July 9, 2026

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street Alexandria,
Virginia 22314-3428

Re: Interim Final Rule: NCUA-2026-1189

Dear Secretary Conyers-Ausbrooks:

The Merchants Payments Coalition (MPC) respectfully submits this comment in response to the National Credit Union Administration (NCUA) Interim Final Rule (Rule) concerning preemption and federal credit union (FCU) fees.

MPC represents a broad coalition of Main Street businesses and trade associations from across the United States, including grocery stores, bookstores, convenience stores, fuel retailers, restaurants, campgrounds, lumber dealers, online merchants, and many other businesses that depend on a fair and competitive payments system. Because interchange fees are embedded in the cost of virtually every card transaction, NCUA's interim final rule would have far-reaching effects on merchants, consumers, and competition throughout the economy.

MPC opposes NCUA's Rule and urges its withdrawal. The Rule raises substantial legal and policy concerns that warrant reconsideration. It appears to authorize conduct that is difficult to reconcile with established federal antitrust principles, departs from longstanding expectations regarding competitive markets, exceeds NCUA's authority under the Federal Credit Union Act (FCUA), and adopts an overly broad interpretation of federal credit union preemption. The Rule also rests on an inaccurate understanding of the modern credit and debit card payments ecosystem and, as a result, does not provide a sound legal basis for preempting the Illinois Interchange Fee Prohibition Act (IFPA). In addition, the process used to promulgate the Rule raises significant questions under the Administrative Procedure Act (APA) and the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA).

While the courts may ultimately determine the Rule's validity, NCUA need not wait for judicial review to revisit its approach. By issuing this Rule, the agency has taken an unusual step into an area of active legal dispute that is already being addressed through the judicial process. Doing so risks expanding the agency's role beyond its statutory responsibility to administer FCUA and may create uncertainty regarding the proper limits of agency

authority in future cases. Rescinding the Final Rule would allow these important legal questions to be resolved through the normal judicial process while preserving confidence that NCUA is acting within the authority Congress has delegated to it. Accordingly, MPC respectfully urges the NCUA to withdraw the Rule.

State Regulation of Centrally Set Interchange Fees Promotes Competition and Protects Consumers

State laws addressing centrally established interchange fees, such as the IFPA, represent an important step toward restoring competition and ensuring that businesses and consumers are not required to pay fees that are unrelated to the value of the goods or services provided. Interchange fees should be determined through competitive market forces, not centrally established by payment networks.

This concern is particularly acute when percentage-based interchange fees are applied to portions of transactions that merchants do not retain, such as sales taxes and gratuities. These amounts are collected by businesses solely as an intermediary for government entities and employees. In Illinois alone, consumers and businesses paid hundreds of millions of dollars in interchange fees on sales tax amounts in 2024 and those costs ultimately increase prices for consumers and impose an unnecessary burden on businesses complying with state obligations.

The payment card industry's justification for applying interchange fees to the entire transaction amount including sales taxes and gratuities is also unsupported. While financial institutions contend that these fees reflect fraud-related costs associated with the full transaction amount, available data demonstrates that merchants bear a significant portion of payment fraud losses. For debit card transactions, Federal Reserve data shows that merchants absorb a larger share of fraud losses than financial institutions. This reality undermines the argument that percentage-based interchange fees on taxes and tips are necessary to compensate issuers for risks they do not exclusively bear.

Compliance with the IFPA Is Feasible and Does Not Impose an Undue Burden

Concerns that the IFPA cannot be implemented are inconsistent with the realities of modern payment processing. Payment networks and merchants already collect and transmit transaction-level data, including tax and gratuity information, through existing systems. The same data flows used today to process transactions can be used to calculate interchange fees on the underlying purchase amount rather than on taxes and tips.

The payment networks themselves have demonstrated the ability to collect and process tax-related transaction data for other purposes. This confirms that distinguishing tax and gratuity amounts is technically achievable using existing technology. Moreover, the IFPA

provides flexibility by allowing merchants to provide this information after the transaction when necessary and receive reimbursement, a process similar to other post-transaction adjustments already routinely handled by payment networks.

The claim that compliance is technically unfeasible therefore does not withstand scrutiny. The issue is not whether the systems exist to implement the law; rather, the issue is whether the payment networks are willing to use existing capabilities in a manner that benefits merchants and consumers.

The Rule Exceeds NCUA's Statutory Authority and Raises Significant Competition Concerns

The Rule improperly expands the scope of federal credit union authority under the FCUA. The FCUA authorizes federal credit unions to make loans and extend lines of credit to their members, but it does not authorize NCUA to regulate fees imposed on non-member entities or provide preemption for activities outside the scope of federal credit union powers.

By removing the limitation that fees apply to members, the Rule extends federal credit union authority to transactions involving non-member merchants and effectively creates regulatory authority that Congress did not provide. Such an expansion cannot serve as the basis for federal preemption of state law.

The Rule also creates significant competition concerns by allowing third parties to establish fees on behalf of competing federal credit unions. Interchange fees are not independently determined by individual card issuers; they are established through network-wide fee schedules adopted by thousands of financial institutions. Permitting the same third parties to set fees across competing institutions is inconsistent with competitive pricing principles and raises substantial antitrust concerns.

The Rule is also internally inconsistent because it permits third-party fee-setting while requiring fees to be established through competitive decision-making by individual federal credit unions. Centrally established fees cannot simultaneously be characterized as the product of independent competition among issuers.

The Rule Does Not Preempt State Laws Governing Payment Networks

NCUA's preemption analysis is flawed because the IFPA regulates fees centrally set by payment networks, not federal credit unions themselves. Visa and Mastercard, which establish interchange fee schedules, are not federal credit unions and are not entitled to FCUA preemption protections.

Federal preemption extends only to activities within the scope of federal credit union authority. It does not extend to independent third parties that establish pricing rules governing payment transactions. Accordingly, even if the Rule remains in effect, it cannot preempt state laws that regulate non-FCU payment networks and their fee-setting practices.

The Rule Fails to Satisfy Procedural Requirements

NCUA failed to develop an adequate record supporting the Rule. The agency did not meaningfully address evidence demonstrating that interchange fees are not competitively determined by individual federal credit unions or that compliance with state regulation is technically feasible. Instead, the Rule relies on assumptions about the payments system that are inconsistent with market realities.

The Rule also raises serious concerns under the APA and the RFA, as amended by SBREFA. NCUA imposed binding legal requirements before completion of the public comment process, limiting meaningful opportunity for stakeholder input and raising questions regarding compliance with APA procedural safeguards.

Additionally, NCUA failed to adequately evaluate the Rule's economic impact on small businesses. The agency did not meaningfully analyze the costs imposed on merchants, despite the significant financial consequences associated with interchange fees applied to taxes and other transaction amounts. Before implementing a rule with such broad economic effects, NCUA should conduct the analysis required by the RFA and SBREFA.

Conclusion

For the reasons discussed above, the Rule raises significant legal and policy concerns, including by exceeding the limits of NCUA's statutory authority, creating potential conflicts with established antitrust principles, improperly expanding the scope of federal credit union preemption, failing to provide a basis for preempting the Illinois Interchange Fee Prohibition Act, and not satisfying applicable requirements under the Administrative Procedure Act, the Regulatory Flexibility Act, and SBREFA. Accordingly, we respectfully urge NCUA to withdraw the Final Rule.

Sincerely,

Merchants Payments Coalition