



MD|DC
Credit Union Association

Chairwoman Delores Kelley
3 East
Miller Senate Office Building
Annapolis, MD 21401

SB 238: Consumer Protection – Banking Institutions – Unauthorized Debit Transactions (Consumer Bank Deposits Protection Act)

Testimony on Behalf of: MD|DC Credit Union Association

Position: Opposed

Chairwoman Kelley, Vice-Chair Feldman, and members of the committee,

The MD|DC Credit Union Association, on behalf of the 77 Credit Unions and their 2.2 million members that we represent in the State of Maryland, appreciates the opportunity to testify on this legislation. Credit Unions are member-owned, not-for-profit financial cooperatives whose mission is to educate and help members achieve financial well-being. **We respectfully oppose this bill.**

The credit union movement is best known for our customer service, willingness to help members in need, and our primary purpose of helping our members gain financial well-being. In the case of a dispute, a credit union will do whatever it can to resolve the issue in a way that satisfies the member.

Federal law already provides clear guidance for consumers and financial institutions on responding to unauthorized debit (and credit) transactions. **The Electronic Funds Transfer Act, Regulation E, Fair Credit Billing Act (FCBA), and Truth In Lending Act (TILA) all play a role in this complex body of law and regulation.** While FCBA and TILA apply to credit accounts, rather than debit accounts, it is essential to understand them to appreciate the complexity of this framework.

- 1. This is an exceedingly complex body of laws and regulations. The operating, supervision, and examination procedures for this process are well established. No matter how simple it may seem, creating a more stringent set of rules in Maryland would be very burdensome.**

The Current Framework

Electronic Funds Transfer Act, Regulation E

Electronic Funds Transfer Act, Regulation E (12 CFR Part 1005) states

“If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer’s liability shall not exceed the lesser of \$50 or the amount of unauthorized transfers that occur before notice to the financial institution.”¹

¹ 12 C.F.R. 1005.6(b)(1)



“If the consumer fails to notify the financial institution within **two business days after learning of the loss or theft of the access device**, the consumer’s liability shall not exceed the lesser of \$500 or the sum of:

- (i) \$50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and
- (ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.”²

“**A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution’s transmittal of the statement to avoid liability for subsequent transfers.** If the consumer fails to do so, the consumer’s liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution, and that the institution establishes would not have occurred had the consumer notified the institution within the 60-day period. When an access device is involved in the unauthorized transfer, the consumer may be liable for other amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.”³

“If the consumer’s delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times **specified above to a reasonable period.**”⁴

Lastly, Regulation E requires a credit union to send a periodic statement to the member in each monthly cycle in which an electronic fund transfer has occurred, or at least quarterly if no electronic fund transfer occurs, for any account to or from which an electronic fund transfer may be made. The periodic statement must contain: the amount of the transfer; the date the transfer was credited or debited to the account; the type of transfer and type of account to or from which the funds were transferred; and the name of any third party to or from whom the funds were transferred.⁵

Moving the initial reporting timeline from 60 to 90 days only in Maryland would drastically increase Maryland credit unions’ compliance costs. As member-owned financial institutions, these costs would be borne by the members themselves. Due to their “smaller” asset size compared to most financial institutions, many credit unions use vendors for their compliance needs. If the vendor does not want to modify its services for only one state, the credit union may need to switch providers, which could be a significant burden in both time and costs. Finally, credit unions already have the flexibility to extend these timelines on a case-by-case basis in extenuating circumstances.

This same argument holds for section 14-4304. Changing policies every time the Governor declares a state of emergency is not possible.

² 12 C.F.R. 1005.6(b)(2)

³ 12 C.F.R. 1005.6(b)(3)

⁴ 12 C.F.R. 1005.6(b)(4)

⁵ 12 C.F.R. §205.9(b)(1)(i),(ii),(iii) and (v).



The procedures for resolving errors are laid out in 12 CFR §1005.11. A complaint must be “received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation... and must indicate why the consumer believes an error exists....⁶ A financial institution may require the consumer to give written confirmation of an error within ten business days of an oral notice.⁷ A financial institution “shall investigate promptly and, except in certain circumstances.” Promptly under the statute is either ten days or 45 days, depending on specific circumstances and actions taken⁸ by the financial institution.

Federal regulators enforce this act, and there is a record retention requirement of at least two years. Changing these procedures in one state would put Maryland credit unions and their members in an unfair position.

An example of the Electronic Funds Transfer Act, Regulation E examination procedures, is Appendix A of this testimony.

2. Although the credit transactions are not the purview of this bill, it is essential to understand that debit transactions do not exist alone in a vacuum; there is a much broader context to consider.

Fair Credit Billing Act (FCBA)

Billing issues by creditors and certain unauthorized usage issues are governed by the Fair Credit Billing Act (FCBA) (15 USC § 1666). The FCBA applies only to “open end” credit accounts (credit cards and revolving charge accounts and their periodic bills or billing statements). Under the FCBA, the liability for unauthorized use of an individual’s credit card maxes out at \$50, and the creditor may be held civilly liable for damages under 15 US Code § 1640.⁹ The consumer must notify the creditor within 60 days after the first bill containing the error was received, and the creditor must acknowledge your dispute in writing within 30 days of receiving notification. Within two billing cycles (but not more than 90 days), the creditor must conduct a reasonable investigation and correct the mistake or explain why the bill is believed to be correct.¹⁰

Truth In Lending Act (TILA) 15 USC 1643 (Liability of holder of a credit card).

Finally, under TILA, a consumer is only liable for an unauthorized transaction on a credit card, for up to 50 dollars, if the unauthorized use of a card “occurs before the card issuer has been notified

⁶ 12 C.F.R. §1005.11 (b)(1)(i)

⁷ 12 C.F.R. §1005.11 (b)(2 - 3)

⁸ Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and the institution has satisfied the requirements of §1005.6(a), the institution may withhold a maximum of \$50 from the amount credited.

⁹ 15 U.S. Code § 1640(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction

¹⁰ 15 U.S. Code § 1666



that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise.” A financial institution may be held civilly liable under TILA in an individual action, “twice the amount of the finance charge involved, but not less than \$100 or more than \$1,000. Exception: In an individual action relating to a closed-end credit transaction secured by real property or a dwelling, twice the amount of the finance charge involved, but not less than \$ 400 or greater than \$ 4,000.”¹¹

3. The reporting requirements of 14–4306 would be impossible to implement and would create significant liability for financial institutions.

An unauthorized transaction can only be deemed unauthorized if a consumer says that it is unauthorized. While a credit union may “flag” a purchase that looks to be out of a consumer’s typical habits and alert the consumer, these occurrences only apply to specified situations outlined in statute, regulation, and procedure. Putting the liability on a banking institution to somehow discern, out of the many millions of daily transactions made by members, what is or is not authorized, is impossible. Going a step further and making this punishable as an unfair, abusive, or deceptive trade practice could create a flood of litigation against financial institutions for something they have very little control over.

4. Additional Disclosure Requirements under 1–212 would create an unnecessary burden for the consumer and the credit union.

The Reg. E disclosure requirements are thoroughly laid out in 12 CFR § 205.4. Adding to the massive amount of information, in any way, will not benefit consumers. 12 CFR § 205 requires that disclosures be:

- a. Clear and readily understandable, in writing, and in a form the consumer may keep. The required disclosures may be provided to the consumer in electronic form if the consumer affirmatively consents after receiving a notice that complies with the E-Sign Act.¹²
- b. Made in a language other than English, if the disclosures are made available in English upon the consumer’s request.¹³
- c. The financial institution must include a summary of the consumer’s liability (under section 205.6, state law, or other applicable law or agreement) for unauthorized transfers.¹⁴
- d. A financial institution must provide a specific telephone number and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer.¹⁵ The disclosure may insert a reference to a telephone number

¹¹ 15 USC § 1640

¹² 12 C.F.R. § 205.4(a)(1)

¹³ 12 C.F.R. § 205.4(a)(2)

¹⁴ 12 C.F.R. §205.7(b)(1)

¹⁵ 12 C.F.R. § 205.7(b)(2)-2



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- e. that is readily available to the consumer, such as “Call your branch office. The number is shown on your periodic statement.”
- f. Business days. The financial institution’s business days.¹⁶
- g. Types of transfers; limitations on the frequency or dollar amount. Limitations on the frequency and dollar amount of transfers generally must be disclosed in detail.¹⁷
- h. Fees. A financial institution must disclose all fees for EFTs or for the right to make EFTs.¹⁸
- i. A summary of the consumer’s right to receipts and periodic statements, as provided in section 205.9, and notices regarding preauthorized transfers as provided in sections 205.10(a) and 205.10(d).¹⁹
- j. A summary of the consumer’s right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in section 205.10(c).²⁰
- k. Liability of institution. A summary of the financial institution’s liability to the consumer under section 910 of the EFTA for failure to make or stop certain transfers.²¹
- l. Confidentiality. The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer’s account to third parties.²²
- m. A financial institution must describe the circumstances under which any information relating to an account to or from which EFTs are permitted will be made available to third parties, not just information concerning those EFTs.
- n. Error Resolution. The error-resolution notice must be substantially similar to Model Form A-3 in Appendix A of Part 205.

As always, we appreciate the ability to have our voices heard and look forward to a continued partnership. Please reach out to me at jbratsakis@mddccua.org or our VP of Advocacy, Rory Murray, at rmurray@mddccua.org with comments or questions.

Thank you!

Sincerely,

John Bratsakis
President/CEO
MD|DC Credit Union Association

¹⁶ 12 C.F.R. §Section 205.7(b)(3)

¹⁷ 12 C.F.R. § 205.7(b)(4)

¹⁸ 12 C.F.R. § 205.7(b)(5)

¹⁹ 12 C.F.R. §205.7(b)(6)

²⁰ 12 C.F.R. § 205.7(b)(7)

²¹ 12 C.F.R. § 205.7(b)(8)

²² 12 C.F.R. § 205.7(b)(9)



Appendix A (Regulation E examination procedures)

Consumer Liability for Unauthorized Electronic Fund Transfers (EFTs) – § 1005.6

Item	Description	YES	NO	N/A
3	Does the credit union impose liability on the member for unauthorized transfers only if: (§ 1005.6(a))	N/A	N/A	N/A
3(a)	Any access device that was used was an accepted access device?			
3(b)	The credit union has provided a means to identify the member to whom it was issued?			
3(c)	The credit union has provided the disclosures required by § 1005.7(b)(l), (2), and (3) ?			
4	Does the credit union not rely on member negligence or the deposit agreement to impose greater liability for unauthorized EFTs than permitted under Regulation E? (Comments 1005.6(b)-1 and -2)			
5	If a member notifies the credit union within two business days after learning of the loss or theft of an access device, does the credit union limit the member's liability for unauthorized EFTs to the lesser of \$50 or actual loss? (§ 1005.6(b)(1))			
6	If a member does not notify the credit union within two business days after learning of the loss or theft of an access device, does the credit union limit the member's liability for unauthorized EFTs to the lesser of \$500 or the sum of: (§ 1005.6(b)(2))	N/A	N/A	N/A
6(a)	\$50 or the amount of unauthorized EFTs that occurred within the two business days, whichever is less; plus	N/A	N/A	N/A
6(b)	The amount of unauthorized EFTs that occurred after the close of two business days and before notice to the credit union (provided the credit union establishes that these transfers would not have occurred had the member notified the credit union within that two-day period)?			
7	If a member notifies the credit union of an unauthorized EFT within 60 calendar days of transmittal of the periodic statement upon which the unauthorized EFT appears, does the credit union not hold the member liable for the unauthorized transfers that occur after the 60-day period? (§ 1005.6(b)(3))			
8	If a member does not notify the credit union of an unauthorized EFT within 60 calendar days of transmittal of the periodic statement upon which the unauthorized EFT appears, does the credit union ensure that the member's liability does not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the credit union, if the credit union establishes that the transfers would not have occurred had timely notice been given? (§ 1005.6(b)(3))			



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9	If a member notifies the credit union of an unauthorized EFT within the time frames discussed in questions 7 or 8 and the member's access device is involved in the unauthorized transfer, does the credit union hold the member liable for amounts stated in § 1005.6(b)(1) or (2) (discussed in questions 5 and 6)? (§ 1005.6(b)(3))			
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NOTE: The first two tiers of liability (§ 1005.6(b)(1) and (2), discussed in questions 5 and 6 do not apply to unauthorized transfers from a member's account made without an access device. (Comment 1005.6(b)(3)-2)

Item	Description	YES	NO	N/A
10	Does the credit union extend the 60-day time period by a reasonable amount, if the member's delay in notification was due to an extenuating circumstance? (§ 1005.6(b)(4))			
11	Does the credit union consider notice to be made when the member takes steps reasonably necessary to provide the credit union with pertinent information, whether or not a particular employee or agent of the credit union actually received the information? (§ 1005.6(b)(5)(i))			
12	Does the credit union allow the member to provide notice in person, by telephone, or in writing? (§ 1005.6(b)(5)(ii))			
13	Does the credit union consider written notice to be given when the member mails or delivers the notice for transmission to the credit union by any other usual means? (§ 1005.6(b)(5)(iii))			
14	Does the credit union consider notice given when it becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the member's account has been or may be made? (§ 1005.6(b)(5)(iii))			
15	Does the credit union limit the member's liability to less than provided by § 1005.6, when state law or its agreement with the member provide for a lesser amount? (§ 1005.6(b)(6))			



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Initial Disclosures – § 1005.7

Item	Description	YES	NO	N/A
16	Does the credit union provide the initial disclosures at the time a member contracts for an EFT service or before the first EFT is made involving the member's account? (§ 1005.7(a))			
17	Do the credit union's initial disclosures provide the following information, as applicable:	N/A	N/A	N/A
17(a)	A summary of the member's liability for unauthorized transfers under § 1005.6 or under state or other applicable law or agreement? (§ 1005.7(b)(1))			
17(b)	The telephone number and address of the person or office to be notified when the member believes that an unauthorized EFT has been or may be made? (§ 1005.7(b)(2))			
17(c)	The credit union's business days? (§ 1005.7(b)(3))			
17(d)	The type of EFTs the member may make and any limits on the frequency and dollar amount of transfers? (If details on the limits on frequency and dollar amount are essential to maintain the security of the system, they need not be disclosed.) (§ 1005.7(b)(4))			
17(e)	Any fees imposed by the credit union for EFTs or for the right to make transfers? (§ 1005.7(b)(5))			
17(f)	A summary of the member's right to receive receipts and periodic statements, as provided in § 1005.9, and notices regarding preauthorized transfers as provided in § 1005.10(a) and 1005.10(d)? (§ 1005.7(b)(6))			
17(g)	A summary of the member's right to stop payment of a preauthorized EFT and the procedure for doing so, as provided in § 1005.10(c)? (§ 1005.7(b)(7))			
17(h)	A summary of the credit union's liability to the member for its failure to make or to stop certain transfers under the Electronic Fund Transfer Act? (§ 1005.7(b)(8))			
17(i)	The circumstances under which the credit union, in the ordinary course of business, may disclose information to third parties concerning the member's account? (§ 1005.7(b)(9))			
17(j)	An error resolution notice that is substantially similar to the Model Form A-3 in Appendix A? (§ 1005.7(b)(10))			
17(k)	A notice that a fee may be imposed by an ATM operator (as defined in § 1005.16(a)) when the member initiates an EFT or makes a balance inquiry and by any network used to complete the transaction? (§ 1005.7(b)(11))			



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18	Does the credit union provide disclosures at the time a new EFT service is added, if the terms and conditions of the service are different than those initially disclosed? (§ 1005.7(c))			
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Change-in-Terms Notice; Error Resolution Notice – § 1005.8

Item	Description	YES	NO	N/A
19	If the credit union made any changes in terms or conditions required to be disclosed under § 1005.7(b) that would result in increased fees, increased liability, fewer types of available EFTs, or stricter limits on the frequency or dollar amount of transfers, did the credit union provide a written notice to members at least 21 days before the effective date of the change? (§ 1005.8(a))			
20	Does the credit union provide either the long form error resolution notice at least once every calendar year or the short form error resolution notice on each periodic statement? (§ 1005.8(b))			

Procedures for Resolving Errors – § 1005.11

Item	Description	YES	NO	N/A
34	Does the credit union have procedures to investigate and resolve all oral or written notices of error received no later than 60 days after the credit union sends the periodic statement or provides passbook documentation? (§ 1005.11(b)(2))			
35	If the credit union requires written confirmation of an error within 10 business days of an oral notice, does the credit union inform the member of this requirement and provide the address where the written confirmation must be sent? (§ 1005.11(b)(2))			
36	Does the credit union have procedures to investigate and resolve alleged errors within 10 business days, except as otherwise provided in § 1005.11(c)? (§ 1005.11(c)(1))			

NOTE: The time period (for question 36) is extended in certain circumstances. ([§ 1005.11\(c\)\(3\)](#))

Item	Description	YES	NO	N/A
37	Does the credit union report results to the member within three business days after completing its investigation and correct any error within one business day after determining that an error occurred? (§ 1005.11(c)(1))			
38	If the credit union is unable to complete its investigation within 10 business days, does it have procedures to investigate and resolve alleged errors within 45 calendar days of receipt of a notice of error; and:			
38(a)	Does the credit union provisionally credit the member's account in the amount of the alleged error (including interest, if applicable) within 10 business days of receiving the error notice (however, if the credit union requires, but does not receive, written confirmation within 10 business days, the credit union is not required to provisionally credit the member's account)?			
38(b)	Within two business days after granting any provisional credit, does the credit union inform the member of the amount and date of the provisional credit and give the member full use of the funds during the investigation?			
38(c)	Within one business day after determining that an error occurred, does the credit union correct the error?			
38(d)	Does the credit union report the results to the member within three business days after completing its investigation including, if applicable, notice that provisional credit has been made final? (§ 1005.11(c))			
39	If a billing error occurred, does the credit union not impose a charge related to any aspect of the error-resolution process? (Comment 1005.11(c)-3)			
40	If the credit union determines that no error occurred (or that an error occurred in a manner or amount different from that described by the member), does the credit union send a written explanation of its findings to the member and note the member's right to request the documents the credit union used to make its determination? (§ 1005.11(d)(1))			
41	When the credit union determines that no error (or a different error) occurred, does the credit union notify the member of the date and amount of the debit of the provisionally credited amount and the fact that the credit union will continue to honor checks and drafts to third parties and preauthorized transfers for five business days (to the extent that they would have been paid if the provisionally credited funds had not been debited)? (§ 1005.11(d)(2))			