ELECTRONIC TRANSACTIONS ASSOCIATION
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January 21, 2020

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: Comments Regarding Federal Interest Rate Authority

On behalf of the Electronic Transactions Association ("ETA"), we appreciate the opportunity to share our thoughts on the proposed rulemaking regarding the Federal Deposit Insurance Corporation's ("FDIC") Federal Interest Rate Authority proposal. ETA supports the FDIC's effort to clarify longstanding and well-established authority to provide secure long-term stability in the lending market and ensure small businesses have more options to affordably access capital.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services, including financial institutions, transaction processors, payments networks, and others. ETA also has members that are engaged in online lending for commercial enterprises, primarily small businesses, either directly or in partnership with other lenders.

Small businesses rely on affordable and accessible capital to hire new workers, invest in their products and drive the growth of our nation's economy. The *Madden vs. Midland* ruling, which this proposed rulemaking seeks to correct, disrupted over 200 years of banking practice, hampering next-generation FinTech products and creating potentially damaging effects across the lending market. By clarifying the long-standing 'valid when made' doctrine into law, this proposed rulemaking supports new and leading-edge online lending models that strengthen and make more competitive the small business lending marketplace. ETA supports a small business lending marketplace that is innovative, competitive, affordable and stable.

General Comments

Small businesses are core to America's economic competitiveness. Small businesses employ nearly half of the nation's private sector workforce – about 48% of all employees – and in 2014 small businesses accounted for over half of net job creation.[1] The number one barrier to growth faced by small businesses is access to financing.

The small business lending industry is responding to the demand for access to credit by small businesses and filling a need for credit solutions. Small businesses that take advantage of alternative access to credit can focus more of their time and effort on growing their businesses, hiring workers, and positively affecting the economy.

[1] US Census Bureau, Business Dynamic Statitstics

ETA appreciates the FDIC's thoughtful and forward-thinking approach to clarify that when a bank sells, assigns, or otherwise transfers a loan, interest permissible prior to the transfers continues to be permissible following the transfer. This can help support industry's on-going efforts to provide opportunities for all consumers and small businesses to access and benefit from innovative financial products and services. ETA stands willing to work with the FDIC to create a positive regulatory environment for small business lenders and their borrowers.

ETA and its members support an inclusive financial system that provides high quality, secure, and affordable financial services for the broadest possible set of consumers and small businesses. ETA member companies touch, enrich, and improve the lives of underserved communities while making the global flow of commerce possible. ETA encourages policymakers to support these efforts through policies that support innovation and the use of technology in financial products and services. Stability and clarity in the regulatory structure allows companies to continue to innovate with a foundation of regulatory compliance.

The Economic Benefits of Online Lending to Small Businesses and the U.S. Economy

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. These are all important financing options for small businesses, with a substantial economic impact. In turn, these businesses stimulate additional economic activity and create jobs in their communities.

According to a study conducted by NDP Analytics in 2018 entitled *The Economic Benefits of Online Lending to Small Businesses and the U.S. Economy,* the economic benefits of online lending to American small businesses are substantial.[2]

- From 2015 to 2017, five of the top online small business lenders funded nearly $10 billion to approximately 180,000 small businesses in urban and rural communities across America. During this period, these lenders lent an average of $55,498 to a small business borrower. About one-quarter of borrowers were microbusinesses with annual sales of less than $100,000. Nearly one-third of these loans went to small businesses and microbusinesses in lower-income communities.

- The $10.0 billion in loans funded to small businesses between 2015 and 2017 directly generated $23.0 billion in sales for the business borrowers. The additional sales of these

[2] NDP Analytics, Pham, Triantis, Donovan, *The Economic Benefits of Online Lending to Small Businesses and the U.S. Economy,* May 2018. Available at https://www.electran.org/osbl/wp-content/uploads/2018-0522-NDP-Online-Small-Business-Lending-Economic-Benefits.pdf.

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small businesses in turn generated $37.7 billion in gross output and created 358,911 jobs with $12.6 billion wages in the local economies of the small business borrowers.

- For every one dollar in lending to small businesses, sales of small business borrowers increased between $1.05 and $2.84 (with an average of $2.31). That one dollar in lending created between $2.01 and $5.59 (with an average of $3.79) in gross output in the local communities of the small business borrowers.

Online Small Business Lenders

While online small business lenders have many different types of business models, two major business models have emerged.

The first type of primary business model for online small business lenders is as a direct lender and, where applicable, as a state licensed lender in those states requiring licenses. In such states, direct lenders originate loans on their own books and may be required to obtain licenses or register with the individual states in which they lend. These direct lenders do not rely on depository institutions to originate loans, but rather make loans themselves and either hold those loans in their own portfolios and rely on capital sources including credit facilities, whole loan sales, and securitizations to fund their originations.

The second type of primary business model for online small business lenders is the bank partnership or lending platform model. Lending platforms provide 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. In this model, the issuing depository institution originates loans to borrowers that apply on the online platform. The loans could be subsequently held by the issuing depository institution for a period of time (typically 1-21 days) and then purchased by the small business credit platforms or directly by an investor through the small business credit platform, or small business credit platforms and banks could share participation interests in the underlying loan.

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. However, most importantly, without clarity regarding existing and longstanding principles such as valid when made, the ability for online small business lending to provide access to capital for small businesses through the bank partnership model would be hampered.

Small Business Lending Is Different Than Consumer Lending

It is imperative that policymakers not conflate consumer lending with small business lending. Commercial and consumer credit are distinctly different types of credit. Small business borrowers have different needs and objectives in obtaining credit than consumers – often relying on financing to buy inventory, smooth cashflow, and expand their marketing.

Conclusion

Small businesses are the backbone of the economy and providing them with that financing enables them to continue to grow. Small business lenders have developed credit products specifically designed to answer those needs and objectives. Many of ETA's members provide financing to their customers that average less than $25,000. Small businesses often are looking for small amounts to get them through a period of time (i.e., to cover payroll or smooth out a bumpy cash flow) or to fund a specific activity (e.g. a new marketing campaign). ETA appreciates that the FDIC is providing clarity on this issue so that small businesses that are traditionally underserved and unable to access financing through more conventional means, can continue access capital through bank partnership models.

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ETA appreciates the opportunity to provide input on this important issue. If you have any questions, you can contact me or ETA SVP Scott Talbott at stalbott@electran.org.

Respectfully submitted,

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