America's Credit Unions

Jim Nussle
President & CEO
202-508-6745
jnussle@americascreditunions.org

99 M Street SE
Suite 300
Washington, DC 20003

August 5, 2024

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Re: Credit Union Opposition to H.R. 9303, the Protecting Consumers from Payment Scams Act of 2024

Dear Speaker Johnson and Leader Jeffries:

On behalf of America's Credit Unions, I am writing to share our concerns with, and strong opposition to, H.R. 9303, the Protecting Consumers from Payment Scams Act of 2024. America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their over 140 million members nationwide.

H.R. 9303 would amend the Electronic Fund Transfer Act (EFTA) to define an unauthorized transfer as one that includes a fraudulently induced transfer, requiring credit unions and other financial institutions to reimburse consumers for this type of fraud. It would also define merchant charges for undelivered goods as errors along with misdirected payments resulting from information a consumer initially provided. The EFTA's current carveout for wire transfers would also change, with the bill treating remittance transfers the same as other electronic fund transfers subject to the EFTA's framework for error resolution and consumer reimbursement.

Collectively, these radical changes to the EFTA's careful delineation of financial institution responsibility would impose severe costs on credit unions and dramatically alter their ability to absorb future losses. Moreover, the bill's failure to address the root causes which have perpetuated criminal activity and left consumers vulnerable would mean a greater share of cooperative resources are directed towards covering fraud that proliferates outside the domain of credit union control. In this regard, the bill embraces an unsustainable and unfair strategy: shifting losses to credit unions and other financial institutions that are spending more money than ever to fight fraud and protect consumers.

The EFTA was designed to strike a balance between a financial institution's role in preventing unauthorized transfers and the individual's responsibility to exercise sound financial judgment over what they choose to authorize. H.R. 9303 would destroy that balance. To effectively combat fraud while providing members with convenient and affordable payment options, credit unions must have confidence that longstanding limits on financial institution liability will not suddenly change when conduct outside the industry's control evokes political concern.

Credit unions support efforts to stop fraudulent schemes and invest in robust compliance programs to limit this activity, but the expansion of credit unions' liability for the misdeeds of fraudulent actors as proposed in this legislation would have the unintended effect of limiting consumer choice and access to services. As such, we strongly oppose this new legislation for the negative impact it will have on credit unions and their members.

Sponsors of this legislation have indicated that they are targeting the fraud that has occurred when consumers use the Zelle platform. We must note that the Zelle platform is used by more than just the largest banks. Credit unions and community banks comprise over 95 percent of the 2,100 financial institutions that participate in the Zelle Network, and this share includes many minority depository institutions (MDIs) and community development financial institutions (CDFIs).

Credit unions continue to make significant investments in security and fraud mitigation technologies to protect their members from scams and identity theft.[1] Credit unions have specifically warned their members about scams that employ peer-to-peer (P2P) services, such as utility bill and romance scams, and the National Credit Union Administration (NCUA) has shared resources with the industry to help protect older members.[2] However, the credit union industry's capacity to absorb fraud losses is not without limit. Credit unions are significantly smaller than banks and are particularly sensitive to new regulatory expectations that alter financial institution liability under the EFTA and Regulation E.

Credit unions are doing everything they can to prevent fraud, but the greatest share of fraud occurs in domains that credit unions cannot easily influence. According to a 2023 Federal Trade Commission (FTC) report, consumers reported losing more money to investment scams than any other category in 2023.[3] The second largest share of fraud originates through online shopping, a domain of commerce that credit unions do not control.[4] Accordingly, legislative proposals such as H.R. 9303 to expand financial institution liability under the EFTA to further encompass fraudulently induced transfers are deeply concerning for our members, as these proposals neither prevent fraud nor incentivize coordination between regulators, law enforcement, and companies outside the financial sector who can help improve American resilience to scams.

America's Credit Unions appreciates efforts to promote consumer and industry resilience to fraud but urges you to reject this misdirected legislation. Credit unions are committed to fighting fraud and sharing information necessary to prevent financial crime.

---

[1] *See* Cornerstone Advisors, The True Impact of Interchange Regulation, 26 (June 2023).
[2] *See* National Credit Union Administration, Preventing Elder Financial Abuse, *available at* https://mycreditunion.gov/life-events/aging-managing-finances/elder-financial-abuse.
[3] *See* Federal Trade Commission, Press Release: "As Nationwide Fraud Losses Top $10 Billion in 2023, FTC Steps Up Efforts to Protect the Public," (February 9, 2024), *available at* https://www.ftc.gov/news-events/news/press-releases/2024/02/nationwide-fraud-losses-top-10-billion-2023-ftc-steps-efforts-protect-public.
[4] *See id*.

Ideally, legislative solutions should aim to prevent fraud before it occurs and should include bolstering the resources of law enforcement, educating consumers about fraud and scam risks, and creating a level playing field between insured depository institutions and underregulated companies.

Sincerely,

Jim Nussle, CUDE
President & CEO

cc: Members of the U.S. House of Representatives