

E-Commerce (H) Working Group Framework 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 The survey also asked whether any of these exceptions had expired, had been rescinded or were made permanent either by legislation or through department action.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 ~~Framework~~ 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~~Framework~~, please note that for opt-in/opt-out of electronic notifications and transactions, ERISA and other relevant federal laws could preempt state laws in the health and life 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, but as the document evolved, it has been adopted as a guide.

Commented [MO1]: Discuss Colton Shulz, ND's comment adding the following sentence "The Working Group attempted to prioritize these categories based on which solutions would be the easiest to implement for the majority of the jurisdictions (1 (easiest) through 5 (hardest)), considering some items will require state statutes changes to enact."

(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

~~Overall, industry supports the use of e-signatures. However, the Center for Economic Justice 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.~~

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:](#)

- ~~Overall, industry supports the use of remote online notarizations or ("RON").~~ The Center for Economic Justice [suggests that such a change be paired](#) ~~agrees~~ 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

~~There is general support for eliminating notarization requirements. However, the Center for Economic Justice 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.~~

[The NAIC's public comment process resulted in the following input:](#)

- [The CEFJ 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).

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 <u>to allow a uniform, streamlined approach aligning state and federal laws related to e-signatures.</u> differentiate between two types of insurers and establish e-insurers/product (opt out) and historically paper (opt in)	UETA much broader than just insurance; may require amending existing state laws

~~Through~~ The NAIC's public comment process resulted in a 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 which can help ensure consumers are properly updated of relevant matters from their insurers.

Commented [MR2]: This change is suggested to reflect input from Northwestern Mutual in the October 2023 comment period and the ACLI's input in the March 2023 comment period.

~~Overall, industry supports the use of e-signatures. However, the Center for Economic Justice 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.~~

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
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 ; differentiate between two types of insurers and establish e-insurers/product (opt-out) and historically paper (opt-in)	UETA much broader than just insurance; may require amending existing federal E-SIGN and state laws

Commented [OM3]: This change was suggested by Northwestern Mutual.

Commented [OM4]: This change was suggested by Northwestern Mutual.

~~Overall, industry supports the use of electronic lapse/termination notices. However, the Center for Economic Justice notes that consumers should have to affirmatively opt in annually due to the importance of such notices and changes can occur over time, including a change in an email address.~~

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

- ~~Overall, industry supports the use of electronic lapse/termination notices.~~
- The American Council of Life Insurers 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.

Commented [MO5]: Northwestern Mutual stated that this is overly burdensome for both the consumer and industry. Presuming valid opt-in, lapse notices should be given the same standing as any other notice required to be sent.

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; differentiate between two types of insurers and establish e-insurers/product (opt-out) and historically paper (opt-in)	May require amending existing state laws; State legislature and/or Governor disagreeing with doing so

Commented [OM6]: Northwestern Mutual stated that this phrase is too broad. They stated the following "Policies? Notices? Billings statements? Proxies? Delivery is usually presumed under notice and access models for eDelivery."

Commented [RM7R6]: NAIC staff would suggest this feedback could be considered further in 2024.

Commented [MR8]: Input to avoid the creation of two dynamics of regulation was provided by the ACLI.

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

- ~~Overall, industry supports the use of e-delivery any time a communication must be sent by an insurer to the insured.~~
- 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

Commented [OM9]: Northwestern Mutual asked, "What about the requirements for the 'Important Notice' to be given in paper, even if eDelivered?"

Commented [RM10R9]: NAIC staff suggests this could be a future agenda item but it may require further study to be properly defined as a potential subject included in the modernization guide.

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

- ~~Overall, industry supports the use of replacement questions.~~
- However, the [The Center for Economic Justice 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 American Council of Life Insurers 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.

Commented [MR11]: IRI also suggested that: They also request that any Market Conduct Guidelines clearly indicate that electronic delivery and signatures meet the requirements.

Commented [MR12R11]: NAIC staff would suggest this could be considered as a referral to a D Committee group which could generally raise awareness to them of our ongoing work such that they be aware that market conduct examinations standards may later need amending to match the modernization efforts state insurance regulators.

(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, ~~and anti-rebating laws.~~

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 ~~Center for Economic Justice~~ [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	The industry raised this topic particularly as it relates to	Forms or applications may each have different legal requirements		Each electronic application must be approved prior to use by the	

requirements of enrollment forms	enrollment in employer group insurance coverages	depending on the type of policy and/or state; need uniformity		Department; all changes must be approved	
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[The NAIC'S public comment process resulted in the following input:](#)

- [The Center for Economic Justice 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

Commented [OM13]: Northwestern Mutual asked "Why is this in the "policy" section? It's a 'notice.'"

Commented [MR14R13]: NAIC staff acknowledges the possibility of confusion. However, the intention was that the category #2 be narrowly focused on the method of delivery of notices while category #3 has a broader focus and thus the inclusion of certain somewhat related topics under this category.

Given the timing, NAIC staff suggest that the long-term organization of this guide be made a future agenda item if the Modernization Guide grows in future years and thus organization would become a higher priority.

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			

Commented [OM15]: Northwestern Mutual said that it is "unclear why this is included in this section. How is this a 'policy' and not a 'notice'? Blurs distinctions that could be meaningful in terms of permitted v prohibited deliveries."

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

- The ~~Insured Retirement Institute~~ [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 ~~Insured Retirement Institute~~ [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.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Anti-Rebating Laws	Recently, the NAIC approved amendments to the Unfair Trade Practices Model Law regarding anti-rebating. The industry raised concerns that jurisdictions have not yet adopted the amendments.	Prior request to amend Unfair Trade Practices Model Law		Encourage adoption of the newest language contained in the Unfair Trade Practices Model Law	

Commented [MR16]: Noting the work to adopt updated amended anti-rebating model law, this text appears out of scope for the guide. Moreover, for all NAIC models, NAIC staff work diligently with state insurance regulators to support adoption across the United States.

(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 ~~Center for Economic Justice~~ [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 ~~Center for Economic Justice~~ [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			Amend statutes to allow digital adjustment of claims; eliminate licensing requirements or provide option for a business license (as opposed to individual licenses); allow	

	licensing requirements related to claims adjustment.			online licensing courses; allow fingerprints submitted in one state to be valid in all states for a set amount of time	
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[The NAIC's public comment process resulted in the following input:](#)

- The ~~American Council of Life Insurers~~[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 ~~Center for Economic Justice~~[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.

Commented [MR17]: Given the differing views, this topic could be one studied further in 2024 which could later result in a referral to a different group based on the results of the study.

(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 topics in the other category ~~are~~ is different design element requirements for forms/documents and online materials, ~~and advertising approval, and the use of telematics.~~

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Use of Artificial Intelligence	Artificial intelligence is a technology that enables computer systems to accomplish tasks that typically require a human's intelligent behavior. The use of AI has increased exponentially across all industries, including the insurance industry.	Statutory modifications expressly providing for use of this technology.			Duplication of H Committee work

~~The Center for Economic Justice opposes the industry request for statutory modifications that would allow for the use of artificial intelligence in insurance. They express concern about how artificial intelligence is defined within the Framework and suggest that more efforts are needed to address the widespread concern about insurer use of artificial intelligence and "big data."~~

Commented [MR18]: Given the other ongoing work under the NAIC's H Committee, this text now appears out of scope and NAIC staff suggest deletion.

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 the states for	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	

forms/documents and online materials.				
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[The NAIC's public comment process resulted in the following input:](#)

- The ~~American Council of Life~~ [ACLI Insurers](#) supports the ~~Framework's~~ [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.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Advertising Approval	The industry raised concerns regarding states' review and approval of long-term care insurance advertising materials.	Different states mandate department reviews and approval of advertising materials related to LTC; make them uniform, take departments out of the business of editing company documents	How many states require these filings and how many are exempt?	NAIC should work with states to seek uniform standards	Duplication of Long-Term Care Task Force work

Commented [MR19]: As the initial table notes, this work could be potentially duplicative with the work of the Long-Term Care Insurance (EX) Task Force (LTCITF) and therefore we would suggest deletion of this text and that the topic only get added back in the future and only after consultation with the LTCITF.

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

—The Center for Economic Justice opposes the proposal to reduce regulatory oversight of long term care insurance disclosures.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Use of Telematics	Telematic devices measure elements of interest to underwriters, including miles driven, time of day, and where the vehicle is driven. Like AI, the use of telematics has increased exponentially across the insurance industry.	Statutory modifications expressly providing for use of this technology for underwriting and rating purposes			Compliance reviews and internal controls; duplication of H Committee work

The Center for Economic Justice believes that effective regulation is crucial for the use of telematics in the insurance industry to protect consumer digital rights and privacy. They argue that a blanket authorization of the use of this technology is unreasonable and that there should be regulations in place to ensure the symmetric use of telematics data by insurers and consumers. The Center for Economic Justice further emphasizes the importance of protecting consumers from unwanted and unapproved uses of telematics data in order to improve consumer confidence in new technologies.

The Consumer Federation of America opposes the inclusion of telematics in the discussion of exceptions to state laws and regulations implemented during the pandemic. They argue that telematics was first initiated in the 1990s and should be addressed by subject matter working groups, with ample public notice and opportunity for insights and comments from consumer advocates. The federation also disagrees with the industry request for statutory modifications expressly providing for the use of telematics for underwriting and rating.