

Tree-Free Compliance

Reducing Disclosure Costs With ESIGN

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Material for this event may be downloaded at:

<http://www.bollearningconnect.com/esign2/materials/>

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Pre-webinar Poll

- Does your institution offer paperless statements?
 - Deposit accounts only
 - Credit accounts only
 - Both deposit and credit accounts
 - Working on it
 - No plans

Topic Orientation

- e-Delivery (E-D) is an emerging topic
- Rules have not yet been tested
- Service norms have not evolved fully

What is “e-Delivery”?

- Substitution of electrons for paper:
 - If “written” delivery is a legal requirement, and
 - Paper will be discontinued, and
 - Bank will transmit items electronically, then
 - You have E-D!

Why Should I be Interested?

- Customers want the service
- CEOs want the service
- E-D has significant regulatory risks

What Can I Switch to E-D?

- Written disclosures to existing customers, such as:
 - Periodic statements
 - Deposit accounts
 - Credit cards, HELOCs, OD lines
 - Due-to-mature notices for CDs
 - Change in terms notices
 - Rate/payment change notices for ARMs
- Disclosures for new accounts

Where Do I Start?

- Action plan
 - Determine what service you will offer
 - Research rules & regs that apply
 - Implement the new service
 - Sell, sell, sell
 - Defend, defend, defend

e-Delivery Models

- "Push"
- "Pull"
- Other systems

“Push” e-Delivery

- Bank transmits “alert message”
 - Ordinary email or proprietary system
 - “Here are your disclosures”
 - Placement of disclosures
 - Body of message
 - Attached file
- Customer
 - Opens attached file
 - Reads and saves/prints disclosure

“Pull” e-Delivery

- Bank transmits “alert message”
 - Ordinary email
 - “Your disclosure is posted on our web site”
 - URL or reference to location of disclosure
 - Length of time disclosures will remain available
- Customer
 - Logs into web site
 - Downloads, reads and saves/prints disclosure

Other e-Delivery

- Alert message may be
 - Passive
 - Paper
 - Phone-based
 - Sent via proprietary system
- New technologies = new E-D possibilities

Poll

- What method do (will) you use for E-D?
 - “Push”
 - “Pull”
 - Other
 - Varies by product
 - Still working on it

Q&A #1

Questions about e-Delivery methods?

Research the Rules & Regs

- ESIGN, UETA, *and*
- All rules & regs requiring “written” disclosures
 - The Fed’s “e-Regs”
 - Other federal regs (various agencies)
 - Fed Regs. (AA, CC, etc.)
 - Other agencies (Flood, Privacy, RESPA, etc.)
 - State laws & regs (if any)

ESIGN vs. UETA

- “Uniform Electronic Transactions Act”
 - Adopted by many states in some form
 - Applies to contracts & state disclosures
 - Has no effect on federal laws & regs.
 - May facilitate delivery of state disclosures

ESIGN vs. UETA

(cont'd)

- ESIGN
 - Federal law
 - Exclusive option for delivery of federal disclosures
 - Optional for matters of state law

What ESIGN Does

- Legalizes
 - e-Writings
 - e-Signatures
 - e-Record retention
- Governs consumer consent process

What ESIGN Doesn't Do

- Require any bank to offer E-D
- Require any consumer to accept E-D
- Require any particular technology
- Specify how to e-deliver documents
- Require regulations
- Appoint any agency to interpret the law

How ESIGN Works

- Disclosure
- Opt-in (“consumer consent”)

ESIGN Flow

- Customer responds to E-D promotion
- Bank gives ESIGN’s pre-consent disclosures
- Customer selects E-D instead of paper
- Customer takes a “test drive”
- Customer consents in manner demonstrating success with the medium
- Bank flags account(s) for tree-free delivery

ESIGN Pre-consent Disclosures

- e-Delivery choices
 - Docs relating to current transaction, only
 - Broader categories of information

ESIGN Pre-consent Disclosures

(cont'd)

- Availability of paper delivery
 - Now
 - Later (if consumer changes her/his mind)
 - Fees for paper

ESIGN Pre-consent Disclosures

(cont'd)

- Necessary hardware/software
 - To access e-written information
 - To retain e-written information

ESIGN Pre-consent Disclosures

(cont'd)

- Procedures for consumer to
 - Withdraw consent at a later date
 - Notify bank when email address changes

ESIGN Consent

- Must be affirmative
- Must demonstrate success with e-medium

“Demonstrate” vs. “Declare”

- Declaration (“I want e-delivery!”)
 - Part of the consent process
 - Can be done on paper or electronically
 - Does not satisfy requirement to “demonstrate” success
- Demonstration of success (the E-SIGN “handshake”)
 - Customer must “test drive” your E-D system
 - Receive notification via email
 - Receive or “pull” sample disclosure
 - Open and comprehend content of sample disclosure
 - Customer must prove (demonstrate) success

Testing Customers

- “Pull” system with email notification
 - Send sample email notification to customer
 - Message contains link to sample disclosure on web site
 - Customer clicks through and opens sample
 - Sample contains PIN or unique data
 - Customer reports PIN or unique data to “pass”

Testing Customers (cont'd)

- “Push” system with email attachment
 - Send sample email notification to customer
 - Attached file contains sample disclosure
 - Customer opens attachment & reads sample
 - Sample contains PIN or unique data
 - Customer reports PIN or unique data to “pass”

ESIGN Changes in Terms

- If bank changes hardware / software requirements
 - Redisclose requirements that will change
 - Allow customer to withdraw consent without consequence
 - If customer consents to change, new “demonstration” is required

Poll

- Has your bank implemented ESIGN yet?
 - Yes
 - Yes, but may need to make changes
 - Not yet

Q&A #2

Questions about E-SIGN?

SPeRS

- ***Standards and Procedures for Electronic Records and Signatures***
- Exciting initiative by private industry
- Makes “commonly understood ‘rules of the road’ available to all parties seeking to take advantage of the powers conferred by E-SIGN and UETA”

Who’s Behind SPeRS?

- Major financial services companies
- Fannie & Freddie
- Trade associations, including ABA & MBA
- Title insurance & mortgage insurance companies
- Software developers & digital signature authorities
- Many others

Why is SPeRS Important?

- ESIGN & UETA lack precise standards
- Congress & states appointed no rulewriters
- Courts are given no benchmarks
- Loss in court could void your e-contracts and e-disclosures (i.e., you are toast)
- No one wants to be the ESIGN-disaster-poster-child of 2004!
- SPeRS is a commercially reasonable standard

SPeRS Structure

- Five principle sections
 - Authentication
 - Consent to use electronic records & signatures
 - Agreements, notices and disclosures
 - Electronic signatures
 - Record retention

SPeRS Standards

- Stated in plain English
- Supported by:
 - A statement of principle
 - A plain-English discussion of the elements in the standard
 - A checklist of issues, strategies and optional solutions for implementing the standard
 - Examples of SPeRS implementations
 - A legal commentary

Types of Issues Addressed by SPeRS

- Risks associated with PINs & passwords
- Obtaining a consumer's consent for E-D
- Selecting an appropriate e-signature process
- Establishing the intent to sign an electronic record
- Effectively e-delivering information
- Hyperlinking to information and disclosures
- Describing and offering download or print options
- Strategies for effective record retention

How Do I Get a Copy?

- Available by mid-September
- \$295.00 per hardbound copy (\$15.00 S&H)
- Orders & info @ WWW.SPERS.ORG

Q&A #3

Questions about SPeRS?

Regs Requiring Written Disclosures

- State laws & regs (if any)
- Other federal regs (various agencies)
 - Regs. AA & CC, Flood, Privacy, RESPA, etc.
 - No specific E-D standards issued
 - No exemption from E-SIGN
- The Fed’s “e-Regs”

What are the “e-Regs”?

- Amendments to Fed Regs B, E, M, Z, DD
- “Helper regs” to accompany E-SIGN

History of the e-Regs

- May 1996: first proposal (Reg E)
- March/April 2001
 - “Interim final rules” issued
 - Rules received much criticism during comment period
- August 2001
 - Rules reclassified “optional”
 - “Additional flexibility” promised
- August 2003
 - Still awaiting “additional flexibility” (29 mos)

Where are the e-Regs?

- New sections added by 2001 amendments:
 - Sec. 202.16 (Reg B)
 - Sec. 205.17 (Reg E)
 - Sec. 213.6 (Reg M)
 - Sec. 226.36 (Reg Z)
 - Sec. 230.10 (Reg DD)
- Commentaries added, too

How do the e-Regs Work?

- All 5 regs are almost identical
- “Electronic communication”
 - Defined
 - Permission to use it for “written” disclosures
 - Rules for using it instead of paper
- Permission to use electronic signatures
- Reminder about getting E-SIGN consent

“Electronic Communication”

- A message that
 - Is transmitted electronically from bank to consumer
 - Uses "visual text" displayable on "equipment"
 - Is retainable

Fed-approved e-Delivery Methods

- “Push” disclosure on or attached to an email
- “Pull”
 - Post disclosure to a WWW address
 - Notify consumer by email (alert message)
 - Maintain WWW posting for at least 90 days
- Other forms of delivery are not "written"
 - Messages sent via proprietary systems
 - WWW click-throughs

Use of Approved E-D Methods

- General rule
 - If the disclosure must be:
 - “Written”
 - “In writing”
 - “In a form the consumer may keep”
 - And no exemption applies, then
 - You must use an approved E-D method

Redelivery

- Must attempt when an alert message bounces
- "Reasonable steps" required
 - Email another address
 - Snailmail

Exceptions

- Disclosures that need not be “written”
 - Not covered by e-Regs
- Application & other pre-account disclosures
 - “Push” or simply display on screen
 - CHARM booklet & program disclosure
 - WYHIOTL booklet & preapp disclosure
 - Schumer box disclosures
 - Reg B GMI disclosures & data request

Strings Attached to Exceptions

- Non-bypassable rule
 - Offering pre-account disclosures is not enough
 - Applicant must access them before submitting application
 - Sequentially linked pages, or
 - Viewable on the screen as part of the application
- Can't borrow 3 day delay rule for HELOC and ARM booklets & program disclosures

General Rule Applies

- Early (estimated) closed-end TIL (Z)
- New account (consummation) disclosures (Z & DD)
- Notice of Action Taken (B)
- Periodic statements (Z & DD)
- EFT information (E)
- Rescission notice (Z)
- Change in terms notices (Z, DD)
- "Due to mature" notice (DD)
- EFT/billing error procedures (E, Z)
- ARM rate/payment adjustment notice (Z)

Special Situations

- If consummation occurs online, consumer must be required to access the new account disclosures before consummation
- Obtain separate email addresses for all owners, send single copy of ROR to each

Q&A #4

Questions about the e-Regs?

Implement the new E-D Service

- Make necessary software system changes
 - Enhance statement/disclosure generator
 - Add flag field to direct processing flow
 - Add program branch to generate alert message to customer
 - Add html document writer
 - Enhance appropriate system to hold customer's EMA
 - CIS
 - Primary application
 - Other
 - Program POP server to outsort bounced alert messages

Sell the new E-D Service

- Price services to encourage E-D
- Revise product descriptions & marketing material
- Train affected employees
- Announce new service to customers
- Sell, sell, sell

E-D Risk Profile

- ESIGN has no penalties
- “Failure to deliver” violations involving
 - Truth in Savings
 - Reg E
 - Truth in Lending
- Corrective action
- Possible penalties
- Reputational damage

Examinations

- No standards or work programs issued
- Left to examiner discretion
- E-D may be reviewed during
 - Compliance exam
 - S&S exam
 - IT exam

Common Violations

- Consumer consent problems
 - What’s E-SIGN?
 - Failure to obtain consent
 - Incomplete pre-consent disclosures
 - Failure to require “test drive”
- Failure to use an approved E-D method
- Alert message sent via proprietary system

First Enforcement Case

- Bank
 - Created paperless NOW product
 - Unaware of E-SIGN
 - Failed to provide pre-consent disclosures
 - Failed to get customer consent for E-D
 - Unaware of e-Regs
 - Failed to use approved method for E-D

First Enforcement Case (cont’d)

- Regulator
 - Concluded that no qualifying “written” disclosures had been given
 - Reg DD
 - Reg E
 - Required bank to
 - Comply with E-SIGN & e-Regs
 - Retroactively send paper statements
 - Reopen the Reg. E error resolution period

Preparing for E-D Exam

- Maintain research file
- Document service decisions
- Prepare to explain consent & testing system

Conclusion: Your Action Plan

- ✓ Determine what service you will offer
- ✓ Research rules & regs that apply
- ✓ Implement the new service
- ✓ Sell, sell, sell
- ✓ Defend, defend, defend

Q&A #5

Questions about anything covered today?
