

April 15, 2021

The Honorable Ed Perlmutter  
Chairman, Subcommittee on Consumer  
Protection and Financial Institutions  
Committee on Financial Services  
House of Representatives  
Washington, DC 20515

The Honorable Blaine Luetkemeyer  
Ranking Member, Subcommittee on Consumer  
Protection and Financial Institutions  
Committee on Financial Services  
House of Representatives  
Washington, DC 20515

Dear Chairman Perlmutter, Ranking Member Luetkemeyer, and Members of the Subcommittee:

On behalf of the members of the Electronic Transactions Association (ETA), I appreciate the opportunity to submit this statement for the record before the Subcommittee's hearing, "Banking Innovation or Regulatory Evasion? Exploring Trends in Financial Institution Charters."

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 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, 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.

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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>

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. 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 Program<sup>2</sup>, online lenders used sophisticated, data-driven processes to reach funding decisions quickly and efficiently and provide access to capital to approved borrowers expeditiously which allowed the small businesses to cover operational costs.

Expanding this access through the bank partnership has allowed numerous banks to partner with fintechs 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 study<sup>3</sup> by law professors from Stanford, Columbia, and Fordham Universities, 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. 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.

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<sup>2</sup> 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.

<sup>3</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 fintech 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 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 Subcommittee’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](mailto:stalbott@electran.org).

Sincerely,



Jeff Patchen  
Manager of Government Affairs  
Electronic Transactions Association

cc: Members of the Subcommittee of Consumer Protection and Financial Institutions

