July 9, 2026

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

Submitted via Regulations.gov

RE: NCUA-2026-1189, Preemption – Federal Credit Union Non-Interest Charges and Fees

Dear Ms. Conyers-Ausbrooks:

FMI – The Food Industry Association welcomes the opportunity to comment on the National Credit Union Administration (NCUA) interim final rule on Preemption – Federal Credit Union Non-Interest Charges and Fees, Docket Number NCUA-2026-1189 ("IFR" or "rule"). FMI strongly opposes the issuance of the IFR for several reasons. This IFR appears to embrace collusive and anticompetitive fee fixing through third party companies, undermines President Trump's endorsement of swipe fee reform and affordability agenda to lower costs for consumers and businesses, and was issued through a deeply flawed and improper process. Accordingly, we urge that this IFR be rescinded.

As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain – from retailers that sell to consumers, to producers that supply food and other products, as well as a variety of companies providing critical services – to amplify the work of the industry.

FMI's membership manufactures, distributes, and sells food and consumer goods that are found in pantries, refrigerators, medicine cabinets, and laundry rooms across the country. Our retail members, which range in size from independent operators to regional and large national and international businesses and brands, operate 45,000 grocery stores and 12,000 supermarket pharmacies. The food industry produces and supplies over 30,000 different food and consumer good products found on store shelves, employs over 6.3 million individuals, and ultimately touches the lives of more than 100 million U.S. households per week.

Food retailing is a diverse industry that presents a unique set of challenges, considering the numerous daily functions a single store provides to its customers and communities. Grocery stores are the hub for everyday food and consumer goods, operating pharmacies that dispense life-depending medications, vaccines, and flu shots, and serving the community of Americans who rely on critical food assistance programs like the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). These functions involve millions of financial transactions every day.

The grocery industry is among the most competitive in our economy. Grocers negotiate prices on every product they sell and every service they use with vendors and operate on razor-thin profit margins – about 2.1 percent on average.[1] Intense competition for consumer business and market share helps keep prices down for shoppers. Conversely, the credit card market today is among the least competitive sectors in our economy. Just two companies, Visa and Mastercard, centrally set the interchange fee rates and transaction terms for all the financial institutions that issue cards bearing a Visa or Mastercard network logo, and consumers and merchants, including grocers in every community in the country, are on the losing end of this unregulated fee fixing.

With this IFR, the NCUA appears to endorse this anticompetitive credit card swipe fee system which imposes excessive costs on food retailers and inflates the prices consumers pay for groceries – a system that President Trump described as an "out of control Swipe Fee ripoff."[2] The NCUA has done so by bypassing the Administrative Procedure Act's ("APA") regular notice-and-comment requirements without good cause or adequate justification. This IFR, which took effect on June 30 before the completion of the announced stakeholder comment period, represents both a flawed process and flawed policy.

The swipe fee system is anticompetitive and harms food retailers and their customers.

The duopoly of Visa and Mastercard control over 80 percent of the credit and debit card network markets in the U.S.[3] and enjoy profit margins of around 50 percent.[4] These dominant card network companies have established a system of fees and rules that limit market competition between the thousands of financial institutions that issue their branded cards.

Card-issuing banks and credit unions within the Visa and Mastercard network systems do not compete with each other on the fee rates they receive from merchants on card transactions, nor do they compete with respect to the terms and conditions governing acceptance of their cards by merchants. Instead, Visa and Mastercard centrally set the fee rates for the interchange fees

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[1] FMI: Grocery Store Chains Net Profits.

[2] President Trump Truth Social post, Jan. 13, 2026, *available at* https://truthsocial.com/@realDonaldTrump/posts/115886085338434959.

[3] *See* Board of Governors of the Federal Reserve System, "Profitability of Credit Card Operations of Depository Institutions," June 2024, at p. 5 ("The general-purpose bank credit card market in the U.S. is dominated by cards issued on the Visa and Mastercard networks, which, combined, accounted for 726.6 million cards, or about 85 percent of general-purpose credit cards, in 2023."); *see also* Complaint, *United States of America v. Visa, Inc.,* 1:24-cv-07214, (S.D.N.Y.) Sept. 24, 2024, at 7 ("Today, over 60% of all U.S. debit transactions run via Visa's payments network. Mastercard is a distant second, processing less than 25% of all U.S. debit transactions.")

[4] Emma Withrow, "Fact Check Team: Credit card giants' profit margins exceed 50% amidst American debt crisis," The National News Desk, Dec. 20, 2024.

that card issuers deduct from card transaction amounts and centrally set transaction terms and conditions via so-called network rules. Because of this centralized fee-fixing, all issuers in each network enjoy the same guaranteed interchange fee rates as every other issuer in the network no matter how efficiently or inefficiently a particular issuer runs its card operations and no matter how much or how little fraud is associated with the issuer's cards. Because of Visa and Mastercard's respective network rules, merchants are also required to accept all branded cards from all issuers in the network, no matter how high the fees get or how much fraud occurs.

This system of centralized fees and rules that Visa and Mastercard have set up with their card issuers shields interchange fee rates from normal market competition and results in excessively high fees that far exceed the reasonable costs of conducting transactions. Every time a credit card is used for a purchase, a merchant is charged swipe fees that are collected by the credit card networks and the card-issuing bank or credit union. These fees (which include fees imposed on any sales tax or gratuity portion of the transaction) can total up to 4% of the transaction amount, which means that merchants often only receive 96 cents of each dollar paid by card. Because the fees are largely percentage-based, the fees grow with inflation and in turn accelerate that inflation. This also means that Visa, Mastercard, and card issuers often make more of a profit from grocery purchases than the store does.

It is not necessary for the fees to be this high. In the European Union, credit card interchange fee rates are capped at 0.3% per transaction – a small fraction of the average Visa and Mastercard U.S. credit card rates – and the credit card systems in Europe operate efficiently and profitably.[5] However, Visa and Mastercard's fee-fixing in the United States allows them to get away with imposing fees that are much higher than those in the European Union and much higher than what a competitive market would bear (and because Visa and Mastercard charge their own network fee on each card transaction, they profit by setting interchange fee rates at high levels that incentivize issuers to issue more cards). Visa and Mastercard's high fees place pressure on grocery merchants, who operate on narrow single-digit margins, to incorporate these fees into retail prices to cover the costs.

As our economy has increasingly moved away from cash transactions and toward electronic retail payments – particularly during the pandemic – grocery stores have seen increased customer use of credit and debit cards. According to FMI's most recent Food Retailing Industry Speaks survey, 81% of grocery store purchases in 2025 were made with a credit or debit card – a 12% increase in use of these payment cards over the last decade.[6] Of this amount, 42% of all grocery purchases were made with a credit card, and 76% of all online grocery purchases were made with a credit card. Online purchases, including those made for curbside or in-store pickup

[5] *See* Fumiko Hayashi *et al.*, "Public Authority Involvement in Payment Card Markets: Various Countries – August 2025 Update," Federal Reserve Bank of Kansas City (discussing interchange fee reforms in various countries, including how the European Union has capped interchange rates since 2015 at 0.3% for credit cards).

[6] FMI, The Food Retailing Industry Speaks 2026.

and third-party or on-demand delivery, are categorized as "card not present" which yields an even higher interchange fee for grocery merchants.

While we recognize that there are benefits to electronic payment transactions, the anticompetitive fee structures in the Visa and Mastercard systems mean U.S. merchants pay fees that far exceed what is reasonably necessary to operate card transactions and that also exceed the rates charged in other countries around the world. Credit and debit card swipe fees charged to U.S. merchants in 2025 totaled $198.25 billion according to the *Nilson Report*[7] – an increase of 80% since the pandemic and 5.9% over the previous year. Of this amount, Visa and Mastercard-branded credit card swipe fees in 2025 totaled $118.83 billion, which is an increase of 365% since 2009 ($25.6 billion). These fees amount to an average cost of nearly $1,200 per American household, according to the Merchants Payments Coalition.[8] And it's not just the total amount of fees that has increased over the years; the average Visa and Mastercard credit card interchange fee rates have increased too, rising from 2.02% in 2010 to 2.26% in 2023 and 2.36% last year.[9] U.S. merchants, and ultimately their customers, now pay the highest swipe fees in the industrialized world.[10]

Grocers are committed to serving all customers, regardless of how they pay. However, the billions of dollars in excessive credit card swipe fees artificially drive up the price consumers pay for goods and services. Retailers are forced to incorporate these fees into their pricing decisions and sell items at the "credit card" price to cover costs. The impact disproportionately hurts lower income Americans, those who rely on cash and those who do not have access to high rewards credit cards. As a recent Harvard Business School working paper reported, "interchange fees generate approximately $30 billion in annual transfers from cash and debit card users to credit card users," and "this represents a $9.2 billion annual transfer from low- and middle-income households earning less than $150,000 in annual income to higher-income households."[11]

Reform of the Visa and Mastercard swipe fee system is urgently needed.

Grocers have tried numerous approaches but have no ability to negotiate with Visa and Mastercard on contract terms or the cost of accepting cards as a form of payment from our customers. Swipe fees that grocers must pay to accept credit and debit cards are typically grocers' highest operating cost after labor and rent. The situation is not sustainable, and there is an urgent need for swipe fee relief.

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[7] *Nilson Report* 1303, March 2026.
[8] Merchants Payments Coalition: "Credit and Debit Card 'Swipe' Fees Reach Record $198.25 Billion as President and Congress Call for Action," March 18, 2026.
[9] Mass Market Retailers, "Merchants sound alarm as swipe fees hit $198B," March 18, 2026.
[10] *See* Clearly Payments, "Statistics on How Much Merchants Pay for Payment Processing in 2024."
[11] Mark Egan, *et al.*, "Who Pays for Payments?" Harvard Business School Working Paper 26-069, at p. 2.

In countries around the world, Visa and Mastercard's anticompetitive fee systems have been reined in by pro-competitive reforms or rate regulation.[12] In the United States, there has been pro-competitive reform and rate regulation of some aspects of the debit card interchange fee system through the Durbin Amendment to the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act.[13] But such measures have not been applied to credit card interchange fees in the United States, and Visa and Mastercard have structured their interchange fee systems to prevent market competition from driving down fee rates. Across the nation, merchants and consumers have urged lawmakers at the federal and state level to provide relief from the crushing burden of these interchange fees.

In the absence of federal reform to address Visa and Mastercard's anticompetitive interchange fee systems, states have pursued modest and sensible reforms such as prohibiting card networks from establishing interchange fee rates that apply to sales tax and gratuity portions of transactions. Sales taxes are collected and remitted by merchants on behalf of state and local governments and gratuities are collected by merchants on behalf of employees, so merchants do not retain the money they collect. They pass 100% of the tax and tip money to the government or employees. When interchange fees are imposed on the tax and tip portion of transactions, it means that merchants must pay for the fees out of the merchant's revenue for the rest of the transaction (which is also assessed interchange fees). It is neither fair nor sustainable to penalize merchants in this way for performing required tax collection on behalf of state and local governments or for collecting tips for employees. But it is lucrative for the credit card industry; in 2024 alone, interchange fees on sales taxes alone resulted in nearly $11 billion in fees for card issuers.[14]

The Illinois Interchange Fee Prohibition Act (IFPA), enacted in 2024, was crafted to provide merchants with the ability to seek relief from network-established interchange fees imposed on sales taxes and tips. The IFPA provides two processes through which this relief can be obtained: either the tax and tip amount can be deducted from the transaction amount at the time of settlement before the interchange fee rate is applied, or the merchant can supply this information after the transaction and receive a rebate proportionate to the amount of interchange charged on the tax or tip. These approaches are based upon familiar processes within the payment system. Card network ecosystems have long itemized and transmitted sales tax amounts as Level II data for millions of card transactions, establishing a roadmap for how transaction portions can be transmitted and deducted at the time of settlement. The IFPA's rebate process is also modeled after the chargeback process in which money is transferred from merchant accounts to issuer accounts post-settlement when information about alleged fraud is presented to the issuer. The IFPA thus was designed to be compatible with existing network

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[12] *See* Hayashi, "Public Authority Involvement in Payment Card Markets: Various Countries – August 2025 Update" *supra* note 5.

[13] 15 U.S.C. § 1693o-2.

[14] CMSPI, "How Much Interchange was Paid on Sales Tax in the U.S.?", *available at* https://cmspi.com/how-much-interchange-was-paid-on-sales-tax-in-the-us/.

processes that could be adapted to meet the law's requirements within the law's implementation period.

The IFPA represents sensible, workable reform that will modestly decrease the $198 billion in annual interchange revenue that banks receive. Illinois swipe fees on sales taxes are estimated at around $508 million per year, and prohibiting swipe fees on sales taxes and gratuities will keep those dollars in local communities and stimulate economic activity, as opposed to sending those dollars primarily to giant card-issuing financial institutions in other states.[15]

Yet the credit card networks and financial services industry have expressed outrage at any legislative reform that would diminish their revenue from centrally fixed interchange fees. The credit card industry has also refused to lift a finger to prepare for implementing the IFPA, advocating instead for the law's delay, repeal, and invalidation. The Illinois General Assembly has twice passed legislation pushing back the effective date of the IFPA, including legislation passed on May 31, 2026, that delayed the effective date to July 1, 2027, thus giving financial institutions a third year to come into compliance with the law. There is no evidence that these several years are insufficient time for financial institutions to comply with the IFPA with little disruption to the payment system and at low-cost relative to the high level of interchange fees.

There has also been litigation over the IFPA, with financial industry trade associations filing suit shortly after its enactment and arguing that federal law preempted the state reform. This litigation resulted in a district court decision in the Northern District of Illinois ("NDIL") on February 10, 2026, holding that the IFPA was not preempted because federal law did not extend preemption to fees set on card issuers' behalf by third party companies.[16] After this NDIL district court decision had been handed down and while an appeal was pending before the 7th Circuit Court of Appeals, the Office of the Comptroller of the Currency ("OCC") published an interim final rule and order on April 29, 2026, changing National Bank Act regulations to allow third parties to set fees for national banks and asserting that the IFPA was preempted.[17] Based on the OCC's interim final rule and the court's belief that it was not able to consider the validity or merits of the rule in litigation in which the OCC was not a party, the NDIL court issued a permanent injunction on June 1, 2026, enjoining the IFPA from being enforced against certain banks, federal savings associations, and payment card networks (but not credit unions).[18] This IFR by the NCUA was published in the Federal Register eight days later.

The NCUA's interim final rule was issued through an improper process.

FMI objects to the process the NCUA has used with this IFR. In issuing the IFR, the NCUA appears to have been driven primarily by a desire to imitate actions taken by the OCC and to

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[15] *Id.*
[16] *Ill. Bankers Ass'n v. Raoul*, ___ F. Supp. 3d ___, 2026 WL 371186 (N.D. Ill. Feb. 10, 2026).
[17] 91 Fed. Reg. 22989 (April 29, 2026); 91 Fed. Reg. 23150 (April 29, 2026).
[18] *Ill. Bankers Ass'n v. Raoul*, ___ F. Supp. 3d, ___ 2026 WL 1534350 (N.D. Ill. June 1, 2026).

influence the ongoing IFPA litigation, as opposed to following the regular APA process and crafting regulations that incorporate sound policy considerations and stakeholder feedback. The NCUA admits that its IFR provisions largely copy the OCC's recently issued interim final rule,[19] even though the OCC itself bypassed the normal APA process in a rushed effort to confer its regulatory blessing upon the current interchange fee system before the 7th Circuit Court of Appeals considered the appeal of the February NDIL district court decision. The NCUA has also demonstrated that it is not serious about incorporating stakeholder input into its IFR, announcing on the day of the IFR's publication that its provisions would take effect ten days before the end of a comment period.[20]

The NCUA concedes that it issued its IFR "without prior notice and the opportunity for public comment and the delayed effective date that are ordinarily prescribed by the Administrative Procedure Act."[21] The NCUA claims it was entitled to do so because under the APA, notice and opportunity to comment are not required when an "agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[22] However, the NCUA's cited rationale and purported "good cause" for finding that prior notice and public comment are impracticable is "the abbreviated timeline" between the February 2026, district court case and the scheduled July 1, 2026, effective date of the IFPA.[23] This finding of "good cause" was rendered moot by the Illinois General Assembly's passage of legislation to delay the effective date of the IFPA to July 1, 2027.

In a footnote in the IFR, the NCUA attempts to salvage its rationale for bypassing the APA process by claiming that the NDIL court had held that the OCC's interim final rule preempts the IFPA and granted a permanent injunction and that "NCUA must act immediately to restore parity between FCUs and national banks."[24] There is no credible explanation of why such immediacy is required. The IFR already acknowledges that the IFPA's effective date was delayed 12 months until July 1, 2027, and the NCUA concedes that its "rulemaking process would likely take several months."[25] The NCUA thus has ample time to conduct a standard APA rulemaking process before the IFPA's scheduled effective date.[26] The NCUA also claims that they "seek[ ] to avoid unnecessarily prolonging the [Illinois] litigation by delaying a ruling as to FCUs until a notice of proposed rulemaking is issued and finalized" and argues that during a rulemaking process "FCUs would have substantial uncertainty regarding compliance with the IFPA and any

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[19] *See, e.g.*, 91 Fed. Reg. 34727 ("Section 701.5(c) is new language that is substantially similar to the OCC's section 7.4002") 91 Fed. Reg. 34728 ("These factors are identical to the factors included in §7.4002").
[20] 91 Fed. Reg. 34725.
[21] 91 Fed. Reg. 34728.
[22] *Id.*
[23] *Id.*
[24] 91 Fed. Reg. 34728, Fn. 34.
[25] *Id.*
[26] Concerns that the NCUA expresses in the IFR about the time that FCUs might need to inform customers and merchants are also keyed to the now-moot July 1, 2026, effective date for the IFPA, not the July 1, 2027, effective date.

appeal to the Seventh Circuit may be remanded back to the district court pending NCUA action."[27] Again, the NCUA has already pronounced that the length of the "abbreviated timeline" that rendered prior notice and public comment impracticable was the length between the February 10, 2026, issuance of the NDIL decision and the July 1, 2026, effective date of the IFPA – less than five months.[28] The IFR did not incorporate a finding establishing that a period of nearly 12 months – the amount of time between the IFR's publication and the July 1, 2027, IFPA effective date – is impracticable for a proper APA rulemaking process (which the NCUA conceded would take only "several months").[29] Further, by circumventing the required APA process purportedly to avoid prolonging litigation, the NCUA has almost certainly invited new litigation involving APA challenges to this IFR and undermined its own justification.

In short, the circumstances animating the NCUA's "good cause" finding changed prior to the IFR's publication, and the NCUA did not issue a credible "good cause" finding reflecting these changed circumstances. Accordingly, the NCUA's IFR should be rescinded to enable a regular APA rulemaking process to promptly take place.

The NCUA's interim final rule ignores the lack of market competition in setting credit union fees and would bless anticompetitive fee-fixing arrangements.

With its issuance of this IFR, the NCUA seeks to follow the OCC's lead in appearing to defend the lucrative but structurally anticompetitive interchange fee arrangements that card issuers have set up with the Visa-Mastercard card network duopoly. Such actions are aimed at preserving higher fees and costs for American merchants and consumers – in contravention of the priority that the Trump administration has placed on cost reduction.

The IFR notes that federal credit unions "could engage" in marketplace negotiations to establish fees and terms for processing payment card transactions, but that credit unions prefer not to do that because "such a process would be complex, inefficient, ineffective, and costly" and because most credit unions "do not have the resources to engage in such activities."[30] Instead, the IFR acknowledges that credit unions "agree to the interchange fees set by the card networks."[31] To be clear, the situation the IFR describes – where credit unions that should be engaging in competition with one another agree to charge the same price for their services through the intermediary of a third-party company that publishes pricing schedules – is a classic example of anticompetitive price-fixing. The NCUA is apparently fine with such price-fixing, saying the IFR's provisions "reflect the reality of the modern financial system and global economy, where products and services may be more efficiently and effectively provided through third parties, which may also make or influence decisions regarding pricing."[32] In complete contradiction, the

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[27] *Id.*
[28] 91 Fed. Reg. 34728
[29] 91 Fed. Reg. 34728, Fn. 34.
[30] 91 Fed. Reg. 34725.
[31] *Id.*
[32] 91 Fed. Reg. 34728.

IFR also says that banks should arrive at the fees on a competitive basis and not on the basis of any agreement.[33] That does not describe the current interchange fee system in the United States. Yet the IFR does nothing to acknowledge, much less explain, that internal contradiction. The IFR is at war with itself. Purporting to give collusive third-party fee-fixing arrangements the NCUA's regulatory blessing represents an abandonment of market competition, and FMI believes market competition provides essential benefits for consumers, merchants, and the economy as a whole.

Because the Federal Credit Union Act does not directly authorize card issuers' receipt of fees related to card transactions from entities that are not members of the credit union, let alone provide for unlimited and/or anticompetitive fees and preemption of state laws affecting the receipt of fees centrally fixed by third party companies on behalf of card issuers, the NCUA claims that such authority and preemption derives from statutory provisions permitting credit unions "to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated."[34] The legal basis for such a broad interpretation of these "incidental powers" that are "necessary or requisite" for credit unions to exercise is legally incorrect. But the policy implication of NCUA's interference in the Illinois litigation is clear: it purports to do the bidding of credit unions to allow them to use third party companies to centrally set not only interchange fees but also other types of fees such as annual fees, late fees, or ATM fees. If the credit union industry prevails with this view that states are preempted from reining in fees fixed by third party companies on credit unions' behalf, centralized fee-fixing will likely become the new norm for a wide range of fees.

Such a fundamental shift away from market competition in fee-setting would have far reaching consequences. This would be bad for consumers, who would not only bear the ultimate cost of excessive centrally fixed interchange fees but would also see market competition diminish among other types of credit union fees charged to consumers. It would also be bad for merchants, who would see the anticompetitive swipe fee system entrenched. All of this would be initiated with an IFR that the NCUA pushed using an unjustifiably truncated process that did not respond to or even consider comments about the IFR's impact.

Conclusion

At a time when credit card industry giants are pulling in record profits on the backs of grocers, main street businesses, and millions of American consumers through credit card swipe fees, FMI strongly opposes the NCUA's procedurally and substantively flawed attempt to endorse and assert preemption over the same swipe fee system that President Trump has correctly called a ripoff. The grocery industry thrives on vigorous marketplace competition. Card-issuing financial institutions should not be exempted from such competition.

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[33] [33] 12 C.F.R. § 701.5(c)(3)(i).

[34] 12 U.S.C. 1757(17); 91 Fed. Reg. 34726-7.

The NCUA appears to be more concerned with protecting card issuers' lucrative interchange revenue stream than with responsibly addressing anticompetitive interchange fees that inflate the prices consumers pay for groceries. The flaws with this IFR and the OCC's similar IFR make clear that these agencies should not have the final word on something as important as consumers' ability to obtain, and our industry's ability to supply food at reasonable prices. Relief from the excessive fees imposed by the Visa-Mastercard duopoly is needed, and Illinois has taken a responsible and workable reform approach that provides critical relief to merchants and consumers while modestly diminishing interchange fee revenue. Accordingly, FMI urges the NCUA to rescind this IFR.

Sincerely,

Christine Pollack

Christine Pollack
Vice President, Government Relations