

Reducing Disclosure Costs With ESIGN

Presented by:

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1. How much cost can be saved by switching from paper deposit statements to e-statements?

Extensive information is not yet available, but a few banks have shared cost-saving estimates of roughly \$1.00 per statement that can be switched from paper to electrons.

2. More banks seem to be using “pull” delivery systems instead of “push.” Is that because the regulators are discouraging “push” delivery?

I’m not aware that regulators have expressed a preference. My greatest fear is that “pushed” sensitive personal financial information could be intercepted at a number of points on the way to the consumer and the encryption cracked.

3. In which cases would you want to use one form of delivery over another?

“Push” delivery would appear to be cheaper than a “pull” system, but suffers from a higher security risk. You are free to mix and match, and may consider “pushing” booklets and other generic disclosures that contain no sensitive customer information. Account statements and other communications containing sensitive information should be held in a secure web space for the customer to “pull.”

4. Can my bank require customers to switch to electronic statements?

No. Customers must be free to choose traditional delivery methods.

5. As part of our staff training about e-banking, can we require staff members to use e-banking and receive account statements electronically?

No. Bank employees are customers and must be free to choose traditional delivery methods.

6. Who says that SPeRS is a commercially reasonable standard?

No one yet knows whether the courts might recognize SPeRS as a commercially reasonable standard for handling e-commerce and e-disclosures.

7. How will the regulators treat these private standards—will they expect us to comply with them?

It's still too early to tell, but SPeRS developers are meeting with bank regulatory policy makers to introduce the new standards.

8. If a customer does not “pull” the disclosure within a specific amount of time, do the e-Regs require us to take any action such as send a paper disclosure?

No. Once the bank has carried out its duty to deliver the disclosures to the pick-up point and send the alert message, no further action is necessary.

9. Why are institutions in general not pushing?

Final poll totals for today's audience indicated that 44% are implementing “pull” systems while only 11% are “pushing” e-documents to their customers. Several factors enter into each bank's decision about which e-delivery methods to employ, including security, costs (both implementation and operating), and available options supported by technology vendors. Of these, security is the major concern. The longer the bank must secure the customers' data, the greater the risk. “Push” systems require the bank to protect the data all the way to the consumers' email box, while “pull” systems shield the data in the bank's most secure area until the customers “arrive” to accept delivery.

10. When is an electronic delivery considered confirmed as received from a regulatory standpoint?

Neither E-SIGN nor the e-Regs require banks to confirm receipt of e-deliveries. They are only required to follow the delivery system disclosed to and agreed by the consumer.

11. I'm in a UETA state with significant state consumer regulations (MA). If state law does not specifically authorize e-delivery, may we still move forward with an e-delivery initiative?

Yes! E-SIGN may be used in the absence of a state UETA.

12. Are there any samples of the disclosures available today?

You can find examples of preconsent E-SIGN disclosures on the web sites of a few banks, but there can be no assurance that these disclosures are complete and accurate. Moreover, your preconsent disclosures must be an exact “fit” for the e-delivery system you operate.

13. If a customer withdraws consent and there is a fee for paper statements, is that a 'consequence' of withdrawal and therefore not allowed?

E-SIGN allows consumers to withdraw consent without fee or other consequence only in cases where the bank has unilaterally imposed a change in the minimum hardware or software the consumer must possess in order to receive e-deliveries. If the consumer withdraws consent under other circumstances, previously disclosed fee schedules for paper-based disclosures can be applied.

14. On the confirmation question. How or what would they consider as confirmation of demonstration?

E-Delivery systems will vary from bank to bank, but the “test drive” must simulate the type of e-delivery your bank will use for “live” documents. After receiving and opening a “pushed” or “pulled” test document, the consumer must be able to demonstrate that the document was useable. One simple way for the consumer to demonstrate success would be to report a PIN or other bit of information contained in the test document.

15. If we are opening accounts on the Internet and using an “Agree and Accept” button for receipt of disclosures, do you suggest we change our mode of acceptance and include a “test drive”?

Yes. “Agree and Accept” buttons or links constitute a declaration by the consumer, not a demonstration of success with the e-delivery methods and file formats.

16. If an alert email is returned as undeliverable, what are we required to do?

When an “alert message” bounces, the e-Regs require the sender to redeliver the “alert” to another email address or a U.S. Postal address.

17. If a disclosure 'bounces' back, and we redeliver it to the same address and it doesn't come back the second time, have we fulfilled our obligation?

The answer hinges on the facts of each case. The regulation states:

Redelivery. When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.

The Official Staff Commentary to this section adds:

If an e-mail to the consumer (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the creditor sends the disclosure to a different email address or postal address that the creditor has on file for the consumer. Sending the disclosures a second time to the same electronic address is not sufficient if the creditor has a different address for the consumer on file.

It would appear that retransmission of the message to the original email address (even if the redelivery appeared to be successful) would only be acceptable if you do not have an alternate address.

18. Can one party withdraw consent for e-D on joint accounts representing all account holders?

If any joint account holder pulls the plug on e-delivery, I would

treat this as withdrawal of consent. Ideally, these types of issues should be addressed in the contract used to open the account.

19. How would you advise taking an application for a home loan and having the potential customer give consent and authorization to the lender?

There is no simple answer to this question because the process of taking an application for a home loan involves many rules found in several different laws and regulations. Generally, the best time to obtain the consumer's consent for e-delivery of various disclosures is at the outset of the application when the customer is most cooperative.

20. Here are a few guidelines for dealing with specific credit laws and regs:

Regulation B's e-Reg amendments exempt time-of-application disclosures from ESIGN. As the credit decision is reached, Reg. B allows a favorable "notice of action taken" to be oral, so the e-Regs still do not apply. Only if the credit decision is adverse will a written disclosure be necessary, and in order to render an electronic adverse action notice, the creditor must first obtain the applicant's consent via the ESIGN process.

Regulation C requires certain lenders to gather, record, and report certain information, but not to provide written disclosures to the applicant, so ESIGN does not come into play.

Regulation E prohibits compulsory use of EFTs for loan payments, but does not require written disclosures to the applicant, so ESIGN does not come into play.

Regulation H (flood insurance) requires written notice to credit applicants when flood hazards are present, but has no special provisions dealing with e-delivery. Flood disclosures can be given electronically by following the ESIGN disclosure/consent process.

Regulation P (privacy) contains its own rules permitting electronic delivery or written delivery. These rules are written in such a way that ESIGN does not come into play.

Regulation Z requires time-of-application booklets and program disclosures in writing for ARM loans and HELOCs, but contains an e-Reg exemption from following the ESIGN

disclosure/consent system for these items. Estimated and final TILs for closed-end home loans are fully covered by the e-Regs and ESIGN.

RESPA requires several written disclosures and ESIGN allows you to deliver any of these items in electronic form by following ESIGN's disclosure/consent system.