Act (TILA). The solar transactions described in this memo are often credit transactions, which are governed by TILA's disclosure requirements.

The most important disclosures required by TILA are those provided before a consumer is asked to sign the credit contract. The required disclosures spell out the terms of the transaction clearly and conspicuously, using standardized terms and measures. Receiving these disclosures is essential for consumers to be able to make informed, rational economic decisions about whether to enter into the transaction.

There is no question that these disclosure requirements (or the comparable requirements of the Consumer Leasing Act, discussed in section IV(B), *infra*), apply to the solar transactions described in this memo. Some of those transactions may be structured as purchase-money loans arranged by the door-to-door seller, while others may be structured as retail installment contracts that may later be assigned to financing entity. The Truth in Lending Act's pre-consummation requirement of written disclosures applies not just to the former, but also to retail installment contracts.<sup>39</sup>

Yet, as demonstrated by the many cases cited in this memo, fraudulent door-to-door solar equipment sellers are evading this disclosure requirement, and obtaining consumers' purported assent to credit obligations without giving the consumers any *actual* disclosure of the terms of the transaction. If these consumers had actually received these disclosures, they would have been alerted to the fact that they were entering into a credit transaction, not enrolling in a free government program. They would have had the opportunity to review the terms of the proposed credit transaction, and likely would have declined to enter into it.

The Bureau's regulations under TILA require that these pre-consummation disclosures regarding the terms of the transaction must be given clearly and conspicuously<sup>40</sup> in writing,<sup>41</sup> and in a form the

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<sup>39</sup> 12 C.F.R. § 1026.2(a)(16).

<sup>40</sup> Reg. Z § 1026.17(a)(1). *See, e.g.*, *Balderas v. Countrywide Bank, N.A.*, 664 F.3d 787, 789–790 (9th Cir. 2011) (relevant notice of right to rescind is one homeowners were given to keep, not one they signed and returned to creditor); *Rojo v. Bear Stearns Residential Mortg. Corp.*, 2011 WL 2601355, at \*3–5 (E.D. Wis. June 30, 2011) (finding at summary judgment that copies of right to rescission received by homeowners are the relevant ones, not ones in the creditor's file); *Rowland v. Magna Milliken Bank*, 812 F. Supp. 875 (C.D. Ill. 1992) (though other copies of contract were legible, the requirement that disclosures be made in a form consumers can keep means the disclosures on their copy must be legible to be clear and conspicuous).

<sup>41</sup> Reg. Z § 1026.17(a)(1). *See, e.g.*, *Shepard v. Quality Siding & Window Factory, Inc.*, 730 F. Supp. 1295 (D. Del. 1990) (oral disclosure not adequate); *Gordon v. Hendricks-Patton Co.*, 389 B.R. 243 (Bankr. N.D. Ala. 2008) (finding a TILA violation where the creditor orally informed the consumer of the amount of the APR but omitted the APR on the TILA statement, but, sustaining the creditor's bona fide error defense); *In*

consumer can keep.<sup>42</sup> The requirement that these disclosures be provided in writing means that the creditor must follow the E-Sign procedures discussed in section III, *supra*, if it wishes to provide them electronically.<sup>43</sup> Indeed, the Bureau's regulations specifically provide that these disclosures can be provided electronically only if the creditor complies with the federal E-Sign Act.<sup>44</sup> However, at present, the Bureau's regulations do not address the manner in which creditors should comply with E-Sign, or spell out any safeguards against evasion of E-Sign's protections.

The CFPB clearly has authority to fill this gap. Its broad authority to issue TILA regulations is set forth in 15 U.S.C. § 1604(a): "The Bureau shall prescribe regulations to carry out the purposes of this chapter. . . . {S}uch regulations may contain additional requirements, classifications, differentiations, or other provisions . . . as in the judgment of the Bureau are necessary or proper to effectuate the purpose of this subchapter, to prevent circumvention or evasion thereof, or facilitate compliance therewith." It is equally clear that this authority extends to guidance, not just formal regulations.<sup>45</sup>

## **B. Other statutes under which the CFPB has rulemaking authority have equivalent requirements.**

A second basis for the CFPB's issuance of the guidance we seek is that some solar transactions are set up as leases, rather than direct sales, implicating the Consumer Leasing Act (CLA). Like TILA, CLA requires pre-consummation disclosures, and they must be given "in writing in a form the

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*re* Steinbrecher, 110 B.R. 155 (Bankr. E.D. Pa. 1990); *Danziger v. San Jacinto Sav. Ass'n*, 732 S.W.2d 300 (Tex. 1987).

<sup>42</sup> Reg. Z § 1026.17(a)(1); *Balderas v. Countrywide Bank, N.A.*, 664 F.3d 787, 790 (9th Cir. 2011) ("When you have pizza delivered, you don't sign for it and let the deliveryman take it back to the restaurant. . . . Delivery under TILA requires a permanent physical transfer from one party to another."); *Williams v. Gelt Fin. Corp.* (*In re Williams*), 232 B.R. 629 (Bankr. E.D. Pa. 1999), *aff'd*, 237 B.R. 590 (E.D. Pa. 1999). *See also* *Emery v. Wells Fargo Bank, N.A.*, 2006 WL 410980 (D. Ariz. Feb. 16, 2006) (no clear authority in TILA requires that the consumer get a *signed* copy); *Lacey v. William Chrysler Plymouth Inc.*, 2004 WL 415972 (N.D. Ill. Feb. 23, 2004) (a copy of disclosures that are blank, *i.e.*, no numbers filled in, also violates this rule); *Parrish v. Blazer Fin. Serv., Inc.*, 868 So. 2d 406 (Ala. 2003) (copy given to the consumer need not be a copy of the signed document, however). *But cf.* *Tripp v. Charlie Falk's Auto Wholesale, Inc.* 290 Fed. Appx. 622, 627 (4th Cir. 2008) (finding that consumer need only be offered a copy of the disclosures since TILA does not "compel" the borrower to take the disclosures).

<sup>43</sup> 15 U.S.C. § 7001(c)(1).

<sup>44</sup> 12 C.F.R. § 1026.15(a)(1)(iii). The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. §§ 7001 *et seq.*).

<sup>45</sup> 12 U.S.C. §§ 5512(b) (authorizing the CFPB to issue guidance to carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof), 5481(12)(O), (14) (defining "Federal consumer financial law" to include TILA).

consumer may keep . . . .”<sup>46</sup> CLA’s existing rules for electronic disclosures mirror those of TILA.<sup>47</sup> The Bureau’s rulemaking and guidance authority under CLA<sup>48</sup> are also comparable to its TILA authority. For the same reasons set forth with respect to TILA in section IV(A), *supra*, the CLA gives the CFPB authority to issue guidance interpreting E-Sign for purposes of consumer leases.

A third basis for the CFPB’s issuance of the guidance we seek is that automatic debits from consumers’ bank accounts are often set up in these solar transactions, implicating the Electronic Funds Transfer Act (EFTA). The Bureau’s EFTA regulations provide that automatic debts can be authorized only by a writing signed by and provided to the consumer.<sup>49</sup> These regulations require that disclosures must be “clear and readily understandable, in writing, and in a form the consumer can keep, except as otherwise provided in this Part.”<sup>50</sup> The CFPB has allowed these disclosures to be provided in electronic form “subject to compliance with the consumer-consent and other applicable provisions of [the E-Sign Act].”<sup>51</sup> However, as with the regulation allowing TILA disclosures to be provided electronically, the CFPB has not provided any further guidance about how to comply with the E-Sign Act’s requirements when EFTA disclosures are provided electronically.

**C. The CFPB’s UDAAP authority supports issuance of guidance regarding unfair, deceptive, or abusive practices in connection with the electronic delivery of disclosures in solar transactions.**

Another source of authority for the CFPB to issue guidance regarding electronic provision of solar transaction documents is the Dodd-Frank Act’s provision giving the CFPB authority to write rules to prevent unfair, deceptive, or abusive acts or practices (UDAAP) by a “covered person” in connection with any consumer financial product or service.<sup>52</sup> The CFPB has issued ten guidance bulletins dealing with UDAAP.<sup>53</sup>

A “covered person” is defined to include “any person that engages in offering or providing a consumer financial product or service.”<sup>54</sup> “Consumer financial product or service” is, in turn,

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<sup>46</sup> 12 C.F.R. § 1013.3(a).

<sup>47</sup> *Id.*

<sup>48</sup> 12 U.S.C. §§ 5512(b) (authorizing the CFPB to issue guidance to “carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof”), 5481(12)(B), (14) (defining “Federal consumer financial law” to include TILA); 15 U.S.C. § 1667f (CLA rulemaking).

<sup>49</sup> 12 C.F.R. § 1005.10(b).

<sup>50</sup> 12 C.F.R. § 1005.4(a)(1).

<sup>51</sup> 12 C.F.R. § 1005.4(a)(2).

<sup>52</sup> 12 U.S.C. § 5531. Products and services covered by the Act are generally set forth in 12 U.S.C. § 5481(15).

<sup>53</sup> See Consumer Fin. Prot. Bureau, [Compliance](http://www.consumerfinance.gov), available at [www.consumerfinance.gov](http://www.consumerfinance.gov).

<sup>54</sup> 12 U.S.C. § 5481(a)(6).

broadly defined to include, among many other things, “extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit”<sup>55</sup> and extending or brokering leases that are the equivalent of purchase finance arrangements.<sup>56</sup> This definition is broad enough to encompass the solar transactions at issue here, regardless of whether the seller is entering into a retail installment contract for the solar equipment, acting as a broker for a purchase-money loan, or leasing or brokering a lease for the equipment. The definition also covers servicers for these transactions and collectors of debt arising from these transactions.<sup>57</sup>

The next question is whether any of the exceptions to this broad grant of UDAAP authority apply to sellers of solar equipment. The first exception that might be relevant is 12 U.S.C. § 5517(a)(1), which provides a narrow exception for certain merchants:

The Bureau may not exercise any rulemaking, supervisory, enforcement or other authority under this title with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, *except to the extent that such person is engaged in offering or providing any consumer financial product or service*, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H. (emphasis added).

This exclusion does not protect solar equipment merchants, because they are “engaged in offering or providing [a] consumer financial product or service.” As illustrated by the many judicial decisions cited in this memo, the business model commonly practiced by the solar companies is to present to consumers a purchase and sale agreement along with a loan contract at the same time as part of the same transaction.<sup>58</sup> By partnering with finance companies and, as one case puts it, becoming “deputized to simultaneously sell customers both solar panels and financing for the purchase of the

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<sup>55</sup> 12 U.S.C. § 5481(a)(5), (15)(A)(i).

<sup>56</sup> 12 U.S.C. § 5481(a)(5), (15)(A)(II).

<sup>57</sup> 12 U.S.C. § 5481(a)(15)(A)(i), (x).

<sup>58</sup> *See, e.g.,* Grimmatt v. Sunlight Fin. L.L.C., 2023 WL 6449447, at \*2 (S.D. W. Va. Oct. 3, 2023) (describing “paperless point of sale system for generating loans” by which solar company and other contractor-partners “are deputized to simultaneously sell customers both solar panels and financing for the purchase of the solar panels through Defendants’ loans” (internal citation omitted)); Mondello v. Power Home Solar, L.L.C., 2023 WL 6311463, at \*5 (N.D. Ohio Sept. 28, 2023) (plaintiffs alleged they were subjected to a summary of the loan agreement at a “rapid pace,” they never learned of the arbitration clause from the sales representative, and they felt pressured to agree to the loan agreement in order to receive the advertised credits and discounts); Puskas v. GoodLeap, L.L.C., 2023 WL 10947154 (M.D. Fla. June 5, 2023) (salesperson presented electronic purchase and financing agreement for them to sign); Cleveland v. Power Home Solar, L.L.C., \_\_\_ N.E.3d \_\_\_, 2024 WL 2835218 (Ohio Ct. App. June 4, 2024) (alleging that salesperson scrolled through purchase agreement at an unacceptably rapid pace, which appellees signed via DocuSign, and they received loan agreement at the same time and in the same manner and format).



solar panels,”<sup>59</sup> these solar companies are clearly offering a “consumer financial product or service.” Even when the solar companies are not themselves extending credit, they are offering a “consumer financial product or service,” namely financing, by presenting consumers with purchase, installation, and loan contracts in a single transaction. Thus, the sellers of solar equipment that sign up consumers for extensions of credit are not excluded from the scope of the CFPB’s UDAAP authority by 12 U.S.C. § 5517(a).

A second provision, 12 U.S.C. § 5517(a)(2)(A)(i), creates another exception for sellers that extend purchase money credit directly to consumers to enable them to buy the merchant’s nonfinancial goods or services. This exception could exclude sellers of solar equipment that extend credit to consumers in the form of retail installment contracts. However, as noted above, it appears that the typical pattern at present is for the sellers to arrange a third-party loan rather than extend credit themselves. Moreover, 12 U.S.C. § 5517(a)(2)(B)(i) creates an exception to this exception for sellers that assign their retail installment contracts to financing entities, a very common practice among sellers.<sup>60</sup> A second exception to the exception sweeps back in sellers that regularly extend credit that is subject to a finance charge, another very common feature of retail installment contracts. Thus, even if sellers of solar equipment switched from using third-party loans to extending credit themselves via retail installment contracts, they would probably not be exempted from the Bureau’s UDAAP authority.

**V. The CFPB should issue guidance regarding electronic disclosures in home solicitation sales to ensure that consumers can access and retain disclosures required to be in writing.**

E-Sign’s seminal prohibition in 15 U.S.C. § 7001(b)(2), ensuring that no person can be required to agree to or use electronic records or electronic signatures, must be safeguarded. As consumers in these settings are present in the same physical space as the salesperson, they have not affirmatively indicated that they agree to an electronic transaction, as would be the case when the transaction takes place online. Indeed, the cases illustrate that often the consumers had no idea that they were even engaging in a credit transaction.<sup>61</sup> To ensure that consumers actually receive the disclosures

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<sup>59</sup> *Grimmett v. Sunlight Fin. L.L.C.*, 2023 WL 6449447, at \*2 (S.D. W. Va. Oct. 3, 2023).

<sup>60</sup> A proviso to this provision is that it only applies if the seller is not engaged significantly in offering consumer financial products or services. 15 U.S.C. § 5517(a)(2)(C). This appears to mean that sellers that only occasionally engage in extending credit to consumers are not subject to the CFPB’s UDAAP authority.

<sup>61</sup> *See, e.g., Jones v. Solgen Constr., L.L.C.*, 318 Cal. Rptr. 3d 313 (Cal. Ct. App. 2024) (salesperson directed consumer to put her finger on his electronic tablet, but did not convey she would be signing any documents, and then he left without giving her any paperwork); *Knight v. Vivint Solar Developer, L.L.C.*, 243 A.3d 956 (N.J. Super. Ct. App. Div. 2020) (plaintiff signed on “signature line” of salesperson’s otherwise blank iPad screen); *Cleveland v. Power Home Solar, L.L.C.*, \_\_\_ N.E.3d \_\_\_, 2024 WL 2835218, at \*7 (Ohio Ct. App. June 4, 2024) (sales agent produced electronic copy of agreement on tablet and obtained consumers’ signatures on arbitration provision by having them sign electronically and without giving them a chance to

required to be provided in writing by TILA, CLA and EFTA, strict compliance with E-Sign’s consent provision—particularly the requirement that the consumer demonstrate their ability to access the electronic records—is the only way to ensure that consumers will be provided those disclosures.

The CFPB’s Supervision and Enforcement manual sets out the rules for determining what constitutes a UDAAP, including that omission of information can be deceptive. In these solar cases, the sellers are failing to ensure that consumers actually receive the required federal disclosures before the transaction, which is the omission of critical information. While written disclosures cannot cure oral misrepresentations, the sellers in the described transactions are attempting to do exactly that by verbally misrepresenting the terms of transactions in the disclosures that the consumers are not receiving. The manual also notes that disclosures must be prominent enough to notice, the format must be easy to understand, the information must be placed in a location that consumers can be expected to notice, and qualifiers must be in close proximity to claims they qualify.<sup>62</sup> All of these signs of a UDAAP are evident in these transactions. Additionally, the CFPB has stated that a representation, omission, act, or practice must be considered from the perspective of a reasonable consumer. If a representation has two meanings and one is false, the representation is misleading.<sup>63</sup>

To ensure compliance with disclosure and record requirements of federal consumer protection laws and to prevent unfair, deceptive, and abusive practices, the CFPB should issue guidance regarding the E-Sign Act’s requirements as they apply to sellers and lenders that offer financing or leasing, or set up automatic debits in transactions that take place in the consumer’s home .

The goal of these proposed guidelines is to provide clear direction to creditors and others who are obligated under TILA, CLA, and EFTA to provide written disclosures to consumers in a form they can keep. The requirements provide safeguards to ensure that, when consumers provide E-Sign consent to receive electronic records, the demonstration requirement in 15 U.S.C. § 7001(c)(1)(C)(ii) is met (*see* section III, *supra*). The cases cited herein (in footnotes and in the Appendix) illustrate the factual situations that are the precipitating cause for consumers *not* receiving the TILA, CLA, and EFTA disclosures required to be provided in writing.

We urge the CFPB to issue a guidance document stating the following:

- 1) ***Email addresses must have been set up by the consumer.*** If the transaction requires E-Sign consent to deliver documents electronically, using an email address created by the seller does not

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review it; “The Agreement is a preprinted form contract which was wholly electronic and viewable only on the electronic tablet of the PHS representative during the course of the sale.”).

<sup>62</sup> *See* Consumer Fin. Prot. Bureau, Supervision and Examination Manual, UDAAP Laws and Regulations 5–6 (Sept. 2023), *available at* <https://files.consumerfinance.gov>.

<sup>63</sup> *Id.* at 6.

comply with E-Sign and invalidate the E-Sign consent, because it does not and cannot demonstrate that the consumer actually has the ability to access and retain TILA, CLA, or EFTA disclosures. As a result, only email addresses created and used by the consumer before the seller contacts the consumer may be used for the consent process or delivery of transaction documents and disclosures.

*Explanation: Allowing the seller to send disclosures to an email address that the consumer does not actually use and may not have access to does not demonstrate the consumer's ability to meet the E-Sign requirement that the consumer must demonstrate the "ability to access the information in electronic form" as required by 15 U.S.C. § 7001(c)(1)(C)(ii).*

- 2) ***The electronic transaction must take place using the consumer's pre-existing email access, which the consumer must access on their own to execute the transaction.*** The consumer must be able to access and use their own email without assistance from the seller. Any such assistance should invalidate the E-Sign consent, because it means that the consumer has not demonstrated their ability to receive electronic records of the disclosures required to be provided in writing by TILA, CLA, and EFTA.

*Explanation: The consumer must be familiar with how to accept emails, open and read attached documents, and retain access to the documents to review at a later time in order to meet the E-Sign requirement that the consumer must demonstrate the "ability to access the information in electronic form" as required by 15 U.S.C. § 7001(c)(1)(C)(ii).*

- 3) ***Consumer-owned hardware must always be used in a home-solicitation sale.*** For the consumer to demonstrate the ability to access and retain documents as required by E-Sign consent requirements, the delivery of the transaction documents and disclosures to the consumer should take place only on electronic hardware (tablet or computer) that was in the consumer's possession prior to the initiation of the transaction between the seller and the consumer.

*Explanation: Without their own hardware, the consumer will not be able to access the document at a later time, when the seller is no longer present. Sellers should not be permitted to guide the consumer through the E-Sign consent process and the signing of the documents using tablets or other hardware that the consumers will not have access to once the seller leaves their home, as that would indicate that the consumer would not have ready access to the documents at a later time.<sup>64</sup>*

- 4) ***Sellers should be cautioned that delivering disclosures to a consumer's smartphone in a home solicitation sale raises concerns in complex transactions.*** When the E-Sign consent

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<sup>64</sup> These provisions apply only to transactions in which the consumer is standing in the same physical space as the seller. Consumers who use computer hardware that they do not own to initiate online transactions do not need these protections.

process and disclosures required by TILA, CLA, or EFTA are delivered to the consumer's smartphone, it is far from evident that the "clear and conspicuous" requirements in those regulations can be met by viewing them on the small screen of a smartphone. Additionally, as the TILA, CLA and EFTA regulations all require that the disclosures must be provided in a form that the consumer can keep, using a smartphone may not ensure that the disclosures can be retained and accessed for later review by the consumer.

*Explanation: Most federal and state disclosure requirements require written disclosures to be made clearly and conspicuously, and require that they be delivered in a form the consumer can keep.<sup>65</sup> And a consumer cannot consent to a contract that they cannot read.<sup>66</sup> The typical transaction proffered by door-to-door salesmen consists of dozens of pages of disclosures and contract terms, and multiple separate documents. Additionally, consumers need to be able to retain and access the documents at a later time. That capability is not always available on smartphones, and even when it is, consumers may not know how to use it. When complex transactions take place using a smartphone, that may indicate that the disclosures were not clear and conspicuous, were not readily understandable, or were not delivered in a way which the consumer could retain.<sup>67</sup> That may give rise to a claim that the disclosures and other documents were not delivered.*

- 5) ***TILA, CLA, and EFTA disclosures must be given in paper form if E-Sign requirements are not met.*** If the E-Sign consent process is not complied with, the disclosures and other documents required to be in writing cannot be considered to have been provided, and the creditor is subject to the penalties that TILA, CLA, or EFTA provides for non-disclosure. To ensure that required written records are provided to parties standing in the same physical space, the required disclosure must be provided to the consumer on paper if the seller or creditor does not deliver them electronically in compliance with E-Sign and the CFPB's guidance.

## **VI. The proposed guidance complies with the E-Sign Act's requirements for issuance of agency guidance.**

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<sup>65</sup> See, e.g., 12 C.F.R. § 1026.5(a)(1)(i) (TILA requirements that disclosures be provided "clearly and conspicuously"); 15 U.S.C. § 7001(c)(1)(B) (E-Sign's requirement that all disclosures relating to a consumer's consent to receive electronic records must be with a "clear and conspicuous" statement); California Dep't of Consumer Affairs, Consumer's Rights to Cancel Home Solicitation Contracts: Legal Guide K-9, [https://www.dca.ca.gov/publications/legal\\_guides/k\\_9.shtml](https://www.dca.ca.gov/publications/legal_guides/k_9.shtml) (California's requirement that notices of the right to cancel a home solicitation sale must be "conspicuous").

<sup>66</sup> E-Sign's definition of an "electronic signature" requires that the signer must have intended to sign the record. 15 U.S.C. § 7006(5).

<sup>67</sup> The E-Sign Act includes a requirement that, when records required to be in writing are delivered electronically, "the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record." 15 U.S.C. § 7001(e).

As noted in the introduction to section IV, *supra*, the E-Sign Act authorizes federal agencies to issue interpretations of E-Sign’s requirements if the agency has rulemaking or guidance authority under a statute other than E-Sign.<sup>68</sup> Section V, *supra*, demonstrates that the guidance we seek falls within the CFPB’s rulemaking and guidance authority under TILA, CLA, EFTA, and the CFPA’s UDAAP provisions.

The E-Sign Act also imposes three requirements for agencies in the exercise of this authority.<sup>69</sup> As discussed below, the proposed guidance easily complies with all three requirements.

- 1) In § 7004(b)(2)(A), E-Sign requires that “such regulation, order, or guidance [must be] consistent with section 7001 of this title.”

*The proposed guidance is entirely consistent with section 7001. Nothing in the proposed guidance contradicts any provision of the E-Sign Act. Instead, it effectuates E-Sign’s protections, prevents evasions of those protections, and provides guidance about how to comply with E-Sign. Moreover, ensuring that each specific requirement of E-Sign’s consent process is met is necessary to ensure that consumers are not “required to agree to use or accept electronic records,” as mandated by § 7001(b)(2).*

- 2) In § 7004(b)(2)(B), E-Sign requires that a federal agency’s “regulation, order, or guidance ... not add to the requirements of” section 7001.

*Nothing in the proposed guidance adds to the requirements of section 7001. Instead, the guidance merely explains the application of the requirements of E-Sign’s consumer consent provision in certain circumstances, i.e., when the transaction takes place in person.*

- 3) In § 7004(b)(2)(C), E-Sign requires the agency to make certain findings: that—
  - (i) there is a substantial justification for the regulation, order, or guidance;
  - (ii) the methods selected to carry out that purpose—
    - (I) are substantially equivalent to the requirements imposed on records that are not electronic records; and
    - (II) will not impose unreasonable costs on the acceptance and use of electronic records; and
  - (iii) the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.”<sup>70</sup>

*Multiple cases (set out in the Appendix) provide substantial justification for the need for such guidance, as these cases show that sellers are not complying with E-Sign, are denying consumers their E-Sign protections, and are engaging in unfair, deceptive, and abusive practices in connection with door-to-door sales of solar equipment. Nothing in the proposed guidance creates requirements for electronic records that are inconsistent*

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<sup>68</sup> 15 U.S.C. § 7004(b)(1).

<sup>69</sup> 15 U.S.C. § 7004(b)(2).

<sup>70</sup> 15 U.S.C. § 7004(b).

*with the treatment of paper records, imposes extra costs on electronic records, or affords favored status to any particular technology.*

## **Conclusion**

In summary, we urge the CFPB to issue guidance on how solar panel sellers, and others involved in home solicitation sales (or leases), can ensure that they are complying with the relevant federal regulations when delivering disclosures required to be in writing through electronic records.. As the cases cited herein illustrate, some sellers exploit the use of electronic documents and devices to deceive and defraud their customers in derogation of the explicit requirements of the E-Sign consent process, which was intended to minimize the risk of such conduct, but is widely violated. The CFPB has CFPA authority over entities selling and leasing solar panels because they also arrange financing for the sale and installation. Issuing guidance on how sellers who transact business in a consumer's home would ensure that consumers are able to see and keep important disclosures required by federal law, would help well-intentioned sellers comply with the law, and would help law enforcement entities better identify fraudsters.

Thank you very much for considering this request. Please let us know if you have any questions.

Sincerely,

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## Appendix – Relevant Cases

**In these cases, the consumer intended to provide an electronic signature, but did not receive any record of the contract and did not know what terms were involved.**

1. Bride v. GoodLeap, L.L.C., 2024 WL 3972994 (W.D. Mo. Aug. 28, 2024) (after plaintiff's husband provided electronic signature while plaintiff was not present, husband received a welcome email from defendant attaching a contract with different terms from those discussed with seller and allegedly bearing plaintiff's signature).
2. Grimmett v. Sunlight Fin. L.L.C., 2023 WL 6449447 (S.D. W. Va. Oct. 3, 2023) (plaintiff claimed he was told to click on a touchscreen on sales agent's tablet and not given an opportunity to read contract he electronically signed, and once he was provided with written agreements they showed he had entered into a Purchase and Installation contract, as well as a Long-Term Loan Agreement and Promissory Note).
3. Mondello v. Power Home Solar, L.L.C., 2023 WL 6311463, at \*5 (N.D. Ohio Sept. 28, 2023) (alleging procedural unconscionability where plaintiffs' signatures were "auto-filled" throughout document, plaintiffs were subjected to a summary of the loan agreement at a "rapid pace," sales representative neglected to mention arbitration clause, and they felt pressured to agree in order to receive advertised credits and discounts).
4. Eugene v. GoodLeap, L.L.C., 2023 WL 6609357, at \*2 (S.D. Fla. Sept. 22, 2023) (alleging that defendants did not allow consumer to read contract in depth at time of signing, and that while he informed consumer that contract he was signing mirrored the sales pitch he received, such representation turned out to be "patently false"), *adopted*, 2023 WL 6585500 (S.D. Fla. Oct. 10, 2023).
5. Losoya v. GoodLeap, L.L.C., 2023 WL 9280252, at \*1 (S.D. Tex. Aug. 29, 2023) (79-year-old widow with third-grade education who uses oxygen tank to breathe and is limited in ability to read and write alleged that she used her finger to sign seller's agent's electronic tablet, which showed only a signature line, believing that doing so would simply begin the process of getting an estimate for the program, but later "discovered to her horror" that her signature and initials had been forged on two loan contracts with defendant for \$59,412.30 and \$65,222.67, respectively).
6. Puskas v. GoodLeap, L.L.C., 2023 WL 10947154, at \*1 (M.D. Fla. June 5, 2023) (alleging that salesperson told plaintiffs that electronic contract they signed "mirrored the sales pitch" he had presented, which it did not, and that salesperson did not give them time to read contract in depth at time of signing).

7. Purnell v. GoodLeap, L.L.C., 2023 WL 2761131 (E.D. Pa. Mar. 31, 2023) (81-year-old widow signed electronic tablet, believing that she was agreeing only to panel installation, but later learned of loan contract in the amount of \$18,900.00 with a 20-year term and 3.99% interest rate; plaintiff alleged that documents were not provided to her at any time before, at, or after loan closing, and that she never signed documents).
8. Waters v. GoodLeap, L.L.C., 2022 WL 15504225 (M.D. Fla. Jan. 19, 2022) (though plaintiff did not dispute that she accepted installation of solar panels or that she agreed to pay \$300 per month to seller, she argued that her signature on the disputed \$75,040 loan agreement with Goodleap to finance the purchase was forged).
9. Griffin v. Vivint Solar, Inc., 2021 WL 2186408 (D.N.M. May 28, 2021) (alleging that representative did not provide copy of contract, did not give plaintiff or her now-deceased husband an opportunity to review the agreement before signing it, incorrectly claimed it could be cancelled at any time, and presented tablet with only a portion of the agreement visible on the screen, which plaintiff's husband signed with his finger).
10. Shackleford v. Vivint Solar Developer L.L.C., 2020 WL 3488913 (D. Md. June 25, 2020) (plaintiff signed signature box after being assured she was merely verifying the sales visit, but later learned that defendant had made a hard inquiry on her credit report).
11. Dronney v. Vivint Solar, 2020 WL 3425301 (D.N.J. June 23, 2020) (wife signed signature box on iPad after being told by salesperson that she was merely giving her electric supplier permission to conduct a roof survey, but one day later learned that defendant had pulled her credit report and inquired into her husband's even though she had informed salesperson that she was not signing anything on behalf of her husband, who was not present at the sales visit, and that she needed to speak with him before any survey took place).
12. Jones v. Solgen Constr., L.L.C., 318 Cal. Rptr. 3d 313, 319-320 (Cal. Ct. App. 2024) (81-year-old woman who lived on Social Security payments of less than \$1,000 per month unwittingly entered into contract for installation of solar energy system with Solgen and 25-year loan contract for \$52,564.28 with financing company after salesperson asked her to put her finger on his electronic tablet but did not convey that she would be signing any documents; after he pressed her finger to the tablet, salesperson left and gave plaintiff no paperwork; plaintiff later told finance company "that she did not sign up for a loan with GoodLeap, but instead believed that she was being offered a government program to lower her utility bill" and that she "did not know any e-mails from GoodLeap were in her e-mail's inbox, was not informed that e-mails would be coming, and would not have known what to do even if she had been informed that e-mails were coming").
13. Cabatit v. Sunnova Energy Corp., 274 Cal. Rptr. 3d 720 (Cal. Ct. App. 2020) (salesperson told plaintiffs they did not need to read agreement because he would go over details, but that they had to sign and initial certain parts before any work could take place; wife-plaintiff, who does not understand complicated or technical terms, signed or initialed where salesperson



indicated even though she did not understand most of what he was saying; plaintiffs never received a copy of the agreement until daughter obtained a copy following a dispute regarding the solar panels).

14. Cleveland v. Power Home Solar, L.L.C., \_\_\_ N.E.3d \_\_\_, 2024 WL 2835218, at \*1 (Ohio Ct. App. June 4, 2024) (affirming trial court’s finding that contract was procedurally and substantively unconscionable where plaintiffs alleged that sales agent obtained their signatures on arbitration provision without their knowledge and consent by having them sign electronically and without giving them a chance to review it; claiming that “the salesman used high pressure sales tactics; the salesman scrolled through the Agreement at an unacceptably rapid pace; appellees signed the Agreement via DocuSign, which included auto-filling of their initials after each paragraph; and appellees also received the Loan Agreement in the same manner and format”).
15. Knight v. Vivint Solar Developer, L.L.C., 243 A.3d 956 (N.J. Super. Ct. App. Div. 2020) (plaintiff, a widow who lived in home with her mother and seven children, alleged that she signed on “signature line” of salesperson’s otherwise blank iPad screen, and shortly after installation of panels she noticed “outrageous withdrawals” from her checking account that she could not afford; plaintiff claimed there were no check boxes on iPad and salesperson never showed her any arbitration clause or mentioned it in any way, and salesperson never gave plaintiff hard copy of agreement).

**In other cases, the consumer alleged that they never signed anything, or that they provided certain personal information but did not provide an electronic signature, and yet a signature was either forged or fraudulently inserted into a contract.**

16. Martinez v. Sunnova Energy Corp., 2024 WL 3005903 (C.D. Cal. May 3, 2024) (after “technologically illiterate” 78-year-old Spanish speaker with equivalent of second-grade education provided defendant with energy bills containing non-public personal information, his electronic signature was allegedly inserted into a contract for a 25-year loan totaling \$48,272.37)
17. Migliore v. Seibert, 2024 WL 1327947 (D.N.J. Mar. 28, 2024) (consumer who verbally agreed to installation later received contract for 25-year loan totaling \$99,749.92; documents included electronic signature in consumer’s name, but she denied ever signing them), *appeal filed* (3d Cir. Apr. 19, 2024).
18. de Moura Castro by Hilario v. Loanpal, L.L.C., 715 F. Supp. 3d 373, 387 (D. Conn. 2024) (alleging that salesperson had control over one plaintiff’s phone and was therefore able to “surreptitiously sign the documents without Plaintiffs’ knowledge or consent”; homeowner wife pointed out that husband had Parkinson’s Disease, which rendered him “legally blind” and unable to “sign documents, speak coherently, or care for himself,” and wife also testified

she had “no understanding of how to even use DocuSign”). *See also de Moura Castro by Hilario v. Loanpal, L.L.C.*, 2024 WL 4100008, at \*6 (D. Conn. Sept. 4, 2024) at 6 (finding that, through hearing testimony and exhibits, “the plaintiffs established that [the sellers’] conduct was not only reckless, but willful. The defendants’ agents lied to the plaintiffs about a free government program for senior citizens designed to reduce their utility bill, when the true cost exceeded \$50,000. Moreover, the defendants’ agents used a fake email address and forged plaintiffs’ signatures repeatedly across multiple contract documents. Indeed, even after the defendants forged the plaintiffs’ signatures and contact information on August 1, 2020, they modified the loan contract to fill in key missing information and to add in a \$7,000 charge for tree trimming, a service that Murphy had advised Mrs. de Moura Castro would be free. This conduct is reprehensible and took a significant toll on the plaintiffs. Accordingly, the Court finds that the plaintiffs are entitled to an additional \$667,766.27 in punitive damages, which rounds the total judgment against Prime and 1st Light to \$1,000,000.”).

19. McDuffie v. Sunnova Energy Corp., 2021 WL 9182420 (C.D. Cal. Oct. 13, 2021) (alleging that, after solar panels were installed on plaintiff’s residence without his verbal or written consent, defendants forged his signature on an agreement to automatically take funds out of his bank account; defendants never provided him with a contract or notice of a right to cancel, nor did they inform him of the existence of a contract).
20. Manfredi v. Vivint Solar Developer L.L.C., 2021 WL 8441831 (C.D. Cal. Sept. 24, 2021) (alleging that defendant concealed that installation would require a 20-year contract, and also failed to provide plaintiff with contract before or during the installation process; when plaintiff eventually received contract after requesting it, she noticed that her name was spelled incorrectly, that it contained an email address and phone number that were not hers, and that it bore her forged signature).
21. Littlejohn v. Vivint Solar, 2020 WL 2521276, at \*2 n.3 (D.N.J. May 18, 2020) (plaintiff alleged that he never completed a Prospective Customer Consent Form, was never presented with an iPad by the salesperson, never signed anything, and never consented to a credit inquiry; court noted that PCCF showed only plaintiff’s typed-out name on signature line rather than a signature in the plaintiff’s handwriting).
22. Brown v. Vivint Solar, Inc., 2020 WL 1332010 (M.D. Fla. Mar. 23, 2020) (one plaintiff never filled out consent form to have credit checked, nor did she provide Social Security number, but two hours after salesperson left she was notified of credit inquiry; other plaintiff gave salesperson his telephone number, email address, birth date, and electric bill, but did not provide Social Security number or sign any forms on salesperson’s iPad, nor did he consent to submission of credit application, yet immediately after salesperson left he was alerted of a credit inquiry).
23. West v. Solar Mosaic L.L.C., \_\_\_ Cal. Rptr. 3d \_\_\_, 2024 WL 4499313, at \*4 (Cal. Ct. App. Oct. 16, 2024) (denying petition to compel arbitration where loan documents were sent to elderly husband-plaintiff’s daughter’s e-mail address, opened on a mobile phone ten seconds after being sent, and

completed with seven electronic signatures in thirteen seconds; “Harold was in his 90's, suffered from dementia, did not use a computer, mobile phone, or e-mail, and was unable to answer simple questions such as his birthdate and telephone number without assistance and significant delay. The evidence strongly suggests Harold lacked the technical facility to open his daughter's e-mail on what was presumably her mobile phone, create a digital signature, electronically click through and execute the loan agreement in seven locations, and submit those signatures, all in the space of 23 seconds, and it unquestionably demonstrates the existence of a factual dispute as to whether Harold actually executed the electronic signatures on the loan documents.”; agent told plaintiffs that work would be done pursuant to government program and he never discussed cost they would have to pay).

24. Fabian v. Renovate Am., Inc., 255 Cal. Rptr. 3d 695 (Cal. Ct. App. 2019) (alleging that salesperson “signed” plaintiff's name on a financial agreement during telephone call, that she was never presented with any actual documents to sign, and that defendant incorporated the solar panel payments set forth in the financial agreement into her mortgage loan payments).
25. Solcius, L.L.C. v. Meraz, 2023 WL 2261414 (Tex. App. Feb. 27, 2023) (plaintiff alleged that installation was completed before he received any written contract to sign despite his requests to review proposed terms, and he claimed he never signed the electronic contract, thereby implying that defendants had signed on his behalf).