E-Signatures: "Old" Digital Technology Waiting for Adoption

by Charles Wendel

While big IT and consulting firms continue to discuss digital initiatives as if they have just discovered them, some opportunities for banks to save money and improve the customer experience gather dust.

E-Signature has existed for close to two decades and yet its adoption has been slow by business lenders despite its wide use by consumer areas. The reasons behind the slow adoption of E-Signature and its limited use help to understand the timeframes that may be required for technology adoption and the need to develop plans to address the internal bank concerns that delay these types of initiatives.

Upfront investment requirement often create a barrier to technology adoption, but the issue with E-Signature is usually not cost related. One bank exec commented: "The investment required is not large" but went on, the cost "was not large, but it took 15 years to get approved." One vendor commented, "E-Signature has been around for years; it is not cutting edge in 2019, but to many lenders it is new to them."

Interviews with commercial lenders indicate that E-Signature use remains low; no more than 20% of business contracts, and often fewer, are signed using it. Recently, it has been receiving greater priority at some lenders largely due to customer demand. Several banks we interviewed stated their clients told them that they "will lose deals, if you do not do it." One banker commented that without E-Signatures "We will be out of business," in particular related to the purchase and sale of loans

Two acts govern E-Signatures, UETA passed in 1999 and ESIGN in 2000. The DocuSign website states: "UETA and the ESIGN Act solidified the legal landscape for use of electronic records and electronic signatures in commerce by confirming that electronic records and signatures carry the same weight and have the same legal effect as traditional paper documents and wet ink signatures."

Given its legal foundation, what has kept it from being adopted? At least five factors:

Transaction size. E-Signatures use has centered on consumer lending with its high volume of relatively small dollar transactions. Larger transactions often hit a roadblock. One senior commercial banker says: "It seems odd to me why there is resistance when other parts of the bank have already moved to E-Signature."

Case Law. Many bankers cite bank legal counsel as the main reason for slow adoption. Some General Counsels believe that only limited case law backs up the validity and enforceability of documents using E-Signatures. But, at this point many lenders now believe that sufficient case law exists; others remain hesitant.

One bank's legal group has concerns about loans that are sold to the secondary market and whether investors will accept E-Signatures. It does not proactively offer E-Signature and has developed a work around for instances in which customers insist on signing digitally. One solution is to have the borrowing client, the bank, and the investors all use the same E-Vault. An upfront agreement governs that transaction in which the parties agree to its enforceability, but no E-Signature is required.

When this Bank does accept E-Signatures, it also "papers out" all transactions, following a mixed digital and physical approach in order to address internal legal concerns. This works as follows: the bank sends documents to the borrower; the borrower then E-Signs and sends to the bank; the Bank then signs ("wet signs") the document. E-Signature experts might view his as a belt, suspenders, and duct tape approach that "analogs" a digital process.

Business Reticence. It is a mistake to simply blame Legal alone for the slowness to adopt E-Signature. In some instances, a legal group even favors expansion of electronic signatures, but the business unit hesitates. Sales leaders have sometimes been "interested but skeptical" about the need for E-Signatures, but, again, clients have begun to "vote with their feet" by moving to banks that offer a more convenient customer experience.

Customer sophistication. Not all customers are ready for innovations like E-Signature. Some may not trust it while others lack the technology to support it. Many customers remain "very paper-based." The leader of a bank business with only 10% usage states, "It is an option for our customers, but most of them prefer physical signatures."

One executive characterizes his company as having been "on the journey toward adoption for many years" and said the use of E-Signatures and other technology differs based on the end customer segment. While warning against generalizations, this executive views micro-borrowers as "wanting as much technology as possible" and that smaller borrowers expect "the consumerization of finance because of the Amazon effect. They want instant everything and demand a frictionless experience." Large corporations also expect strong digitalization with many wanting to be 100% integrated "end-to-end." Middle market customers may be the most reticent to use digital technology, including E-Signature: "Many middle market companies have not been through an internal transition to digital, so they are not ready for it from a lender."

Investor/Buyer Concerns. Some investors will not allow E-signature: "Some groups buying our paper will not OK an electronic signature," while others insist on it.

Take-Aways. Ironically, we have heard from several vendors selling to banks that the vendor management areas of banks insist on their vendors using E-Signature. The same banks struggle to provide E-Signature and other innovations to customers, another example of the silo culture at many banks.

The issues around E-Signature adoption offer some take-aways as banks pursue this and other digital solutions:

- Many, but certainly not all, borrowers are ahead of lenders in their adoption of digital solutions.
- Clients will demand that banks provide digital services that save them costs and improve their customer experience. Lenders that fail to do so risk loss of those customers to more digitally savvy players.
- Timeframes required for technology adoption are often multi-year due to internal legal and compliance concerns and/or the time required to add new technology to the current platform.
- Management should bring Legal and other internal approval groups into the information loop early to make them aware of digital requirements by customers, a step that could cut down on the current multi-year adoption process.
- While the plea, "If we don't do it, we will be out of business" may work in the near term, a more proactive approach is necessary to stay current with customer expectations. As one banker stated, "We need to refine, not remove, controls."

Finally, Fintechs and newer lenders may have a distinct digital advantage versus traditional banks because they operate without legacy systems or legacy mindset. Banks have to adopt more of their mindset while maintaining *necessary* controls. E-Signature has been around for almost 20 years…so much for digital transformation.