



Electronic  
Signature &  
Records  
Association

110 Horizon Drive, Suite 210, Raleigh, NC 27615 | 919.861.4543

# **The Move to Digital Communication: Report on Consumer Benefits of Electronic Records**

*Prepared by*

Electronic Signatures and Records Association (ESRA)

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*Adopted by*

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## EXECUTIVE SUMMARY

Consumers have been embracing the rapid move to digital communication, and have increasingly demonstrated a preference for conducting financial transactions online, including receiving bank statements and other information in real time. In addition, federal legislation designed to reduce the use paper has increasingly driven agencies toward paperless processes. Yet, despite these trends many institutions have been slow to offer a fully digital experience for their customers and constituents. Yet, the advantages of electronic communication of banking information allow access to more timely and accurate information, record retention options, and reduction of fraud and identity theft.

Of course, consumers should not be forced to receive electronic statements if they wish to have paper instead, but the reverse should also be true: regulators and banks must act to better accommodate consumers' preference for digital communication of financial information.

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## I. THE MOVE TO DIGITAL COMMUNICATION

U.S. consumers have converged on one key behavior over the past decade: the move to digital communication. From email to mobile phones to text to social media, electronic interactions are being adopted rapidly and consistently among consumers across all socio-economic strata. Home broadband, which was nonexistent in 2000, is now found in 73% of households.<sup>1</sup> Consumers are exhibiting ever higher propensity to purchase goods and services online.<sup>2</sup>

Consumers are also moving to digital means to manage their financial lives. Consumers now use online banking more frequently than traditional in-branch banking—60 percent use it at least weekly.<sup>3</sup> Last year, the single biggest consumer banking migration was from traditional banks to branchless or “virtual” banks, where 100% of transactions and communications are online.<sup>4</sup>

Everyone will play the role of a consumer at some point. “Consumers” are students, executives, members of the military, commuters, the self-employed, homeless persons, migrant workers, and members of the mobile work force. Consumers are young or old, live in urban or rural environments, and have higher or lower incomes.

Not only are consumers gravitating toward more digital opportunities, Congress enacted the Government Paperwork Elimination Act of 1998 (GPEA, Pub. L. 105-277) requiring that, when practicable, federal agencies use electronic forms, electronic filing, and electronic signatures to conduct official business with the public. Since 1998, there has been a Presidential Memorandum called “Electronic Government,” the Federal ESIGN Act of 2000, the Uniform Electronic Transactions Act and related laws enacted by the states, all acknowledging the validity of using electronic media instead of paper.

Despite clear preferences by consumers and the legal requirement for government to help them, some institutions have been slow to respond, making it hard to do business electronically. Most disclosures and statement documents are still being delivered via postal mail by default, and consumers do not always have the option of going paperless. The most frequently cited reasons for this include: 1) laws and regulations that some believe require a default to paper delivery; 2) the belief that paper is a more secure, reliable means of keeping track of financial information; and 3) the assumption that paper records are presumed to be the preferred medium of consumers. Because of an ever-growing use of electronic devices and electronic communication, many of these concerns are antiquated and no longer valid.

None of these purported reasons is supported by the facts or justifies the slow implementation of electronic processes in consumer-facing business and government

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<sup>1</sup> Andrew Perrin, , *Digital gap between rural and nonrural America persists*, PEW RESEARCH CENTER (May 19, 2017), <http://www.pewresearch.org/fact-tank/2017/05/19/digital-gap-between-rural-and-nonrural-america-persists/>.

<sup>2</sup> See, e.g., 2015 (HG: This link leads to the 2016 survey, same as footnote 3) *North America Consumer Digital Banking Survey*, ACCENTURE, [www.accenture.com/consumerbankingsurvey](http://www.accenture.com/consumerbankingsurvey) (last accessed Oct. 12, 2017). (HG: What is the meaning of the “last accessed” comment here? Should it be there?)

<sup>3</sup> 2016 *North America Consumer Digital Banking Survey*, ACCENTURE, [www.accenture.com/consumerbankingsurvey](http://www.accenture.com/consumerbankingsurvey) (last accessed Oct. 12, 2017).

<sup>4</sup> *Ibid.*

interactions. Existing laws and regulations permit the consumer to opt in to electronic documents; digital records offer more secure and reliable means for managing financial documents; and paper records, while preferred by some, should not be presumed to be the preferred medium of choice for the majority. By their behavior, consumers have demonstrated an affinity towards online transactions, whether with financial institutions or retailers.

Consumers want more control, choices and opportunity to go digital. ESRA supports consumer enablement while advocating for the use of electronic signatures and records, promoting process efficiencies and providing educational resources to the public, businesses and government. Consumers want options and should be permitted to decide if they want to interact with their financial and government institutions in person, via paper, or digitally.

Consumer choice is at the core of ESRA's position on this issue. Consumers must always have a choice on how they receive – and respond to – business communications whether they are bank statements, bills or other documents.

An inescapable fact is that a growing number of consumers want to do business electronically and only electronically. They should have the right under the law and public policy rules and regulations to make that choice. Similarly, those who feel they have a need for paper records should have that option.

Forcing a majority of users who prefer electronic communications to use paper-based transactions instead, solely to “protect” a minority who want paper, is inherently unfair and anti-progressive at a time when society and business seeks to function more efficiently.

## II. CONSUMERS ARE EMBRACING THE MOVE TO DIGITAL

### **ACCESS AND CONVENIENCE**

With the advent of digital communications and the ability to access all sorts of information from a handheld device or a desktop computer, consumers have access to a wide array of electronic processes, documents and transactions.

Digital communications provide convenience for consumers. Consumers want to be able to monitor financial accounts, such as bank statements, credit card statements or credit scores. Consumers do not need to wait for a paper copy of their financial statements to arrive in the mail box or at the PO Box.

Access can be from their home place of work, public library, vacation destination or for active duty military, from anywhere in the world or at sea. This includes combat zones around the globe.

### **HEIGHTENED SECURITY**

Electronic financial records provide heightened security, convenience and access to economic opportunities for all the many versions of “consumers.” Consumers can actively monitor their financial accounts to see if there is any unauthorized activity and take immediate steps to report fraud. Further, by accessing financial statements online

from the financial services provider's portal and not having paper statements delivered by the USPS, this can also reduce incidents of fraud by eliminating opportunities for mail theft.

### **FLEXIBILITY TO MANAGE ONE'S OWN AFFAIRS**

Many financial services institutions allow consumers to opt-in to having a notice sent to their inbox advising the consumer the financial statement is available online. And, perhaps more importantly, financial services institutions enable email alerts when a payment is due -- and also if the payment was not received. This information serves the consumer's interests. A delinquent consumer can make a prompt payment and reduce the amount of interest accruing.

### **AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE BENEFITS**

Access to online financial statements allows consumers with visual challenges – young or old – to manage their own finances. Hand held devices and desktop computers can enlarge the font size on documents aiding in ability to see and understand a financial statement. Also, some consumers may opt to use a text-reader program to read the statement out loud to them. Braille documents are not always readily accessible, and not all consumers with sight impairments are skilled in reading braille.

### **HELPING ELDERS MANAGE THEIR FINANCES**

Older consumers benefit from digital access to financial institutions. Children, relatives or other duly authorized agents may assist an elderly parent with financial decisions without having to be sitting across from the parent at the kitchen table. The ability to see an online statement and be up-to-date with transactions eases concerns that perhaps bills have been overlooked, misplaced or stacked in a pile of other papers.

### **DIGITAL DOCUMENTS CAN BE STORED ONLINE, IN THE FINANCIAL INSTITUTION'S "ELECTRONIC VAULT," ON A DEVICE, OR IN THE CLOUD**

Digital documents can be stored in and accessed from various locations and across various devices and for that reason provide ease of availability and access, including at a later date. Banker's boxes full of financial institution statements and credit card bills are far less accessible, potentially less secure, and certainly less convenient. With electronic records, no heavy lifting required. This makes it much easier for consumers in a mobile society.

## **III. FEDERAL LAW REQUIRES AGENCIES TO REDUCE REQUIREMENTS FOR PAPER**

The Government Paperwork Elimination Act of 1998 (GPEA, Pub. L. 105-277) requires that, when practicable, federal agencies use electronic forms, electronic filing, and electronic signatures to conduct official business with the public. For the most part, compliance with GPEA is now 14 years overdue (October 21, 2003 deadline). GPEA seeks to "preclude agencies or courts from systematically treating electronic documents and signatures less favorably than their paper counterparts," so that citizens can interact with the Federal government electronically (S. Rep. 105-335). It requires Federal agencies, by October 21, 2003, to provide individuals or entities that deal with agencies the option to submit information or transact with the agency electronically, and to maintain records electronically, when practicable. It also addresses the matter of

private employers being able to use electronic means to store, and file with Federal agencies, information pertaining to their employees. GPEA states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. It also encourages use by the Federal government of a range of electronic signature alternatives.

On December 17, 1999, the President issued a Memorandum, "Electronic Government," which called on Federal agencies to use information technology to ensure that governmental services and information are easily accessible to the American people.<sup>5</sup>

Electronic transaction legislation has been in place in all 50 states for over 15 years.<sup>6</sup> Federal law also acknowledges the validity of using electronic media instead of paper. The ESIGN Act of 2000 answered many lingering questions about validity and enforceability of electronic signatures and records, removing barriers to adopting paperless transactions by agencies and regulated entities.

## U.S. OFFICE OF MANAGEMENT & BUDGET

"As public awareness of electronic communications and Internet usage increases, demand for on-line interactions with the Federal agencies also increases. Moving to electronic transactions and electronic signatures can reduce transaction costs for the agency and its partner. Transactions are quicker and information access can be more easily tailored to the specific questions that need to be answered. As a result data analysis is easier. These access and data analysis benefits often have a positive spillover effect into the rest of the agency as awareness of the agency's operations is improved."

## IV. ADVANTAGES FOR CONSUMERS WHO WANT ELECTRONIC STATEMENTS

Electronic devices are becoming the preferred method of receiving and viewing information. While some interest groups have promoted the assumption that records viewed on screens are more likely to be overlooked, these conclusions are not founded on any empirical research. Studies dating back to the 1980s – when screens were far more difficult to read – have found comprehension of electronically presented information to be the same, if not better, than information presented on paper. More recent studies have shown rapid adoption of – and preference for – reading complex material on screens, suggesting that much of the concern about the adequacy of mobile devices to convey important information arises from individual attitudes rather than from real data about actual reading experience.<sup>7</sup>

In addition to the obvious convenience that electronic receipt and retention of financial records affords, there are many reasons for the movement away from paper statements.

<sup>5</sup> Memorandum on Electronic Government, 35 WEEKLY COMP. PRES. DOC. 2641-43, (Dec. 27, 1999).

<sup>6</sup> See Legislative Fact Sheet - Electronic Transactions Act, UNIFORM LAW COMMISSION, <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Electronic%20Transactions%20Act> (last accessed Oct. 12, 2017).

<sup>7</sup> "The present findings thereby suggest that the skepticism towards digital reading media ... may reflect a general cultural attitude towards reading in this manner rather than measurable cognitive effort during reading." Franziska Kretzschmar, et al., Subjective Impressions Do Not Mirror Online Reading Effort: Concurrent EEG-Eyetracking Evidence From the Reading of Books and Digital Media, PLOS ONE (2013), <https://doi.org/10.1371/journal.pone.0056178>

## **CONSUMERS ARE MORE LIKELY TO GET THE INFORMATION THEY NEED, WHEN THEY NEED IT**

As consumers are increasingly obtaining, maintaining, and using credit card products via digital channels, the CFPB notes there is an increasing danger that defaulting to paper could result in fewer people getting the information they need. Not only does it take more effort for consumers to locate old paper statements than to simply log onto a bank website to look up historical information, but paper documents can only be in one physical place, therefore making them inaccessible from anywhere but that place. If they are misplaced, the vital information is simply no longer available.

Further, paper records are not sufficient to provide real-time information for a consumer who needs to know the current status of an account. Real-time access to account information is an added benefit not available today with paper statements alone, since consumers who rely solely on static account statements only see historical information, not recent transactions.<sup>8</sup>

Finally, because postal “junk mail” has become so ubiquitous, physical delivery is commonly cited as a reason for statements to be overlooked or lost among various pieces of mail that vary by size and shape. “Somewhere under that stack of junk mail are invoices that need to be paid. A missed gas bill could mean the heat gets cut off. A missed phone bill could result in severed communications....More mail, more piles, more chances that the really important stuff gets lost.”<sup>9</sup> While email is presented in an inbox in orderly, line-by-line listings of searchable text, physical paper cannot be indexed and searched, nor can it be easily and quickly retrieved from a single storage device without discipline and effort.

## **ONLINE ACCESS PROVIDES A MORE VERIFIABLE RECORD THAN PAPER**

The concept of “keeping a record” is often narrowly defined as placing a physical sheet of paper into a metal file cabinet, but research now shows that most households prefer to store permanent files electronically, either locally or with a cloud provider. The advantage is that an electronic writing exists separately from its paper progeny, virtually guaranteeing a backup in the event of lost local file. Paper records are not self-restoring; physical documents can be stolen, misplaced or destroyed by fire or flood, making them permanently inaccessible. The most obvious advantage to electronic statements is that they do not need to be scanned or copied. It is easier to save a file to a storage medium at the time and place it is first viewed, than to find a physical place to store a paper record where it can be retrieved when needed. Moreover, tamper-sealed electronic documents provide a more durable record than paper, and are more reliable for proving change in content.

BETTER BUSINESS BUREAU

“[D]espite growing fears about identity theft and online fraud, of the victims that know the identity and method used by the criminal, these crimes are more frequently committed offline than online. Internet-related fraud problems are actually less severe, less costly and not as widespread as previously thought.”<sup>11</sup>

<sup>8</sup> CARD Act rules require, for example, that statements be mailed at least 21 days before the payment due date.

<sup>9</sup>Deborah Liss Fins, *4 Steps to Getting Rid of Junk Mail*, AGING LIFE CARE ASSOCIATION, (Jan. 6, 2016), <http://blog.aginglifecare.org/blog/4-steps-to-getting-rid-of-junk-mail/>

## **DIGITAL COMMUNICATIONS CAN REDUCE FRAUD AND IDENTITY THEFT RISK BETTER THAN PAPER**

Paper statements increase the risk of identity theft. A 2005 study concluded that identity theft is a significant issue with postal mail, with bank statements being a favorite target for thieves. Insurers and consumer advocates are increasingly urging their constituents to “go paperless” to decrease their vulnerability to fraud and identity theft.<sup>10</sup>

“Offline consumers” – who eschew all types of online activity, including social media and online shopping – are exposed to less fraud generally, but in banking specifically they incur higher fraud amounts and take more than 40 days to detect it.<sup>11</sup>

Paper statements may in fact be abetting controversial practices, such as deferred interest promotions, because consumers do not realize they have been the victim of these practices until it is too late. The disclosures required in monthly statements have been carefully crafted to deliver critical information, but such information is overlooked when consumers must pore through multiple pages of fine print, which often end up in the recycle bin without being read. Those who access accounts online can provide earlier detection of crime than those who rely only upon mailed monthly paper statements.

Going digital decreases a person’s likelihood that they will be a victim of identity theft. Consumer Reports suggests signing up for free online banking and mobile apps. This allows the consumer to frequently and regularly monitor credit card use and banking accounts to identify if someone else is using your personal information without your permission to obtain goods or services on your accounts. According to Consumer Reports, the annual National Crime Victimization Survey showed two-thirds of reported identity theft involved theft of credit cards, not stolen identities. (Consumer Reports January 2013).

## **V. BREAKING DOWN THE “DIGITAL DIVIDE”**

In the late 1990s – before home broadband, smart phones or tablets existed – electronic transactions were a novelty only within reach of a very few sophisticated technology users. Legitimate concerns arose about the potential impact of converting consumer notices and disclosures to electronic means, particularly upon those who could not afford the equipment necessary to participate. As a result, the federal ESIGN Act included significant consumer protections, requiring affirmative informed consent by consumers to receipt in electronic form of required written materials like statements and disclosures.<sup>12</sup>

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<sup>10</sup> “By managing their financial activities online, consumers can reduce access to personal information on paper bills and statements that may be used to commit identity theft and fraud.” *New Research Shows That Identity Theft is More Prevalent Offline with Paper than Online*, BETTER BUSINESS BUREAU, (Jan. 26, 2005), <http://www.bankcbb.com/fraud-alerts/identity-theft-is-worse-offline.html> (Hyperlink doesn’t work - best I could find is: <http://www.businesswire.com/news/home/20050126005448/en/New-Research-Shows-Identity-Theft-Prevalent-Offline>)

<sup>11</sup> *2017 Identity Fraud Study*, JAVELIN STRATEGY & RESEARCH (Feb. 1, 2017), <https://www.javelinstrategy.com/press-release/identity-fraud-hits-record-high-154-million-us-victims-2016-16-percent-according-new>.

<sup>12</sup> Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001(c).

Today, with the proliferation of online devices and near-universal access to the internet, consumer protection policies of the 1990s must be updated to reflect current practices and the many benefits and protections provided to consumers by electronic processes. Ironically, policies that were initially designed to protect consumers from being left behind by the digital divide and from being victimized by technology they did not understand, now have the potential to harm consumers. And policies that default to paper delivery may even disproportionately harm the vulnerable consumer populations they were designed to protect.

### **MINORITIES AND UNDERBANKED DEPEND MORE ON ELECTRONIC TRANSACTIONS, PARTICULARLY MOBILE**

Lower income families are more likely than higher income families to prefer electronic statements. The ability to receive critical financial information on a mobile device is not a burden or detriment for millions of underserved and unbanked individuals worldwide; rather, it is a critical lifeline providing access to financial services otherwise unavailable to them. This use of mobile electronic platforms for accessing critical financial information then serves as a foundational platform for delivering a host of other services and programs which otherwise would have been inaccessible.<sup>13</sup>

More than any other category of consumers, the unbanked and underbanked depend on mobile access. A 2015 Pew Research report found that 92% of all adults own mobile phones, with ownership among African Americans at 94% and among Hispanics at 92%.<sup>14</sup> According to a 2014 survey by the Federal Reserve Board's Division of Consumer and Community Affairs (DCCA), 67% of the unbanked have access to a mobile phone, 65% of which are smartphones. Ninety percent of the underbanked have access to a mobile phone, 73% of which are smartphones; and 48% of underbanked consumers had used mobile banking in the 12 months prior to the survey.<sup>15</sup> The homeless, understandably, depend exclusively on mobile.

Completely apart from access through mobile phones, electronic banking processes open up entirely new avenues for the unbanked to receive the benefits of integrated banking and financial services otherwise unavailable to them: "For example, innovative banks are also creating links between payroll cards, tax preparation services, and the earned income tax credit (EITC) — rightly described as the federal government's most powerful anti-poverty weapon — to help move tax refunds directly into dedicated savings accounts that can aid lower-income Americans in building wealth."<sup>16</sup>

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<sup>13</sup> Jaspal S. Sandhu, *Opportunities in Mobile Health*, STANFORD SOCIAL INNOVATION REVIEW (Fall 2011), [https://ssir.org/articles/entry/opportunities\\_in\\_mobile\\_health](https://ssir.org/articles/entry/opportunities_in_mobile_health).

<sup>14</sup> Monica Anderson, *Technology Device Ownership: 2015*, PEW RESEARCH CENTER (Oct. 29, 2015), <http://www.pewinternet.org/2015/10/29/technology-device-ownership-2015/>.

<sup>15</sup> Board of Governors of the Federal Reserve System, *Consumers and Mobile Financial Services 2015*, FEDERAL RESERVE BOARD (2015), <https://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201503.pdf>.

<sup>16</sup> John D. Hawke, Jr., *Using Technology to Reach the Unbanked*, COMPTROLLER OF THE CURRENCY ADMINISTRATOR OF NATIONAL BANKS (Fall 2004), <https://www.occ.gov/publications/publications-by-type/other-publications-reports/cdi-newsletter/cdi-power-of-plastic-fall-2004.pdf>.

## **AS CONSUMERS ADVANCE IN AGE, IT IS INCREASINGLY IMPORTANT TO BUILD A DIGITAL RECORD**

The longer a consumer lives, the more records are accumulated in the household. At the same time, many elderly consumers are seeking to downsize and simplify, and they face additional challenges in keeping records organized and safe.

One elder advocate suggested “[a] great way to help an aging loved one get rid of clutter is to help them control the amount of junk mail that floods their mailbox. Especially after the holidays and end-of-year solicitations, the pile could be hiding important bills or notices.”<sup>17</sup> An individual with dementia may not want to throw anything away, for fear of missing something important, but the outcome can be just the opposite.<sup>18</sup> Caretakers of elderly consumers are better able to monitor finances from a distance with electronic access to accounts.

A 2017 Pew Research report found that older consumers are adopting technology. Around four-in-ten (42%) adults ages 65 and older now report owning smartphones, up from just 18% in 2013. Internet use and home broadband adoption among this group have also risen substantially. Today, 67% of seniors use the internet – a 55-percentage-point increase in just under two decades. And for the first time, half of older Americans now have broadband at home.<sup>19</sup> A 2013 study found that older participants “read both faster and with less effort on [a] tablet computer [than paper], due to the backlighting giving a better contrast.”<sup>20</sup> (this seems to be a paraphrase and not an actual quote from that article, so shouldn’t have quotes around it)

## **VI. WHAT IF I PREFER PAPER?**

For those to whom internet access remains elusive, paper records are available; by law, consumers always have the paper option upon request. And consumers of any means who place a value on physical mail can opt for receiving statements in paper form. Banks continue to offer branches and phone support for those who do not wish to take advantage of online banking. Credit card issuers continue to offer the option to receive statements by postal mail.

A clear and informed choice about how to receive statements is essential. Consumers need to understand the benefits and risks of paper statements as well as those of electronic statements and communications. The right to opt in and the right to withdraw are important components of the law.

But consumers should not be forced to access account information solely by reviewing static paper statements. It is a practical fact that many other types of transactions are being done electronically, and that forcing a paper process into this workflow is confusing and potentially counterproductive. Important messages are far more likely to be lost when they are printed one time on a piece of paper, particularly in a household

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<sup>17</sup> Fins, *supra* note 10.

<sup>18</sup> *Id.*

<sup>19</sup> Monica Anderson and Andrew Perrin, *Tech Adoption Climbs Among Older Adults*, PEW RESEARCH CENTER, (May 17, 2017), <http://www.pewinternet.org/2017/05/17/tech-adoption-climbs-among-older-adults/>.

<sup>20</sup> Kretzschmar, et al., *supra* note 7.

that does all its other business by digital means. Given that there is disclosure and there is choice, why shouldn't consumers be able to choose – and benefit from – paperless transactions?

In its 2016 report on the consumer credit card market, the Consumer Financial Protection Bureau, or CFBP, noted: “Substantial and growing numbers of consumers are managing their financial lives electronically and online, and credit cards are no exception to this development. A majority of active credit card accounts are now enrolled in online service portals, and a growing number are enrolled in issuers’ mobile applications. A significant minority have now elected not to receive paper statements.”<sup>21</sup>

## VII. BANKS AND REGULATORS MUST HELP CONSUMERS GO DIGITAL

At a time when consumers are increasingly choosing electronic processes instead of paper-based transactions, a default paper regime for certain documents imposes an unfair burden, particularly on those of modest means. Internet communication has become the preferred channel for most consumers regardless of age, income or race.

Consumers have a choice on whether to receive records and conduct their important transactions via paper or by electronic means and formats. Consumers deserve a choice in determining how required disclosures and statements are provided, and their first option should be to receive them electronically. Consumers should not be burdened with setting up paper storage systems in their households to accommodate outdated delivery methods of their financial institutions.

Regulators should be updating their rules to accommodate lenders, consumers and citizens who wish to go digital. They need to take their responsibility under GPEA seriously and to lead the way toward consumer accommodation in regulated industries like banking and credit.

*Keywords: consumer, electronic signature, access, digital divide, mobile banking*

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<sup>21</sup> 2016 North America Consumer Digital Banking Survey, supra note 3.