



1620 L Street NW, Suite 1020
Washington, DC 20036

202.828.2635

electran.org

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VIA ELECTRONIC SUBMISSION

Donald S. Clark
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Comments on the Federal Trade Commission (“FTC”) Draft Strategic Plan FY 2018-22

The Electronic Transactions Association (“ETA”) submits these comments in response to the FTC’s request for information on the Draft Strategic Plan FY 2018-22 (“The Plan”). ETA appreciates the opportunity to participate in the conversation as the FTC plans for the next 4 years.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include financial institutions, all parts of the payments ecosystem, mobile payment service providers, 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 safe, convenient and rewarding payment solutions and lending alternatives.

EXECUTIVE SUMMARY

- *ETA hopes the FTC will work with other regulators to ensure a positive environment for innovation and financial technology (“FinTech”) companies to thrive.*
- *ETA believes that a flexible national framework could provide the appropriate guidelines for companies to develop means to address cybersecurity risks.*
- *ETA appreciates that Operation Choke Point has come to an end and urges the FTC to stay the course in ensuring that Operation Choke Point will not be undertaken again.*

GENERAL COMMENTS

Big Data and Access to Data

- ETA hopes the FTC will work with other regulators to ensure a positive environment for innovation and financial technology (“FinTech”) companies to thrive.

The FTC has been a leader in exploring the use of big data. ETA urges the FTC to work with other regulators to ensure a positive environment for innovation and FinTech companies to thrive. ETA and its members understand that access to financial data is an important issue for consumers, traditional financial institutions, and FinTech companies, including data aggregators and 3rd party application providers. There is an increased convergence among these groups and it is important to preserve consumer access, choice, and control. Consumers are already benefitting from financial innovations that rely on direct access to their financial data.

With respect to the specific issue of data access, ETA believes that the best way to address these challenges is for financial institutions and the FinTech industry to continue to work together to develop solutions to ensure that consumers are able to permission their financial data safely and securely rather than having a mandated requirement through rulemaking or other regulatory means. ETA is concerned that any government attempt to implement regulations governing account access information will negatively affect the incentive and ability of institutions to continue to develop new and innovative products and services that benefit consumers.

Regulators should encourage industry to take the lead in developing solutions that preserve industry flexibility while providing appropriate consumer protections. In this regard, the financial services industry, including ETA member FinTech companies, have demonstrated a robust and sustained commitment to ensuring consumer access to information, the protection of customer information, and the integrity of financial systems and networks. Specifically, ETA believes that industry solutions that take into account the unique circumstances of the parties and the functionalities being contemplated will be more effective in addressing the risks and opportunities being presented. It is important to recognize that this is a highly dynamic space, where players, technologies, and services offered may differ widely and present different or evolving risks. A one-size fits-all regulatory solution will not keep pace with the dynamic nature of this space and will stifle innovation.

In sum, as technology and innovation continue to shape how information is created, accessed, stored, and disposed of, regulation must remain adaptable and should not impose rigid rules that have the effect of unnecessarily restraining innovation or imposing unnecessary costs or burdens on industry.

Data Security

- ETA believes that a flexible national framework could provide the appropriate guidelines for companies to develop means to address cybersecurity risks.

ETA and its members are dedicated to working with federal regulators to address the important and growing issue of cybersecurity. The prevailing cybersecurity best practices developed and implemented in the financial and payments industries are the product of innovation and cooperation between industry and government.

ETA believes that a flexible national framework could provide the appropriate guidelines for companies to develop means to address cybersecurity risks. In the electronic transactions industry, financial information data is governed by federal law, including the Gramm-Leach-Bliley Act (“GLBA”), the FTC’s Safeguards Rule, and robust self-regulatory programs, including the Payment Card Industry Data Security Standard (“PCI-DSS”), which sets forth requirements designed to ensure companies that process, store, or transmit credit card information maintain a secure environment for such data.

Operation Choke Point

- ETA appreciates that Operation Choke Point has come to an end and urges the FTC to stay the course in ensuring that Operation Choke Point will not be undertaken again.

ETA recognizes the vital role well-considered and prudently enforced federal laws and regulations can play in fostering and protecting a competitive and innovative marketplace. In particular, federal agencies help uphold contract law and the operation of free markets with their efforts to fight fraud. As the trade association for the payments industry, ETA fully supports federal efforts to combat fraudulent and other illegal activities. These efforts benefit both consumers and the payments industry. After all, consumers will be far less likely to avail themselves of the benefits of electronic payments, like faster and more convenient payment methods, if they believe that payments systems could expose them to fraudulent schemes. Accordingly, ETA believes that the payments industry, financial regulators, and law enforcement have a mutual interest in preventing the use of payment systems to perpetrate fraud and other illegal activities.

ETA maintains that the payments industry is well-positioned to help the federal government advance this mutual interest in preventing harm to consumers and protecting the payments system. For its part, ETA is leading efforts to help the credit and debit card processing industry identify fraudulent merchants and prohibit their access to payments system. Unfortunately, Operation Choke Point served as a roadblock for ETA and other industry efforts with excessive regulation and one-size-fits-all litigation, which did not allow for the flexibility and adaptability that banks and non-bank processors need in underwriting and monitoring merchant accounts.

The payments industry has a remarkable record of success in preventing the use of payments systems for illegal activities. While this revolution in technology and business has benefited consumers with lower prices and new goods and services (including better payment options), it has also created new opportunities for unlawful activity. The payments industry has responded to these risks with substantial investments in new tools and practices aimed at identifying and thwarting the use of payment systems by criminals. These investments have proven to be remarkably successful. Even with this success, the payments industry is continually updating its technologies to allow it to stay ahead of criminal enterprises and protect consumers from harm.

To demonstrate its commitment to devising better practices, ETA developed and published its “Guidelines on Merchant and ISO Underwriting and Risk Monitoring” (“Guidelines”). The Guidelines are the core of an educational curriculum designed to provide ETA members with recommended tools for mitigating merchant risk. The Guidelines include such topics as underwriting and risk management of merchants, and the due diligence and oversight of third parties, primarily ISOs. This educational initiative aims to help ETA members eliminate prohibited and undesirable merchants from entering their systems. Rather than impose one-size fits all standards, the ETA’s industry program is designed to supplement existing practices and strategies. In short, the Guidelines provide a well-thought out approach to fighting financial

fraud that avoids the adverse consequences to consumers of Operation Choke Point. The Guidelines also show that the payments industry is able to effectively address fraudulent and illegal activity on their systems, provided it has the freedom to do so, unburdened by an unnecessarily litigation and regulatory mandates.

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We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any issues, please contact me or Scott Talbott at Stalbott@electran.org.

Respectfully submitted,

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PJ Hoffman, Director of Regulatory Affairs
Electronic Transactions Association
1620 L Street NW, Suite 1020
Washington, DC 20036
(202) 677-7417
PJHoffman@electran.org