

September 29, 2020

The Honorable Stephen Lynch  
Chairman  
Task Force on Financial Technology  
Committee on Financial Services  
Washington, DC 20515

The Honorable Tom Emmer  
Ranking Member  
Task Force on Financial Technology  
Committee on Financial Services  
Washington, DC 20515

Dear Chairman Lynch, Ranking Member Emmer, and Members of the Task Force:

The Electronic Transactions Association (“ETA”) appreciates the opportunity to submit this statement for the record before the Task Force’s hearing, “License to Bank: Examining the Legal Framework Governing Who Can Lend and Process Payments in the Fintech Age.”

ETA is the leading trade association for the payments technology industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include financial institutions, mobile payment service providers, payment processors, mobile wallet providers, financial technology companies, and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with secure, convenient, and rewarding payment solutions and lending alternatives – employing millions of Americans and enabling over \$21 trillion in payments in 2019.

### **Regulators and Laws that Govern Payments**

The payments industry is dedicated to providing consumers and businesses access to safe, convenient, and affordable payment services. Although the payments and fintech industries have received considerable attention in recent years as “new” and “innovative” industries, it is important to recognize that these services are regulated by a host of federal and state laws bodies. To highlight these current regulations, ETA has published a white paper<sup>1</sup> that underlines regulators, such as the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau, ETA member companies comply with.

Additionally, the white paper outlines the numerous federal and state laws that apply to payments and related financial products and services. A few relevant federal laws are outlined below, but depending on the circumstances other federal and state laws address money transmission, customer due diligence, credit reporting, information security, data protection, privacy, and prohibitions on unfair, deceptive, or abusive acts or practices. Furthermore, most payments companies work closely with banks and other regulated financial services providers, which means they are oftentimes contractually obligated to comply with bank regulatory requirements.

- **Bank Secrecy Act:** The BSA establishes various requirements for covered financial institutions (including money services businesses) to assist the government in identifying and combatting money laundering and terrorist finance, such as by establishing anti-money laundering programs and reporting suspicious information.
- **Electronic Fund Transfer Act (Regulation E):** Provides consumer rights regarding the electronic transfer of funds to and from consumers’ bank accounts.

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<sup>1</sup> Electronic Transactions Association (2020). *Overview of Federal and State Laws and Regulations Governing Payments and Related Services*. [online] Available at: <https://www.electran.org/wp-content/uploads/ETA-WP-FedStatePayments-1.pdf>

- **Gramm Leach Bliley Act:** The GLBA requires financial institutions to explain their information-sharing practices to customers and safeguard sensitive data.
- **Federal Trade Commission Act:** Section 5 of the FTC Act prohibits unfair or deceptive business acts or practices, including those relating to privacy and data security.
- **Truth in Lending Act (Regulation Z):** Requires creditors to provide disclosures concerning certain terms and conditions of their loan and credit transactions with consumers; regulates the advertising of credit and gives borrowers, among other things, certain rights regarding updated disclosures, billing error resolutions and the treatment of credit balances.

### Online Small Business Lenders

Small businesses are vital for America. However, these businesses routinely lack access to necessary capital to maintain and expand operations. Online small business lending fills this critical gap for small businesses. Indeed, the innovation and affordability of online small business lending products serves to complement, rather than replace, traditional funding sources. Online lenders fund small and short-term loans to business owners very quickly. Access to capital allows small businesses to purchase inventory, cover operational costs, or provide capital to expand.

The bank partnership model provides services for an issuing depository institution to process loans and then purchase the loans to hold on their books or for sale to investors as whole loans or by issuing securities such as member-dependent notes. Under this model, lending platforms are not the lender because they do not originate the loans. Rather lending platforms are technology or outsource vendors rather than the actual lender. The issuing depository institution, expressed as a lender in the borrower's contract, is expected by its banking regulator to oversee the lending platform as a vendor.

Without clarity, small business lending through the bank partnership model would be hampered and could reduce the availability of credit for borrowers with lower FICO scores. According to a study<sup>2</sup> by law professors from Stanford, Columbia, and Fordham, approvals for borrowers, in Second Circuit states, with credit scores under 625 have seen a 52% reduction in credit availability. Outside the Second Circuit states, loan volume for those borrowers grew by 124%.

### Digital Financial Services

The unprecedented recent advancements in technology continue to show great benefits for underserved consumers, as well as the broader economy. ETA members are constantly developing and deploying new products and services, bringing together traditional players and new participants. The innovation in this space delivers new products and services quickly, less expensive, and supports an inclusive financial system that provides high quality, responsible, secure, and affordable financial services for the broadest possible set of consumers.

A goal of ETA member companies is to continually enhance the electronic payments and financial ecosystem so that it is accessible for all consumers, while ensuring their transactions can be completed securely, efficiently, and ubiquitously. A key driver to achieving such a system is the development of new technologies that allow traditionally underserved consumers to access financial products and services.

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<sup>2</sup> Honigsberg, Colleen and Jackson, Jr., Robert J. and Squire, Richard C., How Does Legal Enforceability Affect Consumer Lending? Evidence from a Natural Experiment (August 2, 2017). The Journal of Law and Economics, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=2780215> or <http://dx.doi.org/10.2139/ssrn.2780215>

Financial institutions and financial technology companies have transformed the financial landscape through the introduction of new technologies that expand access to and the number of financial offerings for consumers, lower costs, improve financial management, and increase transaction security. These products and services are continuing to evolve, offering innovative new financial opportunities for all consumers. A modern, flexible framework capable of evolving along with the technology it oversees is ideally suited to fostering continued innovation for the benefit of all.

Many of the most exciting developments emerge from partnerships between banks and FinTech companies. That partnership would be enhanced by clarity and guidance on the bank partner model, particularly when it comes to third-party payment providers. Payment providers often lack direct ownership of their product, and direct relationships with the national regulators. Instead, they must increasingly rely on intermediaries. ETA supports the goal of a national payments charter, and recommended that a carefully constructed, transparent approach to regulation that accounts for differences in risk-profile of each entity and business model while preserving the safety and soundness of the payments system is adopted.

### **Conclusion**

ETA encourages policymakers to focus on a framework that ensures a positive policy environment – encouraging growth and innovation governed by common principles but tailored appropriately to a company’s particular risk profile. Additionally, as companies increasingly offer a wide variety of products and services to reach a broad spectrum of consumers, especially low- to moderate-income consumers, and businesses, we encourage an intentional effort toward harmony. Financial technology is highly regulated at the federal and state level, and harmonization between regulatory schemes and prudential regulators and public policy is critical to fostering an environment where companies and consumers can flourish as digital banking continues to evolve. As the industry continues to evolve it is imperative the regulatory framework is equipped to embrace emerging capabilities without stifling progress. Providing the proper safeguards will both protect consumers and reassure the industry that they have the flexibility to innovate in a manner consistent with the principles of safety and soundness.

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ETA would like to thank the Task Force for this opportunity to provide comments and to recognize your leadership handling these important issues. If you have any questions, please feel free to contact me directly or ETA’s Senior Vice President of Government Affairs Scott Talbott at [stalbott@electran.org](mailto:stalbott@electran.org).

Sincerely,



Jeff Patchen  
Manager of Government Affairs  
Electronic Transactions Association

cc: Members of the Financial Services Committee Task Force on Financial Technology