

April 28, 2021

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Pat Toomey
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Brown and Ranking Member Toomey:

On behalf of the members of the Electronic Transactions Association (ETA), I appreciate the opportunity to submit this statement for the record before the Committee's April 28 hearing, "The Reemergence of Rent-a-Bank?"

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, 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 \$22 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 fintech has received considerable attention as a beneficial and "new" technology, it is not, as some have suggested, an unregulated industry. To highlight these current regulations, ETA has published a white paper¹ that underlines regulators, such as the Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau, that 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. Depending on the circumstances, 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.

¹ 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>

Online fintech lending, for example, involves many of the same steps as traditional commercial lending – the marketing, underwriting, closing, servicing, securitization (in some cases), customer care, and collection of loans. In this regard, online fintech lending is subject to various federal and state laws and regulations. Depending on circumstances, such as the nature of the product and lending model, these laws may include requirements related to fair lending, licensing, interest rates, credit reporting, and debt collection, among other requirements.

Online Small Business Lenders

Small businesses are vital for America, however, these businesses routinely lack access to necessary capital to maintain and expand operations. Such access is particularly important as these small businesses across the country work to recover from effects of the COVID-19 pandemic.

Fortunately for small businesses, ETA’s members are expanding access to credit and offering attractive alternatives to traditional loans. As evident of their participation in the Paycheck Protection Program², online lenders used sophisticated, data-driven processes to reach funding decisions quickly and efficiently and provided access to capital to traditionally underserved borrowers. This expeditious process allowed the small businesses to cover operational costs during a time it was needed the most.

Expanding this access through the bank partnership has allowed numerous banks to partner with fintech’s using their platforms to streamline and automate their loan application process and expedite their underwriting processes. These platforms allow potential lenders to analyze a broad range of financial and operational data to determine an applicant’s creditworthiness and to do so quickly. Enabling small business borrowers to apply for loans online reduces processing costs, accelerates decision making, speeds access to funds and improves the overall customer experience. This type of collaboration has already provided numerous benefits for consumers.

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 study³ by law professors from Stanford, Columbia, and Fordham Universities, approvals for borrowers, in Second Circuit states, with credit scores under 625 saw a 52% reduction in credit availability. Outside the Second Circuit states, loan volume for those borrowers grew by 124%.

“Rent-a-Charter” Concerns

The OCC’s true lender rule specifically addresses the “rent-a-charter” concern. Their rulemaking makes clear that banks are responsible and accountable for the loans they make and prevents any potential arrangements in which a bank receives a fee to “rent” its charter and unique legal status to a third-party with the intent of evading state and local laws.

² As of April 2021, ETA members have helped the SBA process and disburse more than \$142 billion in PPP loans to nearly 2.5 million small businesses.

³ 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>

In the words of the final rule, “[i]f a bank fails to satisfy its compliance obligations, the OCC will not hesitate to use its enforcement authority consistent with its longstanding policy and practice.”⁴

The true lender rule (and companion “valid when made” rule) allow innovative fintechs to partner with banks and increase access to credit while ensuring strict federal supervision and consumer protections are held in the highest standard during the process. This legal and regulatory certainty facilitates access to responsible credit and clarifies responsibility and accountability in lending involving third-party partnerships. Bank third-party partnerships help financial institutions better serve their communities by expanding access to affordable credit products from mainstream financial service providers.

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. Fintech’s are 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 framework is equipped to embrace the proper safeguards to protect consumers without stifling progress.

We appreciate the opportunity to submit this letter for the record and the Committee’s leadership on this topic. If you have any questions, please contact me or ETA’s Senior Vice President of Government Affairs, Scott Talbott at stalbott@electran.org.

Sincerely,



Jeff Patchen
Manager of Government Affairs
Electronic Transactions Association

cc: Members of the Committee on Banking, Housing, and Urban Affairs

⁴ <https://www.occ.gov/news-issuances/federal-register/2020/85fr68742.pdf>