

Selected Subjects

Guru Chatter*

on eBanking Matters

www.bankersonline.com



Reg E Disclosure on Bank's Web Site

by David Dickinson and Richard Insley, BOL Gurus

[Guru BIOS](#)

Question: We do not open accounts online. The Reg E disclosure on our Bank's Web site covers the types of transfers that are allowed for Online Banking along with fees, documentation, Financial Institution's Liability, Confidentiality, Unauthorized Transfers, Error Resolution Notice, etc. (i.e., things we don't need), but this disclosure does not include other EFTs, such as check conversion. Is it required here? The Reg E disclosures provided to customers other than on the Web (new account, debit card application, etc.) do include that type of EFTs.

Answer by David Dickinson: If you do not open accounts online, you do not need an EFT (Reg E) disclosure on the web. As long as customers receive an EFT disclosure when they open an account and when they sign up for new electronic services, you don't need to be concerned.

Answer by Richard Insley: I would get rid of online disclosures that are not needed. If you continue to give the "official" Reg E disclosures in paper form, then the online material can only lead to trouble. Should examiners find contradictions between the two, you may be cited for providing confusing, inaccurate disclosures.

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E-Disclosures for Real Estate Loans

by Richard Insley, BOL Guru

[Guru BIOS](#)

Question: Several bank regulations (Reg Z, B, M, etc.) have been amended to allow for and provide guidance for providing disclosures electronically.

What about RESPA disclosures? Can we provide them electronically and if so, under what conditions?

Answer: Since October 2000 the E-SIGN Act has allowed you to substitute electrons for paper disclosures required by ALL federal laws, rules and regulations--including RESPA and flood insurance. Follow the E-SIGN disclosure & opt-in requirements to obtain the consumer's consent for the substitution and you're good to go. As noted, the Fed has provided additional guidance on Regs. B, E, M, Z, and DD. At this time, no other agency has issued any e-delivery guidance.

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Web Address on Business Cards

by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: Our company's website includes a page for each Loan Officer. Potential applicants can apply for a home mortgage. We are now being told that their URL address cannot be on the business cards. Is this correct?

Answer: I would ask for a cite. I've not heard of this and know of no law or regulation that would be fractured with this.

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De-activating a Customer's Internet Access

by John Burnett, BOL Guru

[Guru BIOS](#)

Question: Are there any Reg E requirements that the bank must comply with prior to de-activating a customer's Internet access when it has been inactive in excess of one year? If your answer is yes, could you please point me to the section in Reg E which it falls under.

Answer: A conservative reading of §205.8 suggests that you provide the customer with 21 days' advance notice before "pulling the plug" on him.

However, if your Internet banking agreement terms allow you to cancel access after a stated period of inactivity, and don't require notice, then I think you can ignore 205.8 here. You made the disclosure already.

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e-Delivery

by Richard Insley, BOL Guru

[Guru BIOS](#)

Question: If my bank offers electronic account statements but also sends paper statements, do I need to worry about E-SIGN and the Fed's e-Regs?

Answer: Because you and your customer do not intend for the electronic information to replace written documents, E-SIGN does not apply. Provided the paper is timely and accurate, it counts as your official periodic disclosure under Fed Regs DD, E and Z. Should you discontinue mailing paper statements, however, you will need prior consent (see E-SIGN) from the customer in order to substitute electrons for paper, and the e-statements will need to conform with applicable parts of Regs DD, E, and Z

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Web Site Accessibility and the ADA

by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: Can anyone give me advice on what the specific requirements are relating to bank Web site accessibility, in accordance with the Americans with Disabilities Act?

Answer: There was a governmental opinion that the ADA applied here, but when challenged in court, it was ruled this was not the case. So while a good idea, ADA compliance isn't a requirement.

The ADA required curb cuts and ramps in the real world. Who do you see using them, yes wheelchairs, yes shopping carts, yes strollers and yes the average person. There are also many ADA recommendations that are good for the cyber world. ALT tags for graphics, color design for those who are color blind and even screen reader friendly sites. Don't rule these out just because they are not "required".

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Test Drive Procedure on E-Statements

by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

Question: I recently attended the e-Delivery seminar from BOL Learning Connect. I have a question regarding the "test drive" procedures of e-statements. To what extent must the customer prove (demonstrate) success of the receiving the email because according to E-Sign the customer must demonstrate that they can access information in the electronic form that will be used to provide the statement electronically?

Answer: A literal reading of the regulation requires that you send the customer a sample record/document using the same electronic method you propose to use for the disclosure/statement you wish to employ. You include within that record a piece of information that the consumer is unlikely to know without reading the record. You then require the consumer to communicate that piece of information to you or your system. Receipt of the correct "key" from the consumer provides evidence the consumer has equipment to receive and display the record and the consumer can read it. Of course, this is in addition to the consumer's affirmative statement that he wishes to participate and all that other stuff that has to happen.

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Archiving Web Site Changes

by Andy Zavoina and Richard Insley, BOL Gurus

[Guru BIOS](#)

Question: I am trying to find out the format you recommend for us to save our Web site in before and after we make changes to it. Would you please advise the format?

Answer by Andy Zavoina: Speaking with regulators, having it is key. If you used animated GIFs or sounds, e-form is best and likely burned to CD/DVD is best. (Assuming it is a quality burn. There are DVD issues coming to light.) A simple site could be printed, but paper would not be my first choice.

Consider if you want to view the pages, or the site as a whole including your internal links. This will help you on the format.

Answer by Richard Insley: I'll add Adobe Acrobat to the list of possibilities, but the vast differences in the levels of sophistication among bank web sites rules out a "one size fits all" retention solution.

Generally, each reg require you to retain "evidence of compliance" with the substantive parts of that reg, not "copies of pages." If you're trying to meet the Reg DD retention requirement for a deposit interest rate board page, you can probably use anything from paper on up. On the other hand, if you're trying to document that the series of links throughout your site do not result in prescreening or steering (a Reg B problem), you need to retain the interlinked pages electronically so you can demonstrate the links/behavior to your next examiner.

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Pros and Cons of E-Statements

by Andy Zavoina and John Burnett, BOL Gurus

Question: What do you think should be the driving factors behind a decision to move to E-Statements for our customers? Is there a downside? Are most banks using them in addition to, or instead of, paper statements? Do you need to do both for a while to make customers more comfortable?

Answer by Andy Zavoina:

[BIO AND CONTACT INFO](#)

The bank will save production and postage costs, which haven't dropped and the price of these will only go up. There is also a convenience to the customer base, which is increasingly adopting technology and delivery of documents in this manner. Especially if this is a business and they want their accountant to have a statement copy.

There is little downside as the steps to delivering e-statements are a one-time set up. If the rules in place but currently optional change, though, returned e-statements may require redelivery via other addresses, including snail mail. That would increase costs but should be limited in the overall scheme of things.

Getting consumer acceptance is the biggest obstacle.

Answer by John Burnett:

[BIO AND CONTACT INFO](#)

My sense is that acceptance of e-statements will increase once banks avail themselves of Check 21's push toward truncation. Once customers become accustomed to non-receipt of checks, one significant hurdle to e-statements will have been jumped.

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Online Transfers Under Reg D

by Andy Zavoina and John Burnett , BOL Gurus

Question: We are just starting internet banking and our customers will have the capability to transfer funds from one account to another. Where do we stand with withdrawal limits with on-line transfers when we have savings accounts and Money Fund accounts? Are these calculated like telephone transfers?

Answer by Andy Zavoina:

[BIO AND CONTACT INFO](#)

Yes. This would be a convenient way to circumvent the controls Reg. D places if these were unlimited.

Answer by John Burnett:

[BIO AND CONTACT INFO](#)

It is one of banking's little ironies that at the same time we are encouraging our customers to shift to e-transactions, we continue to be hobbled by a decades-old regulatory framework that runs counter to our goals.

It's sort of like inviting your customer to try out your bank's new Maserati, but adding a governor to limit its speed to 35 mph.!

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Web Page Funds Availability Disclosures

by Richard Insley, BOL Guru

[BIO AND CONTACT INFO](#)

Question: On our Deposit Accounts web page, we discuss the types of accounts we offer. An account cannot be opened on our web site. Do we need to place our Funds Availability

Disclosure on the page?

Answer: The only reason you would need to place Reg CC disclosures on your web site would be that you have discontinued delivering these disclosures in paper form. Even if you add an online application for new transaction accounts, you can still give paper disclosures if you can deliver them in a timely fashion.

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Reg E Disclosures on Web Page

by Richard Insley, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Our bank will have a web page very shortly and under the Electronic Services Header, the page lists the debit card/ATM cards we offer. Do I need to have our Reg E Disclosure on this page, even though they cannot sign up for opening an account on our web page?

Answer: The only reason you would need to place Reg E disclosures on your web site would be that you have discontinued delivering these disclosures in paper form. Even if you add an online service application for EFTs, you can still give paper disclosures if you can deliver them in a timely fashion.

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When can a national bank use electronic communication as customer notification for securities transactions?

by Carolyn Jones, BOL Guru

[BIO AND CONTACT INFO](#)

Question: When can a national bank use electronic communication as customer notification for securities transactions?

Answer: When both the bank and customer agree to use electronic instead of hard-copy, have the ability to print or download the notification, the recipient affirms or rejects the trade through electronic notification, the system cannot automatically delete the notification and both parties have the capacity to receive electronic messages.

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Online Banking: Is a paper statement required?

Answer by Andy Zavoina and Richard Insley, BOL Guru

Question: We are new to internet banking. We have our customer statements as part of our online product. The statement has a complete copy of our mailed version. We have customers asking us to stop their paper copy. What are the rules and to start this what would need to do.

Answer by Andy Zavoina

[BIO AND CONTACT INFO](#)

Following E-Sign requirements, the customer needs to meet certain requirements such as demonstrating the ability to receive these. [Review E-Sign, especially Section 101\(c\)](#). Then look at [205.17 \(Reg. E\)](#), especially (c), to ensure proper delivery.

This isn't a difficult process but may be more than you want for a single customer.

Make sure when you say the statement is the same, that you are including either the abbreviated Reg. E error disclosure commonly on the back of statement or the annual notice sent as a stuffer, in your disclosures.

Answer by Richard Insley

[BIO AND CONTACT INFO](#)

You must also comply with Reg. DD and possibly Reg Z (if your deposit statement serves as a periodic disclosure for an overdraft protection credit product.) See Sections [230.6](#) and [230.10](#).

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Record Retention & E-Statements

Answer by Richard Insley, BOL Guru

[BIO AND CONTACT INFO](#)

Question: How long must I retain a print copy of an e-statement if the customer does not pick it up?

Answer:

1. You do not have to monitor e-statement files to determine that they have been "picked up."
2. You do not have to print paper copies of e-documents in order to meet retention rules.
3. Retention periods are the same for e-documents as for paper ones.

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Are E-Banking Transactions Considered "In Person"?

Answer by Andy Zavoina and John Burnett, BOL Gurus

Question: We are in the process of investigating Internet Banking and would like to know how transactions conducted through this product might impact Reg D transfer limitations. Are transactions done via Internet Banking considered to be "In Person"?

Answer by Andy Zavoina:

[BIO AND CONTACT INFO](#)

These are more akin to telephonic transactions, they are convenient and generally count as being limited. An exception would be a bill pay where a customer has a check sent to them. Because that would be inconvenient, it would not be limited. Transferring funds from one deposit account to another would be limited as that would be a sweep. It would not be the same as the customer coming to the bank to make a withdrawal and deposit (inconvenient).

Answer by John Burnett:

[BIO AND CONTACT INFO](#)

Internet banking transfers between a customer's own accounts are subject to Regulation D's 6/month limits. Bill payment transfers to third parties fall under the 3/month rule.

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Privacy Notices To E-Customers

Answer by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

Question: If we continually post our privacy policy on our website, are we required to send e-statement customers an annual notification that our statement is available for review on our website?

Answer: [§216.9\(c\)\(1\) of Regulation P](#) reads as follows:

(c) Annual notices only. You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site, and you post your current privacy notice continuously in a clear and conspicuous manner on the web site;

There is no requirement that you send an annual reminder to look at the Web site privacy notice if it's posted "continuously in a clear and conspicuous manner on the web site," under these conditions.

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Customer Approval For E-Checks

Answer by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

Question: We are receiving more and more e-checks, drafts that come through without a customer's signature. currently, we have been contacting the customer to get their approval to pay the check, but long range this is impracticable. What do you suggest we have in place to allow for these transactions to be processed without manual intervention?

Answer: Your use of the term "e-checks" is a little ambiguous. If you are referring to ACH transactions created from customer's checks (POP/ARC) or from telephone or Web authorizations (TEL/WEB) you won't be in a position to intercept the items to check them individually with customers.

If you're referring to paper drafts issued by merchants who received (or allegedly received) customer authorization, you might want to think carefully about how to protect the bank/customer from fraud.

These paper drafts are the subject of pages of discourse in *Brady on Bank Checks*, among other publications. If you miss one and your customer later (when s/he gets the statement) claims lack of authorization (or gets buyer's remorse, a closely-related and usually indistinguishable malady), your bank is generally "up the creek." There may be exceptions in Texas and California, where more progressive language is in their versions of the UCC.

Check with your processor to see if they can detect these items to bring them to someone's scrutiny. It's a challenge, since merchants often obtain a customer's current check number to make the item really go in "under the radar." Otherwise, you may have to get more selective about when you refund the alleged unauthorized transactions to your customers. When you think about it, if the merchant had the customer's bank routing number, account number, and check number, isn't it pretty likely the customer actually authorized the transaction?

Merchants using this system -- at least the reputable ones -- keep audio recordings of customers' authorization conversations. If you need to be truly investigative, you can ask your customer to contact the merchant using your telephone, and have the merchant play back the authorization call. Then decide.

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Electronic Savings Account Regulations

Answer by John Burnett

[BIO AND CONTACT INFO](#)

Question: What are the regulations in regards to offering an electronic savings account? We would like to offer one that limits the deposits to electronic only and encourages ATM withdrawals, We would target customers with electronic Social Security or SSI payments into their accounts.

Answer: You will have to comply with E-sign in order to get your customer's agreement to accept disclosures (opening, statements, changes, etc.) electronically. Then, you'll treat this account just as you would any statement savings account. Reg. E will require your statements to be monthly (since you're issuing an ATM card), and the statements will have to conform to both [Regulation E](#) and [Regulation DD](#), although they can be delivered electronically.

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E-statement Considerations

Answers by Andy Zavoina and Mary Beth Guard, BOL Gurus

Question: We are currently offering FREE E-statements to our customers enabling them to receive their statements on line. There is no charge to do this; however, if they want to receive a paper statement as well it will cost them \$2.95 and an additional email address will cost \$1.50. We do have an agreement drawn up that spells that out clearly. My question has to do with the advertising associated with this offer... If we advertise it as free, and it is, but when you sign up for E-statements you will stop getting paper statements unless you agree to pay \$2.95 a month, what will be the requirements regarding verbiage in our advertisements in order to be in compliance?

Answer by Andy Zavoina:

[BIO AND CONTACT INFO](#)

You want to ensure that your ad does not appear to be "unfair or deceptive".

You could advertise that electronic statements may be substituted for the paper statements at no additional cost.

You could clearly footnote the ad to depict the additional cost for both mediums, especially if you offer this as an option.

As a footnote to this post, you'd get more acceptance of e-statement delivery if you provide some incentive to those opting for it, without a penalty, at least for a trial period.

Answer by Mary Beth Guard:

[BIO AND CONTACT INFO](#)

One more thing. If these are consumer accounts on which periodic statements are required under Regulation E, before you can legally substitute an electronic version for the paper statement, you must be sure you have complied with the provisions of the federal [ESIGN Act](#). If the requirement is federal (which Reg E obviously is) you must comply with ESIGN in order to deliver the document electronically.

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