Interpretive Letter No. 01-06 (September 17, 2001)

A state chartered bank may provide consumer deposit account holders with the required annual disclosure by electronic means. In addition, a state chartered bank or trust company may provide customers periodic account statements by electronic means.

The Consumer Deposit Account Act requires that a disclosure statement be provided to each depositor at the time of the initial deposit and not less than once each year for as long as the account holder maintains the account.[1] The Office of Banks and Real Estate (the "Agency") has recently received inquiries as to the permissibility of banks providing its account holders with the annual disclosure required under the Consumer Deposit Account Act in an electronic format rather than the traditional non-electronic or paper format. Additionally, the Agency has received questions as to whether a bank or a trust company could provide customers periodic account statements by email. Subject to the conditions prescribed below, the Agency has no objection to a bank or a trust company providing these records, or any other records, to its account holders or beneficiaries in an electronic format.

Although the Consumer Deposit Account Act is silent as to how delivery of the required disclosure shall be made, it does not specifically prohibit the use of electronic delivery. Recent legislation provides support to the Agency's decision to permit banks and trust companies to provide electronic disclosures. With respect to a trust company distributing periodic account statements by electronic means, the Governor recently signed Public Act 92-022.[2] Under this legislation, the provisions in the Trusts and Trustees Act requiring a trustee to provide beneficiaries with an account statement at least annually was amended to provide that if the beneficiaries agree to receive electronic delivery of the account statement, the receipt of such statement is presumed if the trustee has procedures in place for the electronic delivery or provision of access to an account statement by electronic means.[3] Additionally, Illinois recently enacted the Electronic Commerce Security Act.[4] This legislation provides that if a rule or law requires information to be written or in writing, with limited exceptions, an electronic record of that information is satisfactory

On the federal level, the Electronic Signatures in Global and National Commerce Act (the "Electronic Signature Act") provides that in transactions in or affecting interstate or foreign commerce, if certain information is required by law to be made available to a consumer in writing, the use of an electronic record to provide or make available that information satisfies the requirement that such information be in writing if certain conditions are satisfied.[5] First and foremost among these conditions is the acquisition of the consumer's consent to delivery in an electronic format.

[1] 205 ILCS 605/0.01
[2] Public Act 92-022; effective August 2, 2001
[3] 760 ILCS 5/11
[4] 5 ILCS 175/5-115
[5] 15 U.S.C. 7001 et. seq.

It is also considered relevant that the Federal Reserve Board has authorized the use of electronic delivery of information. The Federal Reserve Board does require that in cases where electronic fund transfers are made in an account, a bank shall send a periodic statement for each monthly cycle in which such a transaction occurred. If there are no electronic fund transfers in the account, the bank must still send a periodic statement at least quarterly.[6] Regulation E specifically provides that a bank may deliver these monthly or quarterly statements electronically.[7]

Therefore, it is the Agency's position that a bank can provide any disclosure or other documentation to account holders using electronic delivery as opposed to paper or non-electronic delivery provided there is no other specific prohibition to electronic delivery of the document or disclosure in question. In addition, it is the Agency's position that a bank seeking to provide the annual disclosure, the periodic statement, or any other documentation electronically shall follow the provisions in the Electronic Signature Act with respect to obtaining the account holder's consent. It is also the Agency's position that a trust company can provide account statements to beneficiaries or other persons entitled to such statements in accordance with Section 11 of the Trusts and Trustees Act.

A bank seeking to make use of electronic delivery of documents pursuant to the Electronic Signature Act, must provide its consumers or account holders with a clear and conspicuous statement informing them of their right to receive the document in paper or non-electronic form. The statement shall also indicate whether the consumer's or account holder's consent applies to a specific document or to a variety of documents, how he or she can withdraw such consent, and how the consumer or account holder may obtain a paper or non-electronic copy of the document and any fee associated with obtaining such copy. The party delivering the information electronically shall also provide the consumer or account holder a copy of the hardware and software requirements necessary for access to and retention of these electronic records. The consumer or account holder shall consent electronically, or confirm his or her consent electronically, so as to demonstrate his or her ability to access the information in the electronic format.[8]

If the bank chooses to make the information available at an internet site, the bank shall alert the account holder of the availability of the information by sending the account holder a notice by email or to a postal address identifying the account involved and the internet site where the information is available. The bank shall make this disclosure available for at least 90 days from the date the disclosure is first made available or from the date of the notice alerting the account holder of the disclosure, whichever come first.[9]

Finally, the Agency wishes to stress that a bank or trust company seeking to provide information to an account holder, beneficiary, or other person entitled to the

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[6] 12 CFR 205.9(b)
[7] 12 CFR 205.4(c)
[8] 15 USC 7001(c)
[9] 12 CFR 205.17(c)

information electronically should take all reasonable steps to ensure that this communication with the recipient is done in such a way as to provide sufficient protection to the account holder's information. In doing so, the bank or trust company should make every effort to follow the Interagency Guidelines Establishing Standards for Safeguarding Customer Information and the provisions within those guidelines concerning managing and controlling risk.[10] Compliance may be achieved either by sending the information to account holders or beneficiary's electronic address or by making the information available at another location, such as the bank or trust company's internet site.

[10] 12 CFR Part 208, Appendix D-2