



1101 16th Street NW
Suite 402
Washington, DC 20036

www.electran.org
T 800.695.5509
T 202.828.2635
F 202.828.2639

October 31, 2014

Federal Trade Commission, Office of the Secretary
Room H-113 (Annex X)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Big Data: A Tool for Inclusion or Exclusion? Workshop, Project No. P145406

The Electronic Transactions Association (ETA) submits these comments in response to the Federal Trade Commission's (FTC) request for public comment on issues related to the public workshop it convened in Washington on September 15, 2014 to further explore the use of "big data" and its impact on American consumers, including low income and underserved consumers.¹

The FTC's workshop was forward thinking and appropriately explored whether the use of big data could lead to discrimination among consumers. However, we believe three important themes were present at the FTC's big data workshop: (1) There are many positive uses of big data; (2) There was little or no evidence presented concerning specific instances of discrimination that have occurred as a result of big data; and (3) there are adequate laws on the books (e.g., FTCA, FCRA, ECOA, etc.) to permit the government to enforce against any kind of discrimination that could result from big data. Given this, and given the importance of innovation in this space, we urge the FTC to focus on enforcement against discriminatory practices, rather than issuing new guidance on this topic.

ETA is an international trade association representing more than 500 companies that offer electronic transaction processing products and services. The purpose of ETA is to influence, monitor and help shape the merchant acquiring industry by providing leadership through education, outreach, advocacy, and the exchange of information. ETA's membership spans the breadth and scope of the payments industry, with participation from all sectors, from financial institutions to transaction processors to independent sales organizations (ISOs) to mobile network operators, to equipment suppliers.

The members of ETA leverage data to provide a wide range of products and services designed to enhance and secure electronic transfers. Our members rely on data to help reduce fraud and to authenticate transactions between businesses and consumers in order to make such transactions seamless and secure. ETA devotes significant efforts through our Risk, Fraud & Security Committee which monitors risk, fraud, and

¹ See http://www.ftc.gov/news-events/press-releases/2014/10/ftc-extends-comment-period-big-data-workshop-oct-31?utm_source=govdelivery.

related compliance issues in the industry and recommends best practices and other risk mitigation strategies.

ETA has been keenly engaged in the Administration's efforts to examine and consider the role of "big data" having submitted comments in response to the White House Office of Science and Technology Policy's request for information published on March 4, 2014.² Our comments noted the significant role that data plays in facilitating and advancing commercial activity and economic growth in the payments industry as well as the economy as a whole.³

In addition, ETA provided further detailed comments in response to the National Telecommunications and Information Administration's (NTIA) request for public comment on "big data" developments and how they impact the Consumer Privacy Bill of Rights.⁴ Included in their request for comment, NTIA noted that there were broad questions raised by the White house's working group on big data as outlined in its report released on May 1, 2014.⁵ The Big Data report, considered privacy in the context of the Administration's Consumer Bill of Rights (Privacy Blueprint), and found that big data can support economic growth, but at the same time noted the concerns big data and its use can have for privacy protections and use of personal information.⁶ In addition to the White House working group report, the President's Council of Advisors on Science and Technology (PCAST) released an additional report that sought to complement the work done by the working group, focusing largely on the current technologies that are utilized to manage and analyze big data as well as preserve privacy.⁷

ETA member companies are critically dependent on their ability to access, process and transmit data to support the wide range of payment methods offered. Electronic payment methods like credit, debit, prepaid, gift and benefits cards, as well as automatic withdrawals provide speed and efficiency for connecting buyers and sellers around the world. In a matter of seconds, merchants can transmit information for authentication and processing, with consumers receiving their goods immediately and merchants receiving payment within a few days. Millions of such transactions are made possible every day because of the free flow of data. Access to and use of data opens new markets, lowers the barriers for market entry and enhances opportunities for competitive forces in the marketplace to flourish.

² See Comments of ETA in response to Notice of Request for Information, "Big Data RFI," FR Doc 2014-04660, submitted electronically, March 31, 2014.

³ *Ibid.* pp 2.

⁴ 79 Fed. Reg. 109, Department of Commerce, National Telecommunications and Information Administration, [Docket No. 14051-4424-4424-01], Big Data and Consumer Privacy in the Internet Economy, 32714-16, (June 6, 2014).

⁵ Executive Office of the President, Big Data: Seizing Opportunities, Preserving Values (the "Big Data Report"), (May 2014), http://www.whitehouse.gov/sites/default/files/docs/big_data_privacy_report_may_1_2014.pdf

⁶ Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy, ("Privacy Blueprint"), released February 2012.

⁷ Executive Office of the President, President's council of Advisors on Science and Technology, Report to the President, Big Data and Privacy: A Technological Perspective (the "PCAST Report"), (May 1, 2014), http://www.whitehouse.gov/sites/default/files/microsites/ostp/PCAST/pcast_big_data_and_privacy_-_may_2014.pdf

Over the last few decades, the U.S. has ensured that policies serve to promote and encourage innovation, while at the same time, ensure responsible use of data in the payments industry. As a result, the industry has deployed innovative new products and services that benefit merchants and consumers. To that end, ETA believes that policymakers must continue to ensure that any policy initiatives aimed at addressing big data promote the free flow of data across local, state and international boundaries to promote the development of a seamless digital marketplace. To further this growth, policies should encourage the investment in infrastructure that supports the flow of and access to data.

ETA strongly supports industry self-regulatory efforts for the protection of personal information, foremost of which is the Payment Card Industry Data Security Standard (PCI-DSS), created by the PCI Security Standards Council (PCI SCC). PCI-DSS is a prime example of a successful industry-led, multi-stakeholder program, underway since 2006 that should serve as a model for other industries. The group consists of members of the payments industry including banks, merchants and major payment card brands, as well as merchants that participate in the development and deployment of security programs.

While ETA believes that market forces and self-regulation are the best way to shape industry practices, there is one area in need of government involvement – data breach notification. ETA supports a uniform national data breach notification law to provide consumers with consistent, predictable expectations about how and when they will be notified of a breach. Such a law should preempt the patchwork of 46 state laws that currently govern the details of notification in the event of a data breach.

ETA notes that there are several emerging privacy enhancing technologies may be able to mitigate privacy risks to individuals while preserving the benefits of robust data. In particular, for the payments world, there are noticeable differences between the technologies that support mobile payment applications versus those of plastic card transactions. Indeed, while it is the case that the mobile transaction lifecycle possesses similarities to a plastic card transaction, there is a distinct difference when considering the transmission technology, credential storage and authentication procedures that occur at a point of sale. Mobile wallet technology offers rigorous levels of encryption, PIN and password entry and additional measures that serve to mitigate privacy risks. And upgrades to card technology through EMV chip deployment, tokenization services, and end-to-end encryption are making the payments infrastructure more secure as well.

Smartphones are capable of confirming that the consumer is making an authentic transaction by being able to verify “what you have” information and “what you know” information beyond what is capable through a plastic card. The technological capabilities for payments via a smartphone offer multiple verification layers at the point of sale to authorize the payment.

The ETA recently released an industry white paper to advance the deployment of mobile wallets through industry best practices designed to ensure that mobile payment transactions provide for heightened and robust levels of security and serve as a reliable means for payment transactions.⁸

⁸ Better Security Through Mobile – “The One-Two Punch” Industry Best Practices, Presented by The Processor Council of the Electronic Transactions Association, released June 2, 2014.

Moreover, the payments industry has always recognized the critical need to ensure that consumer data is treated with the highest levels of protection and security in order to prevent fraud as well as data theft. Indeed, big data serves as a vital tool to the payments industry as a means to assess and detect fraud and ensure consumer protection. Within the industry, instances of fraud are often detected as a byproduct of notable changes in patterns of spending. To recognize these patterns, requires big data that can serve as a way to fully and accurately understand the changes in spending taking place and to effectively recognize when fraud is occurring. In addition, by doing this, big data can then serve as a means to ensure that fraud is prevented in the future by recognizing instantly when spending patterns fall outside of the norm, thus ensuring added levels of security for consumers.

Moreover, the payment industry is working to migrate to EMV technology that will offer enhanced security to consumers while continuing to foster a payments system that facilitates seamless and timely electronic transactions. EMV and other proposed measures are tools to detect fraudulent transactions. Tokenization is one means to preserve data security. Tokenization masks cardholder information by providing a proxy set of characters to mask the cardholder's true card information. Tokenization works alongside encryption and provides heightened means for security.

Finally, ETA believes that the tremendous innovation and growth in the payments industry is largely being driven by big data. It is therefore essential that the industry continue to be able to access and use big data in order to better serve its customers. Big data has been the momentum behind the development of new products and services and serves as a tool to better understand and respond to customer demands, needs and wants in the payments arena. These products and services enable our members to better serve their customers by offering real-time benefits and rewards. For example, programs that may connect card holders with merchants offering relevant and personalized digital offers providing exclusive benefits. In addition, there are services which provide tools for business to business management, especially for small and medium sized businesses to facilitate fraud risk management. In order to further continue to innovate and thereby maximize economic growth, the ability for the industry to utilize big data is critical. This is especially true for under banked minority communities that are embracing next generation payment mechanisms that provide innovative financial services that may not have been available in the past.⁹

ETA believes that big data can offer tremendous opportunities to protect all consumers, through its use as an anti-fraud tool. It can also provide the necessary data to drive and promote economic growth and market innovation in the payments industry. ETA appreciates the opportunity to submit these comments and looks forward to working with FTC in its efforts to consider big data and its impact on consumers.

⁹ See <http://www.blackenterprise.com/money/consumer-affairs/report-millennials-minorities-lead-shift-to-digital-banking>
And <https://www.masteryourcardusa.org/sutes/default/files/offerFiles/F.%20Technology%20to%20Advance%20Financial%20Opportunity%20081514.pdf>



1101 16th Street NW
Suite 402
Washington, DC 20036

www.electran.org
T 800.695.5509
T 202.828.2635
F 202.828.2639

Sincerely,

Scott Talbott
Senior Vice President of Government Affairs