

# A New Dawning for Electronic Insurance and Investment Product Transactions and Document Delivery?

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In 2020, the financial services industry and regulators adjusted to new norms of social distancing, electronic document delivery, and electronic transactions. Regulators are recognizing the gap between advancements in technology and customer acceptance on the one hand, and a decades-old regulatory structure on the other. Below are some of the notable shifts under consideration at the federal and state levels.

## E-SIGN Modernization Act

In July, three Republican senators introduced a bill to modernize the Electronic Signatures in Global and National Commerce Act (E-SIGN), which became law in 2000. E-SIGN provides a framework for using electronic documents and signatures in transactions involving interstate and foreign commerce.

The new Senate bill seeks to eliminate a provision in E-SIGN that requires consumers to demonstrate their ability to access electronic documents before receiving certain documents electronically. The senators noted in a press release that the provision is an outdated barrier to electronic delivery.

## Electronic Delivery Under the Federal Securities Laws

In recent months, various industry groups have submitted letters urging the SEC to make electronic delivery the default method for communicating with investors. A letter submitted by the American Council of Life Insurers (ACLI) noted that the outdated patchwork of SEC requirements and guidance governing electronic delivery is confusing for consumers and burdensome to firms. The ACLI urged promulgation of “a comprehensive framework where e-delivery, not paper, is the default.”

Some key SEC officials' recent remarks indicate that modernization of securities laws governing electronic transactions is not on just the industry's wish list. For example, Dalia Blass, the director of Division of Investment Management, noted in July that "the Commission's most recent comprehensive guidance on e-delivery is now 20 years old" and that "it is time to reconsider [the SEC's] approach to shareholder and client communication." Similarly, during an SEC open meeting in November, Chairman Jay Clayton stated that the challenges posed by COVID-19 demonstrated that the SEC regulations "should not cling to the mails and paper as the default or preferred paradigm for communications."

## Electronic Insurance Transactions and Delivery

Electronic transactions and electronic delivery in the context of insurance are governed by each state's laws. While many states have adopted the Uniform Electronic Transactions Act (UETA), which permits the use of electronic means to satisfy various records and signature requirements, there are variations among the states. Moreover, separate state insurance laws governing electronic transactions may supersede a state's adoption of UETA. For example, state insurance laws may differ as to:

- disclosures required when obtaining an insurance purchaser's consent to engage in an electronic transaction or to receive documents and other records electronically;
- required methods of obtaining such consents;
- demonstrating delivery or receipt of documents or other records, with some states requiring that the insurer demonstrate actual receipt.

On September 28, the NAIC Innovation and Technology Task Force (Innovation TF) requested industry comments on regulatory relief or accommodations relating to COVID-19, including whether there are any laws or regulations that limit the use of newer technologies. In a similar effort, the New York Department of Financial Services launched its "FastForward" program, soliciting comments and questions about regulatory obstacles in implementing innovations aimed at facilitating recovery from the pandemic's impact.

In response to the Innovation TF request, various interested parties submitted comments urging state insurance regulators to further accommodate electronic transactions in the marketplace. Notably, the ACLI suggested adoption of a state insurance department bulletin to clarify that any "written/tangible form" and "in-person" requirements in state insurance laws may be satisfied by electronic means. Recognizing the need for modernization and the regulatory obstacles, on December 4, the Innovation TF decided to draft a model bulletin that addresses such obstacles and asked its members to provide suggestions for the bulletin.

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