

# Compliance Central

By Steve Van Beek

## Going green the right way

The current market has every credit union looking for ways to cut costs. One of the easiest ways to cut costs is to increase the percentage of members utilizing electronic statements (e-statements) in order to cut down on paper and postage costs. However, there are numerous risks to be examined.

This article will walk through some of the challenges and risks involved with attempting to decrease costs through increasing e-statement usage.

If you have discussed increasing e-statement usage, there is no doubt that someone has presented the idea of switching every member over to e-statements and allowing those who do not want e-statements to “opt-out” and return to a paper statement. If you think this approach seems too good to be true, you’re right.

### Opt-in requirements

The Electronic Signatures in Global and National Commerce Act (E-SIGN), among other requirements, mandates that members give affirmative consent before receiving e-statements. That is, the system must be an “opt-in” system where the member elects to receive e-statements.

The affirmative consent requirement prevents you from sending a notice to your members stating they will be switched to e-statements unless they contact you otherwise. That approach is a type of passive consent and would not fulfill the E-SIGN requirement.

Even if the E-SIGN requirements were not in place, switching your entire membership to e-statements would present its own set of risks. While it may be true that e-statements and online banking reduces the credit union's fraud risks for certain members, it may be increased for members who are less technologically savvy and ill-equipped to view e-statements.

Additionally, certain timelines such as Regulation E's error dispute resolution begin to tick on the delivery of the state-



ment. A clever member, or his attorney, could argue that a statement was never properly delivered if the E-SIGN requirements were not fully met, possibly leaving the credit union on the hook for the fraud loss.

### Using incentives for e-statements

Even though you cannot switch your entire membership over to e-statements, there may be ways to entice current or new members to receive them. These incentives could include a lower annual percentage rate on a loan or a higher annual percentage yield on a share account.

Accounts with e-statements require less operating expenses and, therefore, you would have a rational basis to charge a different rate.

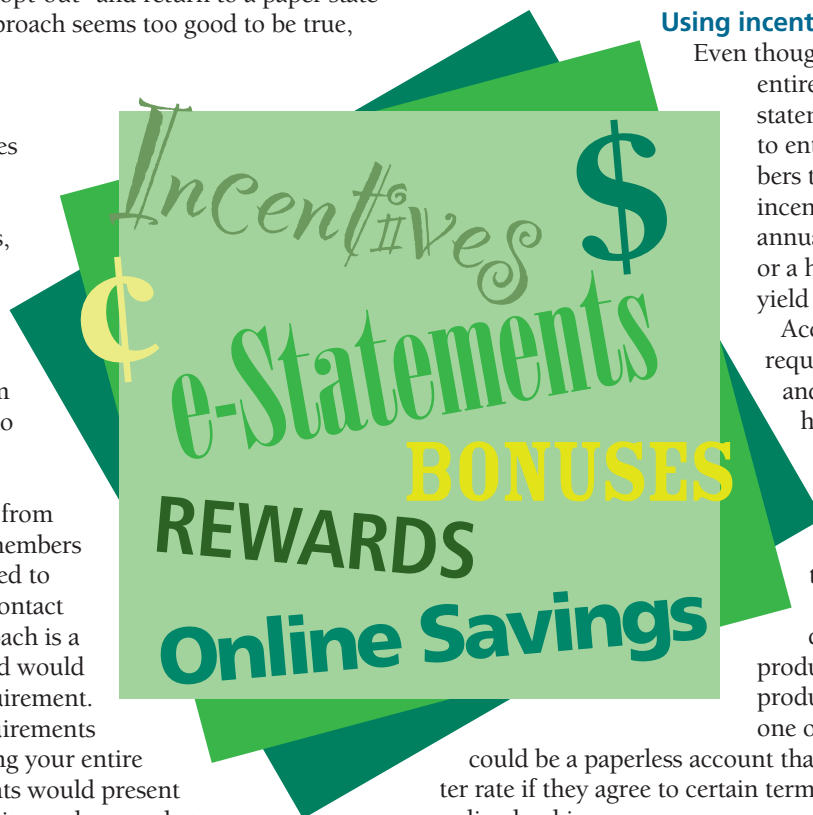
Additionally, you could offer members a reward or bonus if they switch to e-statements.

Or, rather than give a discount on an existing product, you could create a new product with e-statements as one of the requirements. This

could be a paperless account that offers the member a better rate if they agree to certain terms such as e-statements and online banking.

As part of your account opening disclosures, the credit union would include the E-SIGN disclosures and obtain affirmative consent at account opening.

Instead of dangling a carrot to entice members to make the switch, you could use the stick and decide to charge a fee to receive paper statements. Obviously, this fee would need to be



disclosed to the membership, and it might be a tough pill for them to swallow.

This is a good example of reputation risk. If you decide to charge a fee for paper statements in order to reduce costs and increase fee income, you may do so at the expense of offending or losing long-time members.

### Members requesting e-statements

Your credit union's efforts to "go green" and increase e-statements will appeal to some members right away as an easier way to manage their accounts. So, if a member asks a teller or customer service representative to switch over to e-statements, you are all set, right? Unfortunately not, according to the E-SIGN Act.

The affirmative consent requirement needs to be made electronically or confirmed electronically. Thus, if a member comes into your lobby and requests to be switched to e-statements, the credit union still needs to ensure the member can access information in electronic form and have the member confirm his or her consent electronically.

A similar situation occurs when the credit union includes the e-statement option on its signature card. The credit union would still have to get the member to confirm his affirmative consent electronically before sending e-statements.

### Other ways to reduce costs

Even though you can't force members into e-statements, there are other means to reduce the number of paper statements you send. Members with bad addresses whose statements are returned to the credit union provide a good example. As a security precaution, you could stop sending statements to members until they provide you with a valid address, so you are assured the member is receiving the information (and not someone else).

Additionally, the regulations provide some relief for inactive accounts. Federal credit unions can define what constitutes an inactive account in their policies. If an account is determined to be inactive, a periodic statement would not be required for the account.

However, if you charge an inactive fee, the periodic statement would need to be sent as there would be activity in the account — even though it was a fee from the credit union.

As you can see, there are multiple ways to increase the percentage of members receiving e-statements and, ultimately, reduce your paper and postage costs. As you examine the various options, remember that each one presents its own unique set of risks to be considered before the credit union proceeds further. 🌱

*Steve Van Beek is NAFCU's regulatory compliance counsel.*

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