

RISK Alert



ACTIONABLE INSIGHTS FOR BOND POLICYHOLDERS.

Alert Type

Awareness

Watch

Warning

Ensure E-Signature Compliance and Authentication During COVID-19

Serving members remotely through the online channel has grown during the coronavirus (COVID-19) outbreak, along with delivering electronic documents and enrolling members for electronic statements. However, you must be mindful of complying with the Electronic Signatures in Global and National Commerce Act (E-Sign Act). In addition, closing consumer loans remotely with electronic loan documents signed by members using electronic signatures may expose credit unions to Identity theft-related loan fraud.

Details

The E-Sign Act has been a game changer allowing credit unions to open accounts online, deliver disclosures required by various regulations (e.g., Regulations CC, E, Z and Truth-in-Savings, etc.) in electronic format, provide electronic periodic statements as well as electronic credit card statements (collectively referred to as e-statements) rather than paper statements, and deliver electronic loan documents to close loans remotely.

Before a credit union can deliver the required disclosures in electronic format and enroll members for e-statements, you must comply with the E-Sign Act by obtaining members' affirmative, electronic consent to the required E-Sign Act disclosure. The members' consent to the required disclosure must reasonably demonstrate that they can access and open the electronic record in the format used (e.g., Adobe PDF format). This reasonable demonstration requirement is often referred to as the E-Sign "test drive" or "consent handshake," and is the most difficult compliance step that is often overlooked.

Consequences for not complying with the reasonable demonstration requirement when enrolling members for e-statements can be costly. A noncompliant process significantly increases a credit union's loss exposure under Regulation E (Reg E) and Regulation Z (Reg Z). Both regulations provide that a member has 60 days after the statement is made available to report unauthorized transactions. If the credit union fails to comply with the reasonable demonstration requirement, the credit union effectively failed to provide the statement. Therefore, the Reg E or Reg Z error resolution period (60 days) extends until the member receives a paper statement containing the unauthorized transactions. This means the member has a much longer period than 60 days to report the unauthorized transactions. This could result in the credit union being liable for the lion's share of the losses.

Date: April 21, 2020

Risk Category: Compliance, Lending, Online Service; E-signatures

States: All

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Additional thoughts and comments on complying with the E-Sign Act:

Automatic E-Statement Enrollment: Some credit unions may be tempted to enroll all members for e-statements with an opt out feature. This is a blatant violation of the E-Sign Act. Members must provide affirmative, electronic consent to the E-Sign Act disclosure in a manner that reasonably demonstrates they can access/open the e-statement in format used.

Bypassing the Reasonable Demonstration Requirement: Some credit unions believe disclosing to members that they need Adobe Reader relieves the credit union of complying with the reasonable demonstration requirement. This is an incorrect interpretation of the E-Sign Act.

Enrolling Members for E-Statements in the Branch: Some credit unions may be enrolling members for e-statements in the branch using credit union devices (e.g., tablets/laptops). Keep in mind that members must reasonably demonstrate they can access/open e-statements using their own devices. However, there is a work-around (see Risk Mitigation).

Electronic Loan Documents & E-Signatures: Many credit unions are closing consumer loans remotely by using electronic loan documents that members sign remotely using e-signatures. Closing loans remotely using electronic loan docs and e-signatures could increase your exposure to ID theft-related loan fraud.

Risk Mitigation

Credit unions should consider the following loss controls:

- Ensure compliance with the E-Sign Act's reasonable demonstration requirement.
- Avoid automatically enrolling members for e-statements.
- If you enroll members for e-statements or other electronic disclosures in the branch, implement a process to have members confirm their consent electronically in a manner that reasonably demonstrates they can access and open the e-statement in the format used (e.g., Adobe PDF). This can be accomplished by emailing the member a PDF that contains the required E-Sign Act disclosure and a "code" (e.g., Go Green) and instructing the member to open the PDF and reply to the email inserting the "code" in the reply.
- If you close consumer loans remotely by sending members electronic loan documents to be signed with e-signatures, ensure you use a strong authentication method to verify the member/signer's identity.

Risk Prevention Resources

Access CUNA Mutual Group's [Protection Resource Center](#) at cunamutual.com for exclusive risk and compliance resources, like [Complying with the E-Sign Act Risk Overview](#), to assist with your loss control efforts. The Protection Resource Center requires a User ID and password.



Access the Protection Resource Center for exclusive resources:

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