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E-Commerce Modernization Guide

In 2021, the E-Commerce (H) Working Group sent a survey to the states asking what exceptions to state laws or regulations were implemented during the pandemic that allowed electronic commerce, electronic transactions, and electronic communications to take place when in-person methods were not possible. The survey also asked whether any of these exceptions had expired, had been rescinded or were made permanent either by legislation or through department action.

The Working Group also sent a survey to insurers and industry stakeholders asking them to identify any specific technologies, communications, transactions or any other forms and methods of electronic commerce that may currently impede their ability to conduct business electronically, in part because many of the exceptions to state law or regulation that were put in place during the pandemic may no longer be in effect.

After receiving and discussing the survey results, the Working Group organized the responses into a format best suited for consideration going forward. That format organizes the areas of concern into the following five broad categories: (1) e-signature; (2) e-notices; (3) policy issues; (4) claims; and (5) a general “other” category.

The purpose of this Guide is to memorialize the insights gained through that initial survey project and in subsequent engagement with industry representatives. Furthermore, this document hopes to advise regulators on e-commerce laws and regulations and provide uniform guidance on various e-commerce topics. When reviewing this Guide, please note that for opt-in/opt-out of electronic notifications and transactions, ERISA, UETA, and other relevant federal laws could preempt state laws in the life and health context.

Additional consideration may need to be given to the various contexts in which the regulatory requirements that follow are enacted. For instance, Departments using the guidance that follows may find it necessary to have differing requirements based on the type of consumer impacted (*i.e.*, individuals vs. businesses). Initially, this document was referred to as a framework, however, as the document has since evolved, it has been adopted as a guide.

(1) E-SIGNATURE

The first category is e-signature. The Uniform Electronic Transactions Act (UETA) defines electronic signature or e-signature as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” The topics in the e-signature category are wet signatures, remote online notarizations (e-notary or RON), and elimination or minimization of notarization requirements.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Wet Signatures	A wet signature is created when an individual physically marks a document, as opposed to e-signature, which happens electronically	Allow affirmative opt-out for e-signatures, make opt-in the default	No conscious decision made for e-signature by consumer	Add opt-in clauses to applications and policies to allow for e-signatures and e-notices	Employee training; may require amending existing state laws; consent to e-signature limited to per transaction

The NAIC’s public comment process resulted in the following input:

- Overall, industry supports the use of e-signatures.
- The Center for Economic Justice (CEJ) does not believe opt-in should be the default due to the possibility that consumers could consent to terms and conditions that they might not be aware of.
- Northwestern Mutual suggested that concerns could be mitigated by ensuring the signer is provided access to the document during and following the e-signature event.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Remote Online Notarizations (E-Notary or RON)	A remote online notarization generally allows a signer to personally appear before the notary using audio-visual technology instead of being physically present in the same location as the notary	Remaining states should all adopt some form of RON	Could create doubt regarding signature authenticity	Issue bulletin(s) or change(s) in interpretation that RON meets notary requirements	Employee training; may require amending existing state laws; consent to e-signature limited to per transaction

The NAIC’s public comment process resulted in the following input:

- The Center for Economic Justice suggests that such a change be paired with the condition that consumers are provided with clear disclosures regarding the safeguards and potential dangers of using RON.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Eliminate/Minimize Notarization Requirements	There is the potential to eliminate or minimize notarization requirements that may present unnecessary regulatory barriers	Statutory modifications and policy updates to clarify where notarization is still required	Notarizing signatures helps guarantee that the signature is authentic	Survey states asking whose statutes require notarization and why these are necessary	May require amending existing state laws; State legislature and/or Governor disagreeing with doing so

The NAIC’s public comment process resulted in the following input:

- The CEJ emphasized the importance of specific guidelines for fraud detection and prevention to maintain the integrity of the notarization transaction and urged that consumers should be informed of these safeguards.

(2) E-NOTICES

The second category is e-notices. This category examines the electronic delivery of insurance documents, including the electronic delivery of notices (or e-notices). The topics in the e-notices category are wet signatures, lapse/termination notices, proof of delivery, and replacement questions (life insurance application).

The NAIC’s public comment process resulted in general insight applicable to the discussion of E-Notices, broadly. The American Council for Life Insurers (ACLI) suggests Departments encourage consumers to proactively update e-mail addresses helping ensure consumers are timely updated on relevant matters from their insurers.

The NAIC’s public comment process resulted in the following input:

- The CEJ does not believe opting in should be the default due to the possibility consumers could consent to terms and conditions of which they might not be aware.
- The ACLI notes that there may be benefits to e-signatures, asserting that with proper controls, it is much harder to alter an e-document that has been e-signed after signature (as there are typically audit logs registering every change, certificates of completion, or similar processes and controls in place). As a result, if someone alters a document after e-signature, it is detectable. Conversely, if a paper document is altered after wet signature, there may not be evidence to prove when the document was altered and whether the signer agreed to the alteration.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Wet Signatures	A wet signature is created when an individual physically marks a document, as opposed to e-signature which happens electronically	Allow affirmative opt-out for e-signatures, make opt-in the default	Many consumers still want applications, policies and correspondence on paper and will refuse opt-out	Amend UETA and/or insurance specific statutes, laws, rules, bulletins to allow a uniform, streamlined approach aligning state and federal laws related to e-signatures.	UETA much broader than just insurance; may require amending existing state laws

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Lapse/Termination Notices	This topic focuses on the electronic delivery of lapse/termination notices to policyholders	Make electronic communication equal to First class mail; modify UETA and state laws allowing for delivery electronically	Many consumers still want applications, policies and correspondence on paper and will refuse opt-out	Bulletin, regulation or statute to allow for e-delivery any time communication must be sent if valid client email is known.	UETA much broader than just insurance; may require amending existing federal E-SIGN and state laws

The NAIC’s public comment process resulted in the following input:

- The ACLI stated that it may be appropriate to consider adding disclosures that inform insureds that they must keep insurers informed of their contact information as all correspondence will be sent electronically.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Proof of Delivery	This topic focuses on how an insurer may demonstrate the successful electronic delivery of an insurance document	Allow for presumption of delivery if email is not returned as undeliverable	Property and casualty statutes in many states are different and require different notices	Bulletin, regulation or statute to allow for e-delivery any time communication must be sent.	May require amending existing state laws; State legislature and/or Governor disagreeing with doing so

The NAIC's public comment process resulted in the following input:

- The ACLI believes that there should be a presumption of delivery if email is not returned as undeliverable and that that notion should be universal.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Replacement Questions (Life)	If a policyholder is contemplating purchasing a life insurance policy or annuity contract and discontinuing or changing an existing policy or contract, Model #613 requires the applicant to initial if he or she does not want notice read aloud	Revise replacement model, allow replacement questions and disclosures to be part of a digital application process	Model #613 requires producer to leave the original or copy of all sales materials at time of application; also requires electronic sales materials be provided in printed form no later than time of policy/contract delivery	Do all states have the most up-to-date model? Or does industry want the entire model revised?	NAIC must compile which version of the model each state has adopted; possible that few states have adopted updated model with others not realizing their version is outdated

The NAIC's public comment process resulted in the following input:

- The CEJ emphasizes the need for consumer protection in the digital application process. They recommend that consumers receive access to the exact text of the questions and answers for their review and documentation. Additionally, they express concern about potential misrepresentation and misinterpretation of information involved in the replacement decision, making regulatory oversight of digital interfaces essential.
- The ACLI noted that there might be an issue with the effect on census enrolled cases when there is no actual enrollment event and no application.

- The Insured Retirement Institute (IRI) supports modernization of model regulations for annuity-related disclosures and notices but believes that replacement questions could be addressed through a Model Bulletin or Guidance instead.

(3) POLICIES

The third category is policies. This category focuses on the insurance policy. The topics in this category are state variations in policy requirements, regulations that include content or filing requirements of enrollment forms, re-delivery requirement of replacement notices in paper form if initially provided electronically, enrollment in employer group coverage, and UETA exclusion of delivery of notices of cancellation or termination of life insurance benefits.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
State Variations in Policy Requirements	The industry raised concerns that minor variations in insurance policy requirements limit its ability to do business online and require excessive expense to create unique code for each state	Make uniform requirements for issues such as replacement question language, fraud warnings and marketing disclosures that do not materially affect consumer protections		Encourage uniform adoption of NAIC model regulations	

The NAIC's public comment process resulted in the following input:

- Overall, industry supports the use of uniform policy requirements that would not limit its ability to do business online.
- The CEJ supports uniform disclosure requirements, but only if they include substantial and effective consumer protections.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Regulations that include content or filing requirements of enrollment forms	The industry raised this topic particularly as it relates to enrollment in employer group insurance coverages	Forms or applications may each have different legal requirements depending on the type of policy and/or state; need uniformity		Each electronic application must be approved prior to use by the Department; all changes must be approved	

The NAIC'S public comment process resulted in the following input:

- The CEJ suggests that the lack of enrollment form uniformity among the states should not be a high priority for the E-Commerce Working Group.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Re-delivery requirement of replacement notices in paper form if initially provided electronically	The industry raised concerns that some states require delivery of the replacement notice in paper form for life and annuity sales	This unnecessarily duplicates the effort required by the insurer; eliminate any state law requirement that requires paper delivery			May require amending existing state laws; consumers would have to affirmatively opt-out of electronic communications

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Enrollment in Employer Group Coverage	This topics centers on enrollment in employer group coverages, particularly as it relates to various employer policyholder and/or vendor electronic enrollment platforms		Product filings can be very complex; different state disclosure, signature or delivery requirements; age-based requirements		Complexity of filings; forms within a policy or contract may differ on what can/cannot be shared electronically; e-delivery requirements are difficult to implement due to state variations

The NAIC’s public comment process resulted in the following input:

- The ACLI stated that policy delivery to an employer/group policyholders should be streamlined in terms of e-delivery and e-consent.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
UETA excludes delivery of notices of cancellation or termination of life insurance benefits	Similar to the lapse/termination notices topic in the e-notices category above, this topic focuses on the electronic delivery of notices of cancellation or termination of life insurance benefits	Identify which states still have these requirements; amend state law to remove exclusion			

The NAIC’s public comment process resulted in the following input:

- The IRI supports e-delivery of documents as the default option, allowing consumers to opt-out of e-delivery if they prefer paper documents. They believe that this approach is aligned with increasing consumer expectations for electronic transactions and provides the tools regulators and insurers need in order to identify and deter fraud.
- The IRI expresses concern about the proposed differentiation between e-insurers and paper insurers, which may create unnecessary complexity and potential impediments to uniform modernization. They also stress that differentiation could provide some insurers with an unfair competitive advantage or cause confusion among consumers.

(4) CLAIMS

The fourth category is claims. This category focuses on insurance claims. The topics in the claims category are claims processing and minimize/modernize licensing requirements related to claims adjustment.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Claims Processing	After a policyholder reports a loss, the use of drones may help expedite the processing of the insurance claim	Allow for the use of drones		Express statutory or regulatory authority for the use of such technology	Concern for accuracy

The NAIC's public comment process resulted in the following input:

- The CEJ expressed concerns about the use of drones for claims processing, citing data privacy and digital rights issues. They believe insurers should obtain upfront consent from consumers for the use of data and include drone use provisions in policy forms, which would allow regulators to review and approve the terms of such use.
- The CEJ emphasized the need for clear guidelines and guardrails to ensure that the use of drones does not result in unfair terms or practices.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Minimize/Modernize licensing requirements related to claims adjustment	The industry raised the potential opportunity to minimize/modernize licensing requirements related to claims adjustment.			Amend statutes to allow digital adjustment of claims; eliminate licensing requirements or provide option for a business license (as opposed to individual licenses); allow online licensing courses; allow fingerprints submitted in one state to be valid in all states for a set amount of time	

The NAIC’s public comment process resulted in the following input:

- The ACLI strongly supports the proposed industry solutions to modernize licensing requirements related to claims adjustment including allowing online licensing courses, utilizing fingerprints across multiple jurisdictions, and providing additional licensing options. They believe that these changes would help support diversity, equity, and inclusion initiatives within both the NAIC and the life insurance industry.
- The CEJ expressed reservations about the proposal to eliminate licensing requirements for adjusters. They believe that licensing adjusters is important for a variety of reasons and question whether the E-Commerce Working Group is the appropriate forum for discussing adjuster licensing proposals.

(5) OTHER

The fifth category is other. This category focuses on other topics that did not fit into any of the four categories above. The topic in the other category is different design element requirements for forms/documents and online materials.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Different design element requirements for forms/documents and online materials	The industry raised concerns regarding the various requirements across the states for forms/documents and online materials.	Various requirements across the states are difficult to implement	Document design/website/font size/formatting rules differ	NAIC should work with states to seek uniform standards; standards would allow companies to follow well-defined rules and departments to enforce violations	

The NAIC’s public comment process resulted in the following input:

- The ACLI supports the Guide’s proposed solution for addressing different design element requirements for forms/documents and online materials. They also emphasize the need to avoid duplicating the efforts of other NAIC workstreams and encourage the working group to remain focused on the core issues hindering e-commerce modernization.

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