



September 24, 2024

The Honorable Jack Reed
United States Senate
728 Hart Senate Office Building
Washington, D.C. 20510

Re: Credit Union Opposition to S.4943, the Protecting Consumers from Payment Scams Act of 2024

Dear Senator Reed,

The Credit Unions of Rhode Island write to express our strong opposition to the "Protecting Consumers from Payment Scams Act" (H.R. 9303/S. 4943) which would amend the Electronic Funds Transfer Act (EFTA). Credit Unions of Rhode Island, part of the Cooperative Credit Union Association, are concerned about not only the negative precedents this would establish, but also the far-reaching financial toll it would take on the Credit Unions thereby having the unintended consequences of limiting consumer choice. Indeed, this bill has the chilling effect of requiring Credit Unions to subsidize fraudulent actors; it creates a moral hazard of shifting each consumer's obligation to safeguard their financial information to Credit Unions; and it opens a market for transactions consumers intentionally initiated but later claimed were "induced" by fraud. Moreover, the bill inappropriately shifts the regulatory schemes of wholesale wire transfer systems and phone-initiated transfers to the EFTA despite not having been designed to regulate such systems.

This legislation, while seemingly aimed at protecting consumers, will actually harm those it intends to protect. By shifting incalculable fraud losses to financial institutions, only the largest of financial institutions that can absorb the losses created by this bill will likely survive. Ultimately, those community institutions that may be able to survive would be considerably limited in the services they would be able to provide consumers because the bill makes all financial institutions, regardless of size, targets for increased fraud as well as make credit unions subject to inconsistent legal obligations. If not-for-profit credit unions cannot reasonably control the fraud risks associated with electronic funds transfers, they will have little choice but to discontinue those services or significantly increase fees consumers pay.

Credit unions are committed to combating fraud and have invested significantly in robust compliance programs to protect their members when consumers are victimized by fraudulent transfers they did not initiate. However, this bill goes too far by shifting the burden of liability for transfers that consumers intentionally initiated onto financial institutions. By requiring credit unions to reimburse consumers for fraudulently "induced" transfers, such as when a consumer is tricked into authorizing a payment based on a scammer's false pretenses, the bill creates a dangerous precedent that, in all likelihood, could lead to increased costs and reduced services for consumers. As a result, this bill could have a destructive impact on consumer choice.



Additionally, this law would define merchant charges for undelivered goods as errors, shifting the onus, again, from the distributor to the credit union. Under this proposed provision, the bill relieves the distributor from liability to deliver its product or service to the consumer and shifts that financial burden directly to financial institutions regardless of size. In this case, the bill is not providing consumer protection; rather, it fosters merchant insurance.

Pursuant to current law, credit unions attempt to help their members recoup funds the consumer intentionally sent to fraudsters, but the credit union is not liable if those efforts are unsuccessful, nor should they be. It does not make sense to transfer the risk of loss for this type of fraud to credit unions because only the consumer—not the financial institution—is in a position to prevent it.

This legislation has the unintended consequence of encouraging fraudsters to intentionally initiate transactions from credit union and bank accounts which they will later claim to have been fraudulently “induced” in order to double their money by seeking reimbursement from financial institutions under the EFTA. Currently, a social media trend encourages such behavior with checks. While the bill would not require reimbursement for a transaction a consumer initiated with “fraudulent intent,” this litigious solution is not practical as the bill places the burden of proof on the credit union requiring them to sue their members in order to prove such fraudulent intent. Credit unions’ mission is to improve their members’ financial wellness, not to engage in litigation with them.

This legislation would also open up credit unions to a new wave of artificial intelligence-based fraud by repealing the EFTA’s exemption for electronic transfers consumers initiated by phone. This aspect of the bill is especially ill-timed given the recent increase in AI-based fraud, especially voice-cloning technology. In addition, placing wholesale wire systems like Fedwire and CHIPS under the EFTA would create inconsistent legal obligations for credit unions because the EFTA conflicts with state law, especially Article 4A of the Uniform Commercial Code which contains error resolution procedures that are not compatible with the EFTA.

Fraud losses a credit union suffers are satisfied out of the credit union’s capital and, even when there is insurance coverage, the credit union still pays in the end through increased premiums. In addition, the EFTA can subject credit unions to “treble damages” for failing to resolve an alleged error in the consumer’s favor. *See* 15 U.S.C. § 1693f (e). These increased costs will harm both credit unions and the consumers who are credit unions’ member-owners.

This legislation’s unworkable requirements would force credit unions to cease offering some types of electronic fund transfer services as well as cut back on operational expenses and increase the cost of other products, making financial services less accessible to those who need them most.

It is imperative that Congress take action to stop fraudsters, not in effect create a market for them to potentially thrive. This bill does not achieve the intended impact. Rather, it penalizes credit unions and other financial institutions by requiring them to, in essence, fund fraudulent activity.



By supporting H.R. 9303/S. 4943, Congress would be facilitating a new wave of bank fraud that puts consumers at risk and undermines the stability of the financial system.

We urge you to oppose this harmful legislation and work towards finding solutions that protect consumers without unfairly burdening credit unions.

If you have any questions or desire further information, please do not hesitate to reach out to the Association's Chief Advocacy Officer, Adrian Velazquez at 508-229-5605 or at avelazquez@ccua.org.

Sincerely,

David B. Suvall
President/CEO, Rhode Island Credit Union
Advocacy Committee Chair, Credit Unions of Rhode Island

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