MD|DC Credit Union Association

February 23, 2024

Chairman C.T. Wilson
Room 231
House Office Building
Annapolis, Maryland 21401

HB 1135 - Financial Institutions - Community Benefit Plan Act of 2024
Organization – MD|DC Credit Union Association
Position - **Opposed**

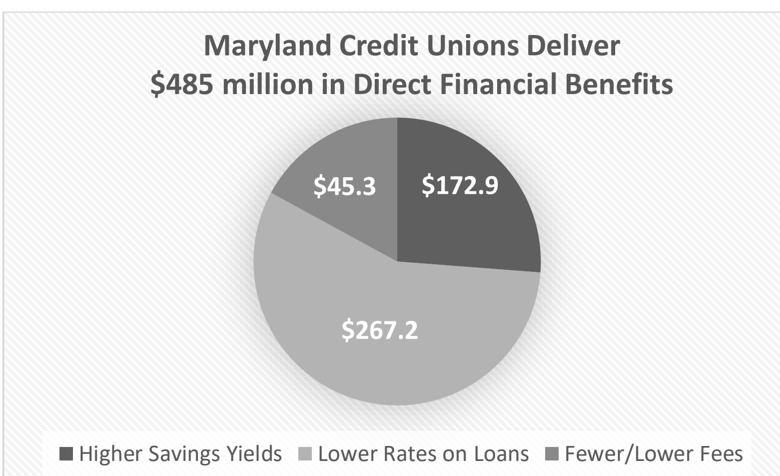
Chairman Wilson, Vice Chairman Crosby, and Members of the Committee:

The MD|DC Credit Union Association, on behalf of the 70 Credit Unions and their 1.9 million members that we represent in the State of Maryland, appreciates the opportunity to testify on this bill. The Association provides legislative and regulatory advocacy, compliance support, professional development, and training to help affiliated credit unions meet their distinct mission of providing affordable and accessible financial services to their members, particularly those in low- to moderate-income communities.

HB 1135 is well-intentioned, but misguided as it would impose unnecessary regulations that would ultimately harm the ability of Maryland credit unions to serve that mission, therefore, **we strongly oppose this bill.**

The Credit Union Mission and Structure Ensure that Communities Come First

Credit unions exist solely for the purpose of providing responsible, affordable, and accessible financial services to their members. They operate as member-owned, not-for-profit financial cooperatives, which means any profits are returned to their members, not shareholders. In 2023, Maryland credit unions generated $485 million in direct financial benefits to members through higher returns on savings, lower fees, and lower loan rates. That translates into $494 in benefits per each member household.[1]



[1] America's Credit Unions, Maryland Membership Benefits Report, Mid-Year 2023

The Credit Union Structure

Credit unions are fundamentally different from other financial institutions that can serve the general public. Credit unions are limited, by both state and federal charters, to serving a defined group of individuals who share a common bond through an employer, association, or distinct community. The common bond is referred to as a credit union's field of membership. Individual credit unions democratically elect their own board of directors from their membership, ensuring the unique financial needs of their members and communities are met.

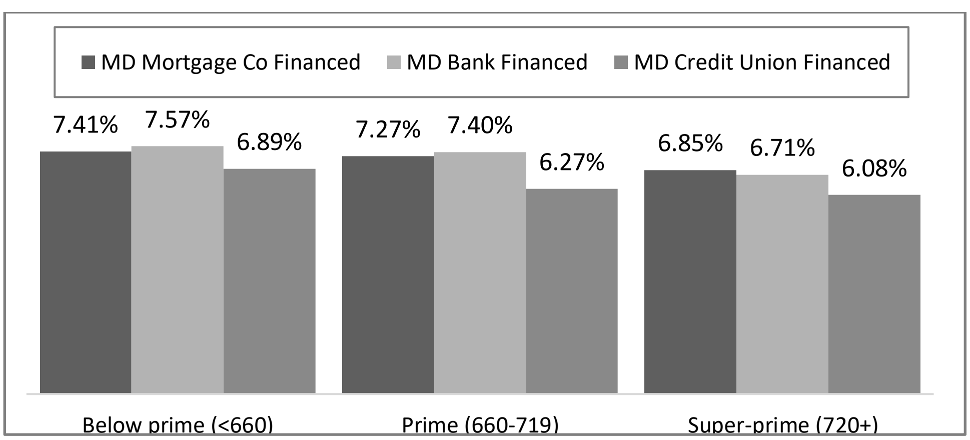
Financial Inclusion

With a mission deeply rooted in financial inclusion, credit unions are uniquely focused on serving individuals, families, and communities of modest means. Over half of Maryland's credit unions, including four state-chartered credit unions, are designated by the National Credit Union Administration (NCUA) as low-income, meaning that more than 50% of their members fall below the agency's low-income threshold.[2] 11 Maryland credit unions are designated as Minority Depository Institutions (MDI) by the NCUA[3], this means a majority of its current members, its board of directors and the community it serves are people of color. To provide context, there are 503 credit unions in the U.S. designated as MDIs, which is more than three times the number of banks holding this designation. Banks have one MDI in Maryland and 148 nationwide as reported by the Federal Deposit Insurance Corporation[4].

Access to Affordable Credit

Credit unions play a vital role in helping members to establish, build and maintain responsible credit. The pioneers of "relationship banking," credit unions know their members, understand their needs, and can generally offer quality financial services at lower costs. In fact, **Maryland credit unions reinvest 85% of deposits back into their local communities through member loans,[5] including mortgages and auto loans that significantly impact members' financial futures**.

Affordable home loans from credit unions help families save money while achieving the dream of homeownership and building intergenerational wealth. As the chart illustrates, **below prime credit union fixed-rate mortgage (FRM) loan rates are about 9% lower than banks. The data show similar savings across all credit tiers when compared to banks and finance companies**.[6]



[2] 12 CFR 701.34 - Low-income members are those members whose family income is 80% or less than the median family income for the metropolitan area where they live or national metropolitan area, whichever is greater, or those members who earn 80% or less than the total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater.

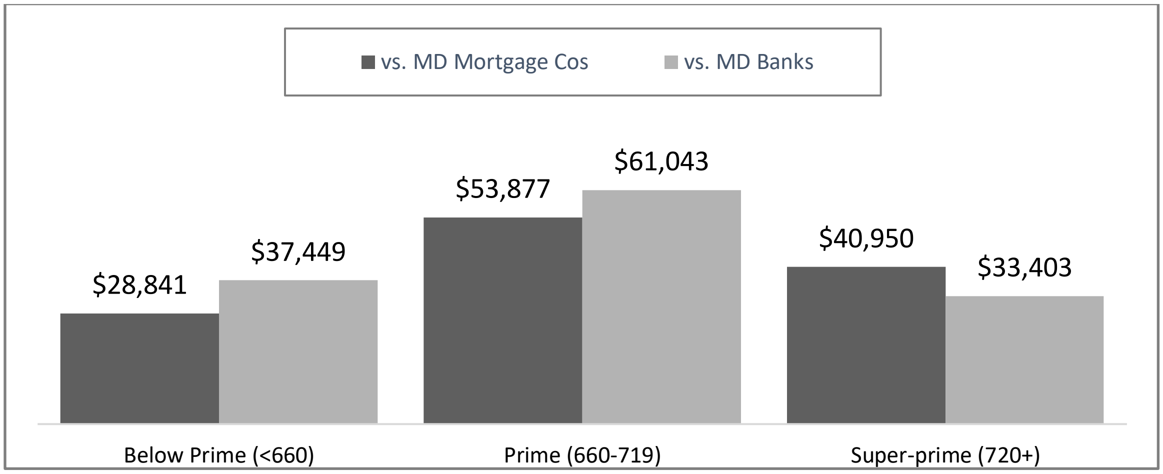
[3] NCUA, MDI, https://ncua.gov/support-services/credit-union-resources-expansion/resources/minority-depository-institution-preservation/mdi

[4] FDIC, MDI and CDFI Banks, https://fdic-gis.maps.arcgis.com/apps/webappviewer/index.html?id=76c05acdf50f4e3db35cd042103e998e

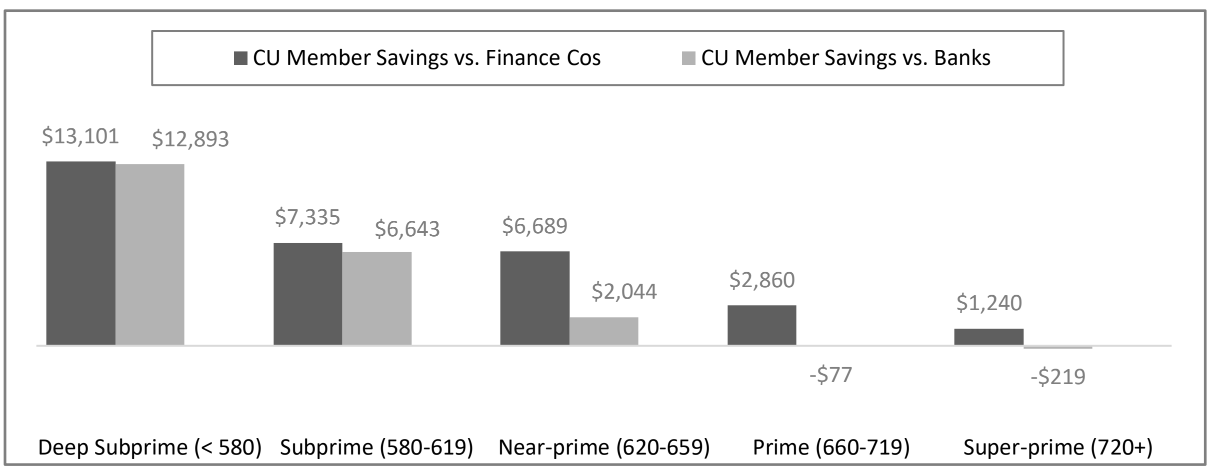
[5] National Credit Union Administration 5300 report via Callahan & Associates.

[6] Data from Equifax ADS & America's Credit Unions, Q3 2022

On a $225,000, 30-year credit union fixed-rate mortgage, Maryland consumers saved between $61,043 and $28,841 over the life of the loan compared to banks and mortgage companies[7] (based on Q23 2022 data from Equifax ADS and America's Credit Unions).



For those with credit challenges, credit unions offer lower-cost auto loans that help ensure reliable transportation to work, reducing the risk of income disruptions. In 2023, Finance company rates were 89% higher than auto loan rates offered by Maryland credit unions.[8] **When compared to finance companies, credit union borrowers save up to $13,101 on a six-year, $40,000 auto loan, depending on their credit rating**.[9]



[7] Data from Equifax ADS & America's Credit Unions, Q3 2022
[8] Equifax ADS & America's Credit Unions, Q2 2023
[9] Equifax ADS & America's Credit Unions, Q2 2023

Diverting Time and Resources from Access to Banking Act Implementation

Maryland state-chartered credit unions have worked closely with the Office of Consumer Financial Regulation and the Governor's Office to establish the Maryland Community Investment Venture Fund, enacted as part of the Access to Banking Act by the General Assembly during the 2023 legislative session. The MD|DC Credit Union Association is actively engaged in shaping its framework and is committed to further collaboration to ensure the success of this initiative. It's crucial to avoid diverting time and resources from these efforts through unnecessary regulatory burdens.

This is an attempt to Subject Credit Unions to The Punitive Community Reinvestment Act.

The National Community Reinvestment Coalition (NCRC) states that "community benefits agreements (CBAs) are a way for banks to spell out how they will satisfy CRA requirements."[10] These agreements primarily occur in the context of bank mergers and acquisitions. Although the proposed bill uses the term "Community Benefits Plan," it essentially entails the same obligations as those outlined in community benefits agreements. The proposed bill's inclusion of credit unions under a CBA-type plan is unprecedented nationally, suggesting that it's a back door to imposing CRA on Maryland's 7 state-chartered credit unions. Not only does this place them at a competitive disadvantage compared to federally-chartered credit unions, but it also runs counter to legislation recently passed by the General Assembly. In 2021, Maryland enacted a parity law allowing state-chartered credit unions to offer services and practices authorized for federally chartered credit unions, thereby ensuring fairness in competition.

The Community Reinvestment Act is described by Josh Silver, Senior Advisor at the National Community Reinvestment Coalition, as punitive, "the CRA can be thought of as an effort to atone for the public and private sector sins of discrimination, segregation, and the perpetuation of poverty in communities of color and working-class communities."[11]

Credit unions already align with the spirit and objectives of the Community Reinvest Act through their mission, structure, purpose, and operational orientation. The statutory and regulatory framework under which credit unions operate, mandates they serve individuals of modest means. Congress has repeatedly recognized this alignment, exempting credit unions from CRA requirements in 1977, 1997, 2000 and most recently in 2018.

---

[10] ncrc.org, Community Benefits Agreements, How Banks Ensure They Meet Local Needs, https://ncrc.org/cba/#:~:text=Community%20benefits%20agreements%20(CBAs)%20are,neighborhoods%20compared%20to%20prior%20practices.

[11] Silver, Josh. "The Purpose and Design of the Community Reinvestment Act (CRA): An Examination of the 1977 Hearings and Passage of the CRA " NCRC." NCRC, June 14, 2019. https://ncrc.org/the-purpose-and-design-of-the-community-reinvestment-act-cra-an-examination-of-the-1977-hearings-and-passage-of-the-cra/.

Why this Bill is Operationally Problematic for Credit Unions

While we think the requirements proposed in this bill undermine the good work that credit unions do, there are also several operational and administrative challenges that would make it difficult for credit unions to comply.

1. 1–501 (C) (3) - INCLUDES COMPARISONS TO DEMOGRAPHIC BENCHMARKS AND PEER OR INDUSTRY LEVELS OF ACTIVITIES

This requirement is designed as a one-size-fits-all solution, yet it fails to account for the distinctive attributes of each credit union, rendering it to have no practical value in application. While two credit unions may exhibit similar activity levels based on their asset size, their similarities often end there. Due to the unique field of membership restrictions governing each credit union, making direct comparisons in a community benefit report, between credit unions or with banks becomes exceedingly challenging.

2. 1–501 (C) (4) INCLUDES DOCUMENTATION OF INPUT FROM COMMUNITY–BASED ORGANIZATIONS AND OTHER STAKEHOLDERS.

While there's no strict rule preventing credit unions from soliciting feedback from individuals outside of their field of membership, it distracts credit unions from their purpose of serving their members and forces the credit union to spend time and money on non-member services. Any information gained from non-member feedback would be worthless because the credit unions cannot serve non-members. Only two Maryland-chartered credit unions are community chartered, and regularly receive input from community-based organizations and stakeholders.

Under the Maryland Credit Union Act §6–302.

(b) A member of a credit union may be:

(1) An individual who shares with other members of the credit union one of the common bonds within the field of membership types approved by the Commissioner;
(2) An employee of the credit union;
(3) An entity that is composed primarily of individuals who are eligible for membership;
(4) An individual living in the same residence and maintaining a single economic unit with an individual who is eligible for membership; and
(5) An immediate family relative of an individual who is eligible for membership.

3. 1–501 (D) "COMMUNITY DEVELOPMENT" INCLUDES… (2) AVOIDANCE OF PATTERNS OF LENDING RESULTING IN THE LOSS OF AFFORDABLE HOUSING UNITS.

In 2018 - 2021, 614,577 mortgages were originated in Maryland,[12] of which only 2.67% were originated by Maryland state-chartered credit unions. Under no circumstance would this volume of lending affect affordable housing units either positively or negatively.

4. 1–501(D) (4)(III) ECONOMIC DEVELOPMENT BY FINANCING SMALL BUSINESSES OR FARMS THAT MEET THE SIZE ELIGIBILITY REQUIREMENTS OF THE DEVELOPMENT COMPANY OR SMALL BUSINESS INVESTMENT COMPANY PROGRAMS UNDER 13 C.F.R. § 121.301, OR ANY SUCCESSOR REGULATION,

---

[12] 2018 – 2021 Home Mortgage Disclosure Act data

WITH AN EMPHASIS ON SMALL BUSINESSES THAT HAVE GROSS ANNUAL REVENUES OF NOT MORE THAN $1,000,000.

There are no state-chartered credit unions that currently engage in agricultural lending. This type of lending is highly specialized and is often performed by financial institutions that are highly integrated into the agricultural community.

5. 1–501 (D)(6) OTHER ACTIVITIES THAT PROMOTE THE OBJECTIVES OF THIS SUBTITLE, AS DETERMINED BY THE REGULATIONS IMPLEMENTING THE FEDERAL COMMUNITY REINVESTMENT ACT OR BY THE COMMISSIONER.

We believe this is the crux of the bill. **This legislation is attempting to expand the scope of the Community Reinvestment Act to credit unions.** For the reasons explained above, we do not think this is appropriate. This attempted "end-around" of the law is disingenuous.

6. 1–502(B) THE PURPOSE OF THIS SUBTITLE IS TO REQUIRE THE COMMISSIONER TO ENCOURAGE REGULATED FINANCIAL INSTITUTIONS TO MEET THE FINANCIAL NEEDS OF THE LOCAL COMMUNITIES WHERE THE REGULATED FINANCIAL INSTITUTIONS ARE CHARTERED CONSISTENT WITH THE SAFE AND SOUND OPERATION OF THE REGULATED FINANCIAL INSTITUTIONS.

The credit unions chartered by the State of Maryland, impacted by this legislation, diligently serve their members with unwavering commitment and dedication. To date, no data or complaints have been brought to our attention that suggest any deviation from this commitment. Credit union employees spend every day doing good work for their communities and this insinuation is offensive.

7. 1–504(B)(4)(II) THE COMMISSIONER SHALL ESTABLISH A PUBLIC COMMENT PERIOD OF NOT LESS THAN 60 DAYS DURING WHICH MEMBERS OF THE PUBLIC MAY PROVIDE COMMENTS ON THE DRAFT COMMUNITY BENEFIT PLAN (III) A REGULATED FINANCIAL INSTITUTION SHALL REVISE THE DRAFT COMMUNITY BENEFIT PLAN IN RESPONSE TO PUBLIC COMMENTS ON THE PLAN.

As stated previously, credit unions have field of membership restrictions on who they may serve. Input from members is welcome at any time and is encouraged. Any information gained from non-member feedback would not be helpful to the credit union's mission because the credit unions cannot serve non-members.

Regardless of whether a credit union is state- or federally-chartered, the NCUA requires all merger documentation and member communications to be publicly available for comment on its merger public comment site.[13]

8. 1–504(C)(1) A REGULATED FINANCIAL INSTITUTION THAT ISSUES AT LEAST 300 BUT FEWER THAN 1,000 SINGLE FAMILY HOME LOANS EACH YEAR SHALL: (I) INCLUDE IN ITS COMMUNITY BENEFIT PLAN A RETAIL LENDING PRODUCT OR COMMUNITY DEVELOPMENT LOANS, INVESTMENTS, GRANTS, OR SERVICES THAT ARE TARGETED TO: 1. AT LEAST ONE UNDERSERVED OR DISTRESSED COUNTY; AND 2. LOW– AND MODERATE–INCOME INDIVIDUALS AND OTHER UNDERSERVED POPULATIONS IN THAT COUNTY.

This provision blatantly undermines the safety and soundness principles the financial industry is based on, the autonomy of the credit union board of directors, and the Commissioner of Financial Regulation

---

[13] NCUA Letter 18-CU-3 The Merger Rule Provisions Including the Member to Member Communications Process

by requiring a credit union to offer products or services that it may not be equipped or positioned to offer. **Credit unions are democratically controlled, member-owned cooperatives. The members know what is best. Credit union members are the best people to tell the credit union what products and services to offer.** Under current law, these duties are under the control and supervision of the credit union board of directors and Maryland Commissioner of Financial Regulation. **All policies related to products and services must be in writing, approved by the board of directors, and meet regulatory scrutiny.**

Under Maryland Art-Fin §6–328.

(a) In addition to any power or duty provided for by law, the board shall: In addition to any power or duty provided for by law, the board shall:

- (6) In the absence of a credit committee, appoint one or more loan officers and delegate to those officers the power to approve or disapprove loans and lines of credit in accordance with written policies established by the board;
- (9) Manage the investment of credit union funds in accordance with written investment policies established by the board;
- **(13) Establish and adopt written policies necessary to implement the powers and duties of the credit union, including policies on:**
    - (i) Loans and lending;
    - (ii) Investments;
    - (iii) Employment and personnel;
    - (iv) Funds management;
    - (v) Collections;
    - (vi) Charge offs; and
    - (vii) Expulsion of members;

    (18) Except for any instance where, in the judgment of the board, it would result in damage to the credit union's financial soundness or would otherwise force the board to abrogate their fiduciary responsibility, perform every other duty that the members require.

9. 1–504 (E) (1) A MEMBER OF THE PUBLIC MAY COMMENT AT ANY TIME ON THE COMMUNITY BENEFIT PLAN OF A REGULATED FINANCIAL INSTITUTION.

See the above comment on this topic.

10. 1-505 (B) IF THE COMMISSIONER DETERMINES THAT A COMMUNITY BENEFIT PLAN IS NOT ADEQUATE IN MEETING COMMUNITY NEEDS OR THAT A REGULATED FINANCIAL INSTITUTION HAS SUBSTANTIALLY FAILED TO ATTAIN ANNUAL GOALS UNDE THE PLAN, THE COMMISSIONER SHALL: (B)(3) REQUIRE A BRANCH DIVESITURE FOR THE REGULATED FINANCIAL INSTITUTION;

This provision significantly favors large financial institutions, particularly those on Wall Street. Divestiture and conservatorship are distinct mechanisms employed by regulatory bodies to redress challenges within financial institutions, each serving unique objectives and governed by disparate procedures. Divestiture entails the deliberate sale or disposal of assets or business segments to target specific concerns or redefine the institution's structure. Conversely, conservatorship involves the provisional assumption of control and administration of the institution by a regulatory authority to tackle financial turmoil and facilitate recuperation.

In the context of the current legislation, the mandated divestiture of assets from local institutions is highly likely to result in the direct enrichment of Wall Street banks. Such a provision starkly contradicts the longstanding desires expressed by communities.

11. 1–505. (C) (1) A BANKING INSTITUTION OR A CREDIT UNION SHALL HONOR ANY COMMUNITY BENEFIT PLAN ESTABLISHED BY AN ENTITY ACQUIRED BY THE BANKING INSTITUTION OR CREDIT UNION.

Implementing a provision like this could potentially have adverse effects on consumers and could be deemed unlawful. If a credit union acquires a bank, there might be legal constraints preventing it from fulfilling the community benefits plan associated with that bank. Credit union and bank statutes differ significantly in terms of what is permissible, encompassing areas such as investment, interest rates, mortgage and business loan portfolios, and membership restrictions. Credit union-bank transactions are typically motivated by sound business rationale for all involved parties, as well as the consumers, small businesses, and communities affected. Consumers stand to benefit from gaining access to robust, responsible, community-oriented financial services.

12. 5-203 (e)(1) FOR a banking institution with a composite CAMELS rating of 3, 4, or 5 for its most recent examination, the annual assessment imposed under this section shall be increased by an additional 25%

The CAMELS rating system is based upon an evaluation of six critical elements of a credit union's operations: Capital adequacy, Asset quality, Management, Earnings, Liquidity and Sensitivity to Market Risk. CAMELS is designed to consider and reflect all significant financial, operational, and management factors examiners assess in their evaluation of a credit union's performance and risk profile. The higher the number, the lower the condition of the credit union. Increasing the annual assessment of a credit union with a 3, 4, or 5 CAMELS rating would do far more harm than good. If a credit union has a 3, 4, or 5 CAMELS rating, it needs improvement, not increased fees.

The Maryland Office of Financial Regulation already has the authority through examination, supervisory and enforcement authority to identify discriminatory practices or unfair lending. This would duplicative and unnecessary because it's already part of the exam process.

13. 5-203 (e)(2) THE ANNUAL ASSESSMENT IMPOSED UNDER THIS SECTION MAY BE INCREASED BY AN AMOUNT DETERMINED BY THE COMMISSIONER AND PAYABLE TO THE COMMUNITY REINVESTMENT FUND ESTABLISHED UNDER § 2–118.2 OF THIS ARTICLE TO ENFORCE THE REQUIREMENTS OF TITLE 1, SUBTITLE 5 OF THIS ARTICLE.

This language gives the Commissioner carte blanche freedom to increase fees as he or she sees fit. In an industry that relies heavily on monetary predictability this does not seem appropriate.

14. 6–712. (5) THE COMMISSIONER MAY INCREASE THE ANNUAL ASSESSMENT BY AN AMOUNT DETERMINED BY THE COMMISSIONER AND PAYABLE TO THE COMMUNITY REINVESTMENT FUND ESTABLISHED UNDER § 2–118.2 OF THIS

ARTICLE TO ENFORCE THE REQUIREMENTS OF TITLE 1, SUBTITLE 5 OF THIS ARTICLE.

See above comment.

Conclusion

Credit unions operate as member-owned financial cooperatives and are chartered to serve the "convenience and needs" of their field of membership. Their mission, structure, and purpose inherently prioritize the financial wellbeing of their members. Furthermore, the Maryland Credit Union Act mandates that credit unions "promote public convenience and advantage."[14]

Credit unions are restricted to serving members within their designated field of membership. Each individual member, regardless of their financial status, can provide input on the credit union's operations and participate in the election of its board of directors from the ranks of its membership. According to the Maryland Credit Union Act, every member is entitled to both a vote and a voice in all credit union matters.[15] Membership is the cornerstone of credit union governance.

To establish a credit union, a thorough explanation is required in the charter application outlining how it will benefit its members and address their needs. Credit unions must articulate their mission statement and demonstrate how it aligns with the community they serve.[16] This proposed bill seems to disregard the fundamental principles of credit unions. It is duplicative and unnecessary and would divert time and resources from members, as well as implementation of the Access to Banking Act which is focused on expanding economic opportunity to underserved communities.

We appreciate the opportunity to express our concerns and look forward to continuing to work together to support financial wellness.

Sincerely,

John Bratsakis
President/CEO
MD|DC Credit Union Association
9891 Broken Land, Suite 405
Columbia, MD 21046

[14] Md. Art. Fin. Inst. - §6–307(b)(2)
[15] Md. Art. Fin. Inst. - §6–317(b)(1)
[16] Md. Art. Fin. Inst. §6–309