July 8, 2026

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

RE: Preemption-Federal Credit Union Non-Interest Charges and Fees (RIN 3133-AG11)

Dear Ms. Conyers-Ausbrooks:

On behalf of its member credit unions, the Cooperative Credit Union Association, Inc. ("Association") appreciates the opportunity to comment on the National Credit Union Administration (NCUA) Board's interim final rule on Preemption-Federal Credit Union Non-Interest Charges and Fees. The Association is the state trade association representing nearly 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, which further serve over 5 million consumer members. The Association developed these comments in consultation with our members.

The interim final rule added a new Section 701.5 to NCUA's Rule and Regulations, titled "Preemption," that applies to federal credit unions. The interim final rule also made conforming amendments to Section 701.21 and Section 701.35 of NCUA rules to move pre-existing federal preemption provisions formerly codified at Section 701.21(b), (g)(6) and Section 701.35(c), (d) to the new Section 701.5. Section 701.5 therefore consolidated existing preemption provisions into a single rule, in addition to clarifying that NCUA's regulations preempt state laws regulating credit card and debit card interchange fees.

The Association strongly supports the NCUA Board's interim final rule that preempts state laws regulating federal credit union interchange fees, but we also urge the Board to extend application of the rule to state-chartered credit unions too. The Illinois Interchange Fee Prohibition Act (IFPA) and similar state laws are unworkable in practice and would impose significant compliance and operational costs on all credit unions.

It is clear NCUA has authority under Title I of the Federal Credit Union Act to preempt entire classes of state laws such as the IFPA —a power known as "field preemption"—with respect to federal credit unions. Regarding state-chartered federally-insured credit unions, we urge the Board to use its authority under Section 206(b) of the Act to extend the application of Section 701.5's debit and credit card interchange provisions to federally-insured state-chartered credit unions too. *See* 12 U.S.C. § 1786(b); 12 C.F.R. § 701.5(c)(2).

The Board has historically used this Section 206(b) authority to extend a wide range of regulations to federally-insured state-chartered credit unions based on safety and soundness and related supervisory concerns. State laws like the IFPA present potential safety and soundness concerns in relation to earnings risk and operational risk.

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These state laws also present systemwide level playing field concerns that threaten to unbalance the dual-chartering system because they apply to state-chartered credit unions, but not to federal credit unions. This disadvantages state-chartered credit unions and could therefore present a systemic risk to the National Credit Union Share Insurance Fund over the long term.

Alternatively, the NCUA should work with the National Association of State Credit Union Supervisors (NASCUS) and state credit union regulators to extend the application of Section 701.5 to state-chartered credit unions based on state law federal parity provisions (also known as "wildcard statutes"). *See, e.g.*, M.G.L. ch. 171, § 6A ("Powers and permissible activities; regulations"); N.H. R.S.A. § 383-E:4-411 ("Advantageous Federal Powers"); R.I. Gen. Laws § 19-5-25 ("Exercise of same powers as federal credit unions").

The Association, however, strongly supports the Board's interim final rule as it applies to federal credit unions, which is a continuation of longstanding NCUA policy.

Prior to the interim final rule, Section 701.35 of NCUA Rules and Regulation had since 1984 expressly preempted state laws purporting to regulate federal credit unions' account fees, such as non-sufficient funds fees.

As the U.S. Court of Appeals for the Ninth Circuit held in 2025, this NCUA federal preemption rule under the former Subsection 701.35(c) expressly preempted all state laws attempting to regulate account fees at federal credit unions*. King v. Navy Fed. Credit Union*, 148 F.4th 628, 630-32 (9th Cir. 2025) ("It is difficult to imagine preemption language more explicit than this."). The former Section 701.35(c) provision upheld in *King v. Navy Fed. Credit Union* is now recodified as part of the new Section 701.5.

Like the NCUA Board, the Office of the Comptroller of the Currency (OCC) has also issued a similar interim final rule preempting state interchange fee laws with respect to national banks. 12 C.F.R. § 7.4002; National Bank Non-Interest Charges and Fees, 91 Fed. Reg. 22989 (Apr. 29, 2026).

While both the OCC and the NCUA interim final rules are appropriate policy responses to unworkable state laws like the IFPA, the NCUA Board's federal preemption authority under the Federal Credit Union Act exceeds that of the OCC under the National Bank Act.

This is because the Dodd-Frank Act amended the National Bank Act (and the Home Owners Loan Act) to limit OCC's ability to preempt conflicting state laws. *Cf. Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 213 (2024) ("Dodd-Frank provided, as relevant here, that the National Bank Act preempts a state law 'only if' the state law (i) discriminates against national banks as compared to state banks; or (ii) 'prevents or significantly interferes with the exercise by the national bank of its powers'…").

In addition to being good public policy, the Board's interim final rule establishing Section 701.5 is therefore on very firm legal footing. As the Nine Circuit's recent decision in *King v. Navy Fed. Credit Union* confirmed, the NCUA Board has broad federal preemption authority under the Federal Credit Union Act, including having wide latitude to preempt entire classes of state laws such as those attempting to regulate credit union interchange fees or other non-interest charges and fees.

We further support the interim-final rule's broad definition of the term "charge" and also support the five weighing factors concerning the reasonableness of non-interest fees and charges based on those in the OCC's Section 7.4002 rule.

Under Section 701.5, Federal credit union are to consider the following five factors in addition to any other factors the credit union finds relevant:

(A) The cost incurred by the Federal credit union in providing the service;

(B) The deterrence of misuse by members of financial services;

(C) The enhancement of the competitive position of the Federal credit union in accordance with its business plan and marketing strategy;

(D) The use of third parties to provide or facilitate the provision of a product or service; and

(E) The maintenance of the safety and soundness of the Federal credit union.

In assessing the reasonableness of federal credit unions' non-interest fees and charges, we urge the Board to act consistently with OCC determinations under 12 C.F.R. § 7.4002. We note that not-for-profit credit unions typically charge lower fees than for-profit banks.

The Association strongly supports the NCUA Board's interim final rule on Preemption-Federal Credit Union Non-Interest Charges and Fees, although we urge the Board also to extend the rule's debit card and credit card interchange provisions to state-chartered, federally-insured credit unions as well as to federal credit unions.

Thank you for the opportunity to comment on this interim final rule. If you have any questions or desire further information, please do not hesitate to contact the Association at (508) 481-6755 or govaff-reg@ccua.org.

Sincerely,

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