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**From:** [REDACTED]

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**Subject:** Electronic Signatures & Form 2678

Examination Operations has asked whether the Service may accept a Form 2678, *Employer/Payer Appointment of Agent*, that displays an electronic signature. As we understand the proposed electronic signing procedure, the enrollee will fill out the Form 2678 online and sign it with a mouse or stylus. The signature will be created by the person with a live signature, but it will be a digital image of the actual signature. The Form will be mailed to the Service, and the vendor will maintain a digital image of the completed form.

It is our view that an electronic signature should only be accepted by the Service when there are published guidance or IRM provisions that specifically authorize use of an electronic signature for the specific form involved. Since there is no guidance or IRM provisions authorizing the use of an electronic signature on Forms 2678, we recommend that the Service not accept Forms 2678 signed electronically until the Service authorizes its use for Forms 2678 either in published guidance or in the IRM.

It is a business decision whether to accept use of electronic signatures on any specific form. As discussed more fully below, although electronic signatures are legally valid, the utility of using electronic signatures on specific documents or forms must be balanced against the risk of disavowal by the signer.

Internal Revenue Code section 6061(a) provides the general rule that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary. Although the Internal Revenue Code does not define the term "signature," 1 U.S.C. § 1 provides that a "signature" includes a mark when the person declaring the same intended it as such, and section 6061(b)(1) provides that the Service shall establish procedures for accepting signatures in digital or other electronic form. The Internal Revenue Code does not provide detailed rules for the use of electronic signatures beyond authorizing their use in section 6061.

The use of electronic signatures in transactions involving almost all federal organizations other than the Internal Revenue Service is primarily governed by the

Government Paperwork Elimination Act, Pub. L. No. 105–277, Div. C, Title XVII, 112 Stat. 2681-749 (1998) (codified at 44 U.S.C.A. § 3504 note (West Supp. 1999) (GPEA). Although GPEA by its terms does not apply to the Internal Revenue Service, see GPEA § 1709, its provisions are useful in analyzing the legal and policy underpinnings of the use of electronic signatures by governmental agencies. GPEA’s core concern is electronic documents, referred to as “records” or “electronic records,” and “signatures” that are created, communicated, and stored in electronic form.

GPEA defines the term “electronic signature” as “a method of signing an electronic message that-- (A) identifies and authenticates a particular person as the source of the electronic message; and (B) indicates such person’s approval of the information contained in the electronic message.” GPEA § 1710. It is a generic, technology-neutral term that refers to the universe of all of the various methods by which one can sign an electronic record. Although all electronic signatures are represented digitally (*i.e.*, as a series of ones and zeroes), they can take many forms and can be created by many different technologies.

An electronic signature is legally equivalent to a handwritten signature and may not be denied legal effect, validity, or enforceability solely because it is in electronic form. GPEA § 1707. All signatures, however, whether paper or electronic, are subject to challenge for other reasons, such as claims of forgery, lack of authority, mistake, or duress. Accordingly, although electronic signatures are legally valid, the utility of using electronic signatures must be balanced against the risk of disavowal by the signer. In the case of signatures signed by IRS employees, the risk of disavowal is extremely low. Taxpayers or agents, by contrast, may challenge an electronic signature, especially in the case of documents that may fix the taxpayers’ or agents’ liability and may be introduced in court proceedings. In those cases dealing with high-risk documents, taxpayers should either be required to sign by non-electronic means or the Service should institute heightened authentication, security procedures, and electronic signing processes to protect the Service against the risk of disavowal by the taxpayer.

### **Relationship between an Electronic Signature, a Security Procedure, and a Signing Process**

It is important to distinguish an electronic form of signature from a security procedure and to understand the concept of a signing process that incorporates both. While these concepts are all related, at their core they are different and must be treated accordingly.

The essence of an electronic form of signature is data representing a sound, symbol, or process that is made or adopted by a person with the intent to sign a document. *Buckles Management LLC v. InvestorDigs, LLC*, 728 F. Supp. 2d 1145, 1151 (D. Colo. 2010) (holding that electronic record was not signed where the alleged signature was not “executed or adopted by a person with the intent to sign the record”). It indicates a person’s intent to associate himself to information or a reason for signing (*e.g.*, approving a document, acknowledging receipt of information, etc.). A security procedure, by contrast, is employed for, among other purposes, verifying that an electronic record, signature, or performance is that of a specific person (attribution) or

for detecting changes or errors in the information in an electronic record (integrity). Security procedures help identify parties and verify the integrity of information, whereas signatures associate the signer to a legally binding statement or representation. Security procedures can be used either inside or outside of the signing process. For example, in the context of a signing process, a security procedure might be used to verify the signer's identity.

A "digital signature" is a term for a technology-specific process often used to authenticate identity and/or to verify the integrity of electronic records. While the process is not an electronic form of signature per se (notwithstanding its name), it has properties that make it particularly well suited for use as an electronic form of signature where it is expressly intended for that purpose. The Service is already using digital signature technology for enforcement forms. See, e.g., Interim Guidance Memorandum for Electronic Approval of Enforcement Actions, SBSE-05-01112-006. Also, note that an electronic signature may be used by the official who approves a lien release under the Automated Lien System. See IRM 5.12.3.4(2), Requests for Release of Lien (09-07-2006). Such signatures are legally sufficient under GPEA section 1707 and I.R.C. § 6061(b)(1).

Consequently, if the Service should make the business decision to accept electronic signatures on Forms 2678, we recommend that the Service adopt procedures that not only are consistent with GPEA but also incorporate security procedures to protect the Service from taxpayer challenges either that the taxpayer did not sign the form or that the electronic signature process is invalid. Accordingly, for purposes of creating a valid and enforceable electronic signature, the Service should adopt electronic signing procedures that satisfying the following signing requirements:

1. A person (*i.e.*, the signer) must use an acceptable electronic form of signature;
2. The electronic form of signature must be executed or adopted by a person with the intent to sign the electronic record, (*e.g.*, to indicate a person's approval of the information contained in the electronic record);
3. The electronic form of signature must be attached to or associated with the electronic record being signed;
4. There must be a means to identify and authenticate a particular person as the signer; and
5. There must be a means to preserve the integrity of the signed record.

These guidelines are consistent with those issued in OFFICE OF MANAGEMENT AND BUDGET, *Use of Electronic Signatures in Federal Organization Transactions* (January 25, 2013), which was designed to assist federal organization officials in complying with the signing requirements applicable to electronic transactions.

Should the Service choose to authorize use electronic signatures on Forms 2678, the appropriate Internal Revenue Manual provision and Form instructions should be revised to set forth the procedures under which these forms can be electronically signed.

Please contact this office if we can be of further assistance.