



NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AG11

Preemption – Federal Credit Union Non-Interest Charges and Fees

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule; request for comment.

SUMMARY: The NCUA Board is adopting an interim final rule to clarify federal credit unions’ (FCUs) power to charge non-interest charges and fees includes the power to assess, collect, impose, levy, receive, reserve, take, or otherwise obtain non-interest charges and fees, including interchange fees from credit and debit card operations. Further, the interim final rule explains that FCUs may charge non-interest charges or fees, even when such charges and fees are set by or in consultation with third parties. NCUA invites public comments on this interim final rule.

DATES: The interim final rule is effective June 30, 2026. Comments on the interim final rule must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Comments may be submitted in one of the following ways. **(Please send comments by one method only):**

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. The docket number for this rule is NCUA–2026–1189. Follow the “Submit a comment” instructions. If you are reading this document on [federalregister.gov](https://www.federalregister.gov), you may use the green “SUBMIT A PUBLIC COMMENT” button beneath this rulemaking’s title to submit a comment to the [regulations.gov](https://www.regulations.gov) docket. A plain language summary of the rule is also available on the docket website.

- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mailing address.

Mailed and hand-delivered comments must be received by the close of the comment period.

Public inspection: Please follow the search instructions on <https://www.regulations.gov> to view the public comments. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received and will not be deleted, modified, or redacted. Comments may be submitted anonymously. If you are unable to access public comments on the internet, you may contact NCUA for alternative access by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: *Office of General Counsel:* Rachel Ackmann, Senior Attorney, at (703) 548-2601; John Brolin, Senior Attorney, at (703) 518-6438, or at 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Federal credit unions (FCUs) routinely rely on third parties for a range of products and services.¹ In particular, third parties are crucial to FCUs' provision of payment cards, which are vital and deeply rooted components of the American and global economy. These cards are among the most universally accepted and common methods of

¹ See, e.g., SL No. 07-01 *Evaluating Third Party Relationships* (Oct. 2007), available at <https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/evaluating-third-party-relationships-0>.

payment and are routinely used by millions of consumers to pay for products and services worldwide.²

Card networks are a crucial means of allowing FCUs to exercise their statutory authority to offer share accounts and lend. FCUs contract with card networks (*e.g.*, Visa and Mastercard) and others to facilitate payment card transactions. When acting as the issuers of credit and debit cards, they provide payment cards to members, assess cardholder risk, and offer services including fraud detection and prevention, dispute resolution, and rewards programs. When acting as acquirers they contract with merchants who accept payment cards and connect these merchants to the card network so that transactions are seamlessly processed and settled.

To compensate FCUs and other card network participants for their services, the participants are paid fees. These fees, which include interchange fees, compensate these parties for the costs of their participation, incentivize their provision of services and continued participation in the network, and enable enhancements, such as fraud detection and prevention, rewards programs, and technology upgrades. Interchange fees are an important aspect of the compensation structure that an FCU evaluates when deciding whether to participate in a card network.

An FCU could engage in bilateral negotiations with myriad merchants and other financial organizations involved in processing payment card transactions to establish the terms of this activity, including fees. Given the global nature of payment card systems, however, such a process would be complex, inefficient, ineffective, and costly. Moreover, most FCUs do not have the resources to engage in such activities. Accordingly, most FCUs agree to the interchange fees set by the card networks.

² See, *e.g.*, Berhan Bayeh et al., Federal Reserve *2025 Findings from the Diary of Consumer Payment Choice*, 5 (2025) (finding that, in 2024, credit and debit cards were used for approximately 65 percent of consumer payments).

In its 2024 spring session, the Illinois General Assembly passed the Illinois Interchange Fee Prohibition Act (IFPA) to ban FCU credit and debit card issuers and acquirers from receiving from or charging merchants any interchange fees on the portion of a transaction made up of state and local taxes and gratuities.³ The IFPA defines an interchange fee as “a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.”⁴ The enactment of the IFPA set off a chain of litigation about the scope of a state’s ability to regulate national banking entities, including FCUs.

A Federal district court in the Northern District of Illinois recently held that NCUA rules do not preempt the IFPA regarding FCU credit and debit card interchange fees.⁵ The court found that § 701.21(b) of NCUA’s rules, NCUA’s preemption rule related to loans and lines of credit, does “not preempt all state laws regulating credit cards but instead, identifies specific aspects of the relationship between credit unions and their members that states cannot regulate.”⁶ The court reasoned that since § 701.21(b) “refer[s] to state laws regulating fees charged to credit union members in connection with an initial line of credit” and that interchange fees are not directly tied to loan interest or repayment terms, then NCUA preemption is not implicated.

The Federal Credit Union Act (FCU Act) authorizes FCUs to offer credit and debit cards to members and provides NCUA authority to regulate FCUs’ charging of non-interest charges and fees related to these products, including interchange fees.⁷ Section

³ 815 ILCS 151/150-1 et seq.

⁴ Essentially, interchange fees are established for compensation to the issuer (often times, FCU) for its services related to credit and debit card payment transactions.

⁵ *Ill. Bankers Ass’n v. Raoul*, ___ F. Supp. 3d ___, 2026 WL 371196, at *16 (N.D. Ill. Feb. 10, 2026).

⁶ *Ill. Bankers Ass’n v. Raoul*, No. 24-7307, 2025 WL 409060, at *3 (N.D. Ill. Feb. 6, 2025). *See* 12 CFR 701.21(b).

⁷ *See* 12 U.S.C. 1757(1) (authorizing FCUs to make contracts); 12 U.S.C. 1757(5) (authorizing lines of credit); 12 U.S.C. 1757(6)(C) (permitting “share draft accounts authorized under section 1785(f)"); 12 U.S.C. 1785(f)(1) (“[A credit union] may permit the owners of such share draft accounts to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties.”); 12 U.S.C. 1757(17) (authorizing FCUs “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”).

701.21(b) does not explicitly state NCUA’s preemption authority related to such non-interest charges and fees.⁸ To address this gap, and to ensure § 701.21(b) more accurately states NCUA’s exclusive authority to regulate non-interest charges and fees, NCUA is issuing this interim final rule (IFR) to consolidate and clarify NCUA’s preemption rules. The IFR clarifies that FCUs have authority under the FCU Act to charge non-interest charges and fees, including interchange fees, and NCUA has exclusive authority over FCUs’ ability to charge non-interest charges and fees.

The Office of the Comptroller of the Currency (OCC) recently issued a similar IFR to clarify the longstanding powers under federal law for national banks to charge certain fees, regardless of whether those fees are set by the bank or a third party.⁹ The OCC simultaneously issued an interim final order to further confirm that federal law preempts the IFPA, expressly providing that national banks and federal savings associations are neither subject to nor required to comply with the IFPA. Following OCC’s IFR, the Federal district court in the Northern District of Illinois granted a permanent injunction preventing Illinois from enforcing the IFPA’s interchange fee limitation against (1) national banks; (2) banks chartered by states other than Illinois that are subject to the Riegle-Neal Interstate Banking and Branching Efficiency Act;¹⁰ (3) federal savings associations; and (4) payment card networks.¹¹ NCUA has consulted with

⁸ The FCU Act permits FCUs to make the decision to receive interchange fees set by payment networks, along with decisions about the payment card services to offer, the card networks with which to contract, and the terms of the agreements. Therefore, the FCU Act’s preemption of state laws affecting these terms and fees should not be read to change simply because a third party has a role in setting the non-interest charges and fees. Additionally, NCUA’s intent to preempt FCUs’ non-interest charges and fees is evident in § 701.21(b)(1). Section 701.21(b) sets forth a non-exhaustive list of areas where state law is specifically preempted. Included in the list are many income-related items, such as “rates of interest,” “late charges,” “closing costs, application, origination or other fees.” The list of preempted items is distinguishable from the much narrower list of issues that are not preempted. Non-preempted items are those traditionally left to the exclusive jurisdiction of states, including the area of insurance laws, security interests, collection costs and attorney fees, and curing defaults. Non-interest charges, whether contracted with third-parties or charged directly to the member, is closely related to the listed examples of preempted items in § 701.21(b)(1).

⁹ 91 FR 22989 (Apr. 29, 2026).

¹⁰ 12 U.S.C. 1831a(j)(1).

¹¹ *Ill. Bankers Ass’n v. Raoul*, ___ F. Supp. 3d ___, 2026 WL 1534350, at *12 (N.D. Ill. Jun. 1, 2026).

OCC staff in issuing this IFR and is adopting language that is substantially similar to the language adopted by the OCC.

B. Legal Authority

The FCU Act provides FCUs the power “to make contracts,”¹² “to make loans . . . and extend lines of credit to its members,”¹³ and “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.”¹⁴ A credit card constitutes a form of a line of credit and falls squarely within the scope of FCU lending authority under the FCU Act and NCUA regulations. Additionally, NCUA has long maintained a regulation governing the circumstances under which the FCU Act and NCUA regulations preempt state laws that would otherwise apply to FCU lending activities.¹⁵ This provision, codified at 12 CFR 701.21(b), sets forth a list of areas that are specifically preempted under FCU lending authority.¹⁶ Included in § 701.21(b) are state laws affecting rates of interest, amount of finance charge, use of and limits on variable rate credit, maturity limits and other terms of repayment, and various other conditions. The list is illustrative only and is not intended to be exhaustive.¹⁷

The FCU Act also provides FCUs authority to receive shares, share certificates, and share draft accounts¹⁸ and also provides authority for FCUs “to make contracts”¹⁹ and “exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.”²⁰ Debit cards, which

¹² 12 U.S.C. 1757(1).

¹³ See 12 U.S.C. 1757(5) (authorizing lines of credit); see also 12 CFR 701.21(a) (“[T]he Federal Credit Union Act (12 U.S.C. 1757(5)) authoriz[es] Federal credit unions to . . . issue lines of credit (including credit cards) to members.”).

¹⁴ 12 U.S.C. 1757(17). As relevant here, an activity is authorized under an FCU’s incidental powers if it is “convenient or useful in carrying out the mission or business of credit unions consistent with the Federal Credit Union Act[.]” 12 CFR 721.2(a).

¹⁵ See, e.g., 49 FR 30683 (Aug. 1, 1984).

¹⁶ 12 CFR 701.21(b).

¹⁷ 49 FR 30683 (Aug. 1, 1984).

¹⁸ 12 U.S.C. 1757(6)(C) (permitting “share draft accounts authorized under section 1785(f)”).

¹⁹ 12 U.S.C. 1757(1).

²⁰ 12 U.S.C. 1757(17).

permit a member to electronically withdraw funds from a share account, are permissible under these authorities and have long been recognized as such by NCUA.²¹ Consistent with the preemption principles applicable to lending, NCUA has also issued a regulation governing the applicability of state laws to FCU share, share certificate, and share draft accounts. This provision, codified in 12 CFR 701.35, states that FCUs may determine the types of fees or charges and other matters affecting the opening, maintaining and closing of share, share draft or share certificate accounts and that state laws purporting to regulate such matters do not apply to FCUs.²²

Accordingly, FCUs have broad powers to engage in activities that are part of, or incidental to the business for which it is incorporated, including issuing debit cards and credit cards (payment cards) and processing payments. Federal courts have also recognized that national banks' federally authorized power to provide banking services includes the authority to charge for those services.²³ This reasoning applies equally to FCUs, which similarly possess the authority to impose non-interest charges and fees associated with credit card and debit card transactions.²⁴ FCUs are also explicitly permitted to derive income from incidental activities.²⁵ Additionally,

²¹ Debit cards are “convenient and useful” because they permit members of FCUs to participate in a marketplace in which the use of such cards dominates, as are the fees which support those activities. *See* 12 CFR 721.3(k) (expressly authorizing “debit cards” as an incidental power); *see also* 12 U.S.C. 1757(6)(C) (permitting “share draft accounts authorized under section 1785(f)”)”; 12 U.S.C. 1785(f)(1) (“[A credit union] may permit the owners of such share draft accounts to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties.”); 12 CFR 721.3(d) (authorizing “electronic fund transfers”).

²² 12 CFR 701.35. *See King v. Navy FCU*, 148 F.4th 628, 634 (9th Cir. 2025) (holding that under § 701.35 “all state laws that regulate account fees—general, specific, or otherwise— have no application to federal credit unions”).

²³ *Ill. Bankers Ass’n v. Raoul*, 760 F. Supp. 3d 636, 655–56 (N.D. Ill. 2024) (citing *Monroe Retail, Inc. v. RBS Citizens, N.A.*, 589 F.3d 274, 284 (6th Cir. 2009) and *City & Cnty. of San Francisco*, 309 F.3d 551 (9th Cir. 2002)).

²⁴ Even if the receipt of fees related to credit card and debit card transactions is not considered directly authorized under the FCU Act, it is clearly authorized under the FCU Act’s incidental powers. The incidental powers granted to FCUs are not identical, but similar to those granted to national banks. *Compare* 12 U.S.C. 1757(17) (permitting FCUs “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”), *with* 12 U.S.C. 24 (Seventh) (permitting national banks to exercise “all such incidental powers as shall be necessary to carry on the business of banking”).

²⁵ 12 CFR 721.6 (“[Credit unions] may earn income for those activities determined to be incidental to [their] business.”). *See*, OGC Legal Opinion 03-1020 (Jan. 2004), available at <https://ncua.gov/regulation-supervision/legal-opinions/2004/preemption-fee-limitations-debt-cancellation-products> (finding that state

NCUA has previously recognized that FCUs may solicit members that are retail merchants to accept merchant card processing services offered through a third party in exchange for compensation from the third party.²⁶

An FCU's decision to contract with a card network and receive compensation through interchange fees is directly and reasonably related to its authority to issue payment cards to members. Accordingly, the FCU Act affords FCUs broad authority to issue credit and debit cards and to charge non-interest charges and fees associated with those products.

Finally, NCUA has broad power to issue regulations governing FCUs and is issuing this IFR pursuant to its general regulatory authority under the FCU Act. Under the FCU Act, NCUA is the chartering and supervisory authority for FCUs.²⁷ Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.²⁸

II. Interim Final Rule

Although NCUA believes that its preemption rules already allow FCUs to impose fees that are set by a third party without state interference, NCUA is adopting this IFR to clarify that the FCU Act provides authority for FCUs to charge, whether directly or indirectly, non-interest charges and fees, including interchange fees, in connection with offering permissible activities or services and that state laws regulating such activities are not applicable to FCUs. NCUA is satisfied that, in stating its position, it is exercising the rulemaking authority granted by Congress to preempt state laws regarding share

law limiting charges related to debt cancellation or suspension agreements, authorized under NCUA's incidental power rules, are preempted under § 701.21(b)). *See also*, OGC Legal Opinion 07-0743 (Aug. 2007), available at <https://ncua.gov/regulation-supervision/legal-opinions/2007/preemption-georgia-law-regarding-check-cashing-fees> (finding that FCUs are not subject to a state statute prohibiting financial institutions from charging fees for cashing checks for non-account-holders).

²⁶ *See*, OGC Legal Opinion 04-0716 (Feb. 2005), available at <https://ncua.gov/regulation-supervision/legal-opinions/2005/card-processing-services-members> (finding that FCUs may solicit members that are retail merchants to accept merchant card processing services offered through a third party in exchange for compensation from the third party).

²⁷ 12 U.S.C. 1752–1775.

²⁸ 12 U.S.C. 1766(a).

accounts, loans, and lines of credit made by FCUs, and any incidental powers related to such authorities. The IFR is intended to preempt any state law affecting the non-interest charges and fees related to payment card services, including the IFPA. The Board believes the IFR resolves any uncertainty about the scope of the FCU Act, NCUA's preemption rules, and FCUs' obligation to comply with the IFPA.

To clarify its position, NCUA is adding a new § 701.5 on preemption to part 701. Section 701.5 consolidates NCUA's preemption rules in §§ 701.21(b) and (g)(6) and 701.35(c) and (d) in one section and adds a new provision explicitly stating that FCUs may charge non-interest charges and fees and that state law limiting those charges are preempted. Each section of § 701.5 is discussed below.

First, § 701.5 includes introductory language to set forth NCUA's intent concerning preemption of state laws. This language provides that NCUA applies preemption principles derived from the United States Constitution, as interpreted through judicial precedent, when determining whether state laws apply.

Section 701.5(a) governs preemption related to share, share draft, and share certificate accounts and is identical to NCUA's long-standing preemption provisions in § 701.35. To reflect that consolidation, the IFR moves paragraphs (c) and (d) from § 701.35 to § 701.5(a), and removes them from § 701.35.

Section 701.5(b) governs preemption related to loans to members and lines of credit to members and is substantially identical to § 701.21(b) and (g)(6), related to due-on-sales clauses. The only amendment to current § 701.21(b) is the removal of the words "to members" in § 701.21(b)(1). The removal of the words "to members" is intended to clarify that the authority to regulate the rates, terms of repayment and other conditions of FCUs loans and lines of credit (including credit cards) is not limited to charges directly to members. As reflected in the new definition of "charge" in § 701.5(c)(1), one of the purposes of § 701.5 is to clearly articulate an FCU's power to receive non-interest

charges and fees for providing products or services, regardless of whether the charge or fee comes directly from the member receiving the product or service or via a third party that may not have a “member” relationship with the FCU. To reflect that § 701.21(b) is moved to § 701.5(b), the IFR reserves § 701.21(b).

Section 701.5(b) also includes existing authority in § 701.21(g)(6) related to due-on-sales clauses. The IFR makes no amendments to the historic language in § 701.21(g)(6) and has only moved the provisions to § 701.5(b)(5) to consolidate NCUA’s preemption authority. Current § 701.21(g)(6) is amended to remove the existing language and replace it with a cross reference to § 701.5(b)(5).

Section 701.5(c) is new language that is substantially similar to the OCC’s section 7.4002 and is intended to state explicitly that FCUs have authority to charge non-interest charges and fees related to permissible activities.

Defining “Charge”

Some of the ambiguity about the scope of NCUA’s current preemption rules appears to be related to whether an FCU’s authority regarding receiving fees for its services must be directly between the FCU and its member. Accordingly, the IFR is adding a definition of “charge” to § 701.5(c)(1) and explicitly stating an FCU’s authority to impose non-interest charges and fees. This definition clarifies that charge means to assess, collect, impose, levy, receive, reserve, take, or otherwise obtain, including through a fee sharing or similar economic relationship. This definition also clarifies that FCUs may take such actions directly or through intermediaries, partners, payment networks, interchanges, or other third parties. These amendments are intended to encompass various means by which a FCU may obtain non-interest charges for providing a product or service, regardless of which entity sets the amount of the non-interest charge or fee or exactly how the FCU obtains the charge or fee.

Paragraph (c)(2) states that an FCU may charge non-interest charges and fees, including share account service charges and interchange fees from credit and debit card operations. Section 701.5(a) (current § 701.35) also permits FCUs to charge non-interest charges and fees related to share account service charges, but NCUA is including the reference in paragraph (c)(2) as well for clarity. The IFR also explicitly includes interchange fees as a nonexclusive example of the non-interest charges and fees covered to provide additional clarity. NCUA continues to emphasize, however, that the inclusion of this example does not imply the exclusion of others.

Paragraph (c)(3) describes the factors an FCU considers when making a business decision to establish non-interest charges and fees in accordance with safe and sound banking principles.²⁹ The IFR provides that each FCU should make business decisions regarding non-interest charges and fees on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding, or discussion with other financial institutions or their officers.

This IFR also makes explicit that an FCU's choice regarding charging non-interest charges and fees, including whether to enter into business relationships or lines of business or charge fees set by or in consultation with third parties, are also business decisions to be made by each FCU, in its discretion, according to sound banking judgment and safe and sound banking principles. The 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.

²⁹ NCUA construes § 701.5(c)(3) to mean that an FCU that considers at least these five factors in setting its non-interest charges and fees has satisfied the requirement that the charges and fees be set according to safe and sound banking principles and, therefore, faces no supervisory impediment to exercising the authority to set charges and fees that the regulation describes.

The IFR also provides factors for determining whether an FCU establishes non-interest charges and fees in accordance with safe and sound banking principles. These factors include, among others:

- (A) The cost incurred by the FCU in providing the service;
- (B) The deterrence of misuse by members of financial services;
- (C) The enhancement of the competitive position of the FCU 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 FCU.

These factors are identical to the factors included in § 7.4002.

The OCC's § 7.4002 provides that charges and fees that are "interest" within the meaning of 12 U.S.C. 85 are governed by § 7.4001. NCUA is not adopting a similar provision. NCUA notes that while 12 U.S.C. 1785(g) is similar to 12 U.S.C. 85, it has historically been interpreted to accord "most favored lender" status to a state chartered federally insured credit union.³⁰ Therefore, it is not relevant to FCU's authority to charge non-interest charges and fees.

The OCC's section 7.4002 also provides that fees related to fiduciary activities are not covered under § 7.4002. The NCUA notes that NCUA fiduciary authority is generally limited, but an FCU is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under certain written trust instrument or custodial agreement created or organized in the United States and forming part of a tax-advantaged savings plan.³¹ Given the limited applicability of NCUA's fiduciary authorities, § 701.5 does not include a parallel provision as § 7.4002(e), but the NCUA

³⁰ See NCUA Interpretive Ruling and Policy Statement (IRPS) 81-3. 46 FR 24153 (Apr. 30, 1981), available at <https://ncua.gov/files/publications/irps/IRPS1981-03.pdf>.

³¹ 12 CFR pt. 724.

confirms that FCUs may continue to receive reasonable compensation for acting as trustee or custodian, as provided under § 724.1.

III. Regulatory Procedures

A. Administrative Procedure Act

NCUA is issuing this IFR without prior notice and the opportunity for public comment and the delayed effective date that are ordinarily prescribed by the Administrative Procedure Act (APA).³² Pursuant to the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”³³

NCUA has found that prior notice and public comment are impracticable for this IFR due to the abbreviated timeline between the February 2026 district court case and the effective date of the IFPA.³⁴ As the court’s analysis in the opinion was based, in part, on a perceived lack of clarity in § 701.21(b) regarding non-interest charges and fees charged to third parties, absent this IFR, there likely will be significant uncertainty as to whether FCUs are required to comply with the IFPA.

As explained below, the IFPA creates a complex and potentially unworkable standard, and it imposes significant potential liability for non-compliance. Therefore, financial institutions, including FCUs, may take drastic actions to avoid these risks, up to

³² 5 U.S.C. 553.

³³ 5 U.S.C. 553(b)(B).

³⁴ 815 Ill. Comp. Stat. 151/150. NCUA notes that immediately prior to publication in the *Federal Register*, the Illinois legislature voted to delay the effective date from July 1, 2026, to July 1, 2027. At drafting, the delay had not been signed into law, but the NCUA understands that the delay is likely to be signed. NCUA believes good cause exists even if the delay becomes effective. First, the Federal district court in the Northern District of Illinois has already held the OCC’s interim final rule preempts the IFPA and granted a permanent injunction. NCUA must act immediately to restore parity between FCUs and national banks. Additionally, NCUA seeks to avoid unnecessarily prolonging the litigation by delaying a ruling as to FCUs until a notice of proposed rulemaking is issued and finalized. The rulemaking process would likely take several months, during which time FCUs would have substantial uncertainty regarding compliance with the IFPA and any appeal to the Seventh Circuit may be remanded back to the district court pending NCUA action.

and including declining payment card transactions subject to the IFPA.³⁵ Given the complexity of the payment card systems and the modern economy, these effects may not be limited to Illinois.

For FCUs that choose to continue to support these payment card transactions, NCUA understands that these card issuers will need to inform customers, in advance of the IFPA's July 1 effective date, that the terms and conditions of their payment cards may soon change.³⁶ NCUA also understands that FCUs will need to inform merchants about possible changes, including updates to how they process payments, the need for new software or hardware, or that some transactions may be declined.³⁷ These communications, as well as the potential for FCUs to stop supporting covered payment card transactions, may generate significant customer and merchant confusion about whether, or how, payment cards will work after the IFPA's effective date. These potential actions may cause doubt about continued access to basic lending and deposit services, which could lead to economic harm and disruption and pose significant risks to the safety and soundness of FCUs or the nation's banking system as a whole.

In light of these potential consequences, NCUA, for good cause, finds that advance notice and comment is impracticable and is issuing this IFR. This IFR will provide regulatory clarity that NCUA preemption rules include non-interest charges and fees and, therefore, that the IFPA is preempted. The IFR is intended to help prevent the imminent negative effects of the IFPA's application to FCUs. Given the importance of this issue, however, NCUA invites public comment on all aspects of this IFR and intends to issue a

³⁵ *E.g.*, Letter from H. Carney, Exec. Vice President, Fin. Inst. Pol'y & Regul. Affs., Am. Bankers Ass'n, to W. Giles, Principal Deputy Chief Couns., OCC 3 (Mar. 30, 2026) ("ABA Letter") ("We are also hearing that some issuing financial institutions—particularly smaller and mid-sized banks—are concluding that the IFPA's risks and costs are too great, and have indicated they may simply cease issuing credit or debit cards to their customers, while also exploring options for declining card transactions in Illinois.")

³⁶ *Id.*

³⁷ *Id.*

final rule as soon as possible after the close of the comment period and sufficient time to consider and address comments.

Background

In the modern economy, millions of customers and merchants worldwide rely on payment cards every day, including an estimated 1.3 million merchants in Illinois.³⁸ As discussed above, FCUs serve an essential function in the U.S. payment card systems.³⁹ A significant disruption of these payment networks could cause substantial economic harm.

On June 7, 2024, Illinois enacted the IFPA, which, among other things, prohibits card issuer banks, card networks, acquirer banks, and other participants from receiving or charging a merchant an interchange fee on the tax or gratuity amount of a payment card transaction.⁴⁰ This prohibition, known as the interchange fee prohibition, applies if the merchant informs the acquirer of the tax or gratuity amount as part of the authorization or settlement of the transaction (automatic process).⁴¹ Alternatively, the merchant has 180 days to transmit the relevant documentation (*e.g.*, paper receipts) to the acquirer bank, after which the issuer has 30 days to credit the merchant for any interchange fee charged on the tax or gratuity amount (manual process).⁴² Violations of the interchange fee prohibition carry a civil penalty of \$1,000 per transaction.⁴³

In August 2024, the Illinois Credit Union League, Illinois Bankers Association, America's Credit Unions, and American Bankers Association (collectively, IBA) sought

³⁸ See U.S. Small Bus. Admin., *2024 Small Business Profile: Illinois* (reporting 1.4 million small businesses, representing 99.6% of all Illinois businesses); Clearly Payments, *How Many Businesses in the US and Canada Accept Credit Cards in 2025* (2025) (estimating that approximately 94 percent of U.S. merchants accept payment cards).

³⁹ Any payment cardholders could make purchases subject to the IFPA, such as when traveling to Illinois or shopping online.

⁴⁰ 815 Ill. Comp. Stat. 151/150-10(a). The IFPA defines an interchange fee as “a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.” *Id.* at 151/150-5.

⁴¹ *Id.* at 151/150-10(a).

⁴² *Id.* at 151/150-10(b).

⁴³ *Id.* at 151/150-15(a).

to enjoin the IFPA.⁴⁴ In February 2026, the district court found that the interchange fee prohibition was not preempted by federal law.⁴⁵

IFPA's Application to FCUs

NCUA understands that current payment card infrastructure does not support the IFPA's automatic process and cannot be updated by the IFPA's effective date.⁴⁶ To implement this process would appear to require, at a minimum: (1) the card networks to develop new technological and standards changes in coordination with relevant U.S. and international standards bodies; (2) acquirer and issuer FCUs to implement these changes; and (3) merchants to develop and adopt systems to transmit the requisite information at the point of sale.⁴⁷ Such changes likely would entail lengthy and careful planning because implementation glitches or failures could disrupt global payment card systems or create opportunities for fraud or misuse.⁴⁸

As an alternative, certain merchants may invoke IFPA's manual process by submitting tax documentation. It is unclear, however, how this process could be implemented. Acquirer FCUs may not be able to identify the issuer in a given transaction.⁴⁹ Even if identification were possible, there is generally no mechanism for

⁴⁴ Compl. for Decl. & Inj. Relief, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 15, 2024); Pl.'s Mot. for Prelim. Inj., *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024).

⁴⁵ *Ill. Bankers Ass'n v. Raoul*, ___ F. Supp. 3d ___, 2026 WL 371196, at *16 (N.D. Ill. Feb. 10, 2026). On June 1, 2026, following OCC's interim final rule, the court granted a permanent injunction against the IFPA for national banks. *Ill. Bankers Ass'n v. Raoul*, ___ F. Supp. 3d ___, 2026 WL 1534350, at *12 (N.D. Ill. Jun. 1, 2026).

⁴⁶ *See id.* at *6 ("It is an open question whether the transaction process could adapt to the impact of the IFPA in time."); *see also* ABA Letter, *supra*, at 3.

⁴⁷ Declaration of Chiro Aikat ¶¶ 33-40, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) (Decl. C. Aikat); Declaration of Dierdre P. Cohen ¶¶ 6-7, 20-26, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) ("Decl. D. Cohen").

⁴⁸ Decl. D. Cohen, *supra*, ¶ 26.

⁴⁹ *See* Decl. C. Aikat, *supra*, ¶ 43 ("The statute's text seems to contemplate that the information that a merchant possesses, such as what it can identify from receipt or ledger, specifying the amount of tax and gratuity, will be sufficient for the acquiring bank to determine which issuing bank was involved in the transaction. In nearly all circumstances, however, that will not be true. This is because modern payment card transaction receipts include only a truncated payment card number, specifically the last four digits of the 16-digit payment card number, to minimize the risk of payment card number theft (and as specifically permitted by applicable banking law). But the issuer of a payment card is not identifiable from the last four digits. Rather, it is the first six digits of a payment card number that identify the issuing bank.").

direct communication between these institutions.⁵⁰ Furthermore, based on the broad definition of tax documentation, which includes “invoices, receipts, journals, ledgers, and tax returns,” an issuer institution may not be able to reliably identify the tax and gratuity amount for each transaction or calculate the corresponding interchange fee credit.⁵¹ Even if each of these hurdles could be overcome, building new systems and hiring staff to facilitate this highly manual process would require time to develop and test.⁵²

Despite the complex and potentially unworkable nature of the interchange fee prohibition, the IFPA exposes FCUs to penalties of \$1,000 per transaction for failing to comply with its provisions.⁵³ Given the upwards of 6.5 billion payment card transactions that occur yearly in Illinois, participants in the payment card could be subject to as much as \$6.5 trillion in liability per year for non-compliance with IFPA.⁵⁴ The potential liability could pose significant risk to an FCUs’ safety and soundness as well as the nation’s banking system.

In light of the above, the card networks and FCUs may seek to mitigate their liability, for example, by advising merchants in Illinois to not accept payment cards for tax and gratuity, attempting to decline certain classes of transactions (e.g., purchases of gasoline, where excise tax is imbedded in the product’s price),⁵⁵ or denying payment card transactions originating in Illinois or elsewhere.⁵⁶ Some smaller FCUs may even be

⁵⁰ See Declaration of Raju Sitaula ¶ 20, *Ill. Bankers Ass’n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) (“Decl. R. Sitaula”).

⁵¹ 815 ILCS 151/150-5.

⁵² Decl. R. Sitaula, *supra*, ¶ 26.

⁵³ 815 ILCS 151/150-15(a).

⁵⁴ See Federal Reserve, *Federal Reserve Payments Study, 2024 Accessible Version of Trends in Noncash Payments* (March 6, 2025); U.S. Bureau of Economic Analysis (BEA), *SQGDP1 State Quarterly Gross Domestic Product Summary* (accessed Thursday, April 9, 2026). The number of payment card transactions in Illinois was estimated by aggregating the estimated number of 2022 card transactions in the United States as reported in the Federal Reserve Payment Study’s 2024 Accessible Version of Trends in Noncash Payments and multiplying by 3.9 percent, which is Illinois’s share of the current United States dollar Gross Domestic Product in 2025 according to the BEA. Note that each party in a single transaction seemingly could be subject to the \$1,000 fine, so the total fines attributable to one transaction could be more than \$1,000.

⁵⁵ Since the excise tax is included in the price of gas in Illinois and varies by grade of fuel, it may be impossible for merchants to transmit only the cost of the fuel and not the excise tax.

⁵⁶ See ABA Letter, *supra*. Currently, the data provided to the payment card network as a part of an electronic transaction includes the physical location of the merchant. However, that data may reflect the

forced to stop offering payment cards altogether.⁵⁷ Some have stated that compliance with the IFPA could lead to “potentially business-ending consequences” for some participants.⁵⁸

NCUA understands that FCUs will need to communicate with members and other stakeholders about the effects of the IFPA, including potential changes to the functionality of payment cards.⁵⁹ As noted above, these communications may generate significant confusion and doubt about access to basic lending and deposit services, especially when combined with potential widespread and unpredictable declines of payment card transactions. This could lead to economic harm and disruption and pose significant risks to the safety and soundness of FCUs and the nation’s banking system as a whole.

To avoid these potentially grave consequences, NCUA is acting by IFR. For the same reasons, the Board is not providing the usual 60-day comment period before issuing this IFR.⁶⁰

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good

merchant’s headquarters or other location and not the location where the transaction occurred. Further, for online purchases, determining where the purchase took place is even trickier and that information is also not currently conveyed through the payment card networks. Decl. D. Cohen, *supra*, ¶ 25. As a result, blocking every transaction subject to the IFPA, and only those transactions, may be technically difficult to achieve. Such efforts may result in transactions that are not subject to IFPA being blocked, *e.g.*, a transaction that occurs in Indiana, but where a merchant’s payment card terminal reflects its headquarters location in Illinois.

⁵⁷ Declaration of Rick Francois ¶ 15, *Ill. Bankers Ass’n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) (“[The] manual reimbursement solution as currently proposed under the legislation creates an unsustainable burden on debit card issuers of our size. If the debit card product becomes unprofitable for banks of our size, they will be forced to consider no longer offering these cards to their consumers. Not offering the debit card product would be harmful not only to banks of our size, but to our consumer clients.”).

⁵⁸ *Ill. Bankers Ass’n v. Raoul*, ___ F. Supp. 3d ___, 2026 WL 371196, at *6 (N.D. Ill. Feb. 10, 2026).

⁵⁹ ABA Letter, *supra*, at 3.

⁶⁰ See NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2 and IRPS 15-1. 80 FR 57512 (Sept. 24, 2015), available at <https://www.ncua.gov/files/publications/irps/IRPS1987-2.pdf>.

cause.⁶¹ The NCUA finds there is good cause to issue the IFR without a 30-day delayed effective date for the same reasons set forth above regarding advance notice and opportunity for comment.

B. Executive Orders 12866, 13563, and 14192

Pursuant to Executive Order 12866 (“Regulatory Planning and Review”), as amended by Executive Order 14215, a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Information and Regulatory Affairs (OIRA), within the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order.⁶² Executive Order 13563 (“Improving Regulation and Regulatory Review”) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866.⁶³ This IFR was drafted and reviewed in accordance with Executive Order 12866 and Executive Order 13563. OIRA has determined that this IFR is an economically significant regulatory action as defined under section 3(f)(1) of Executive Order 12866.

As discussed above, the IFPA would impose substantial costs on FCUs. This IFR clarifies the scope of FCUs’ power to charge non-interest charges and fees. The IFPA, however, prevents or significantly interferes with this power. Therefore, this IFR, the effect of which is to preempt the IFPA, will result in significant cost savings.

Executive Order 14192 (“Unleashing Prosperity Through Deregulation”) requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least

⁶¹ 5 U.S.C. 553(d).

⁶² 58 FR 51735 (Oct. 4, 1993).

⁶³ 76 FR 3821 (Jan. 21, 2011).

10 prior regulations.⁶⁴ This IFR is expected to be a deregulatory action under Executive Order 14192, because it may provide legal clarity for affected FCUs.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act⁶⁵ generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the agency makes such a certification, it shall publish the certification at the time of publication of either the proposed rule or the final rule, along with a statement providing the factual basis for such certification.⁶⁶ For purposes of this analysis, NCUA considers small credit unions to be those having under \$100 million in assets.⁶⁷

As discussed previously, consistent with the APA, NCUA has determined for good cause that general notice and opportunity for public comment is unnecessary, and thus, NCUA is not issuing a notice of proposed rulemaking.⁶⁸ Rules that are exempt from notice and comment procedures are also exempt from the Regulatory Flexibility Act requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly, NCUA has concluded that the Regulatory Flexibility Act's requirements relating to initial and final regulatory flexibility analysis do not apply.

However, the NCUA evaluated whether the IFR will have a significant economic impact on a substantial number of small entities. At year-end 2025, there were 2,514 small federally insured credit unions. Of these, 1,723 are FCUs (directly supervised and

⁶⁴ 90 FR 9065 (Feb. 6, 2025).

⁶⁵ 5 U.S.C.601 *et seq.*

⁶⁶ 5 U.S.C. 605(b).

⁶⁷ 80 FR 57512 (Sept. 24, 2015).

⁶⁸ 5 U.S.C. 553.

insured) or 68.5 percent. Of these, 46.7 percent had nonzero credit card balances at year-end 2025 and roughly 90 percent offered ATM cards.

However, the IFR imposes no new mandates, and thus no direct costs, on affected FCUs. Therefore, the NCUA believes that the IFR will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) generally provides that an agency may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The PRA applies to rulemaking in which an agency creates a new or amends existing information collection requirements. For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA has reviewed this IFR and determined that it does not create any new or revise any existing collections of information. Accordingly, no PRA submissions to OMB will be made with respect to this IFR.

E. Executive Order 13132 on Federalism

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.⁶⁹ NCUA, an agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This IFR preempts state laws and therefore constitutes a policy that has a federalism implication. In formulating and implementing this IFR NCUA was guided by the fundamental federalism principles and special requirements for preemption included in Executive Order 13132. Specifically, Executive Order 13132 provides agencies shall construe, in regulations and otherwise, a federal statute to preempt state law only where the statute contains an express preemption provision or

⁶⁹ 64 FR 43255 (Aug. 4, 1999).

there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. NCUA is satisfied that, in stating its position on preemption of state law in this IFR, it is exercising the specific and general rulemaking authority granted by Congress to preempt state laws regarding the share accounts, loans and lines of credit made by FCUs, and any incidental powers related to such authorities.

NCUA believes that this IFR preempts state law only as necessary to achieve the objectives of the FCU Act and to ensure FCUs are permitted to charge non-interest charges and fees for permissible restriction without regard to state restrictions. Executive Order 13132 also requires that when an agency acts through rulemaking to preempt state law, as is occurring here, the agency shall provide all affected state and local officials notice and an opportunity for appropriate participation. Due to timing considerations as discussed above, it was not practicable to consult with state authorities.

F. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this IFR will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.⁷⁰ The IFR clarifies that FCUs' power to charge non-interest charges and fees includes the power to assess, collect, impose, levy, receive, reserve, take, or otherwise obtain non-interest charges and fees, including interchange fees from credit and debit card operations. The IFR does not directly affect family well-being and any effect on family well-being, including financial well-being, is expected to be indirect, at most.

G. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA) generally provides for

⁷⁰ Public Law 105-277, 112 Stat. 2681 (1998).

congressional review of agency rules.⁷¹ NCUA must submit a report to Congress and the Comptroller General when it issues a final rule, as defined by the CRA.⁷² An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a “major rule.” The Office of Information and Regulatory Affairs has determined that this IFR is a major rule as defined by the CRA.⁷³ For the same reasons noted above, however, NCUA is adopting the IFR without the delayed effective date generally prescribed under the CRA. The delayed effective date required by the CRA does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.⁷⁴ In light of current market uncertainty, NCUA believes that delaying the effective date of the rule would be contrary to the public interest for the same reasons discussed above. NCUA will file appropriate reports with Congress and the Comptroller General so this rule may be reviewed.

H. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (commonly known as *regulations.gov*). (44 U.S.C. 3501 note). While NCUA is not issuing a notice of proposed rulemaking, a summary of this IFR can be found below:

NCUA is adopting an IFR to clarify that FCUs’ power to charge non-interest charges and fees includes the power to assess, collect, impose, levy, receive,

⁷¹ 5 U.S.C. 801-808.

⁷² 5 U.S.C. 804(3).

⁷³ 5 U.S.C. 804(2).

⁷⁴ 5 U.S.C. 808.

reserve, take, or otherwise obtain non-interest charges and fees, including interchange fees from credit and debit card operations. Further, the IFR explains that FCUs may charge non-interest charges or fees, even when such charges and fees are set by or in consultation with third parties.

The IFR and the summary can be found at <https://www.regulations.gov>.

List of Subjects in 12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons set forth in the preamble, the NCUA Board amends 12 CFR part 701 as follows:

PART 701 – ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 12 U.S.C. 4311-4312.

2. Add § 701.5 to read as follows:

§ 701.5 Preemption.

This section states the NCUA Board's intent concerning preemption of state laws. The NCUA applies preemption principles derived from the United States Constitution, as interpreted through judicial precedent, when determining whether state laws apply.

(a) *Share, share draft or share certificate accounts.* A Federal credit union may, consistent with this section, parts 707 and 740 of this subchapter, other Federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

(b) *Loans to members and lines of credit to members—(1) Preemption of state laws.* This paragraph (b) is promulgated pursuant to the NCUA Board's exclusive authority as set forth in section 107(5) of the Federal Credit Union Act (12 U.S.C 1757(5)) to regulate the rates, terms of repayment and other conditions of Federal credit union loans and lines of credit (including credit cards). This exercise of the Board's authority preempts any state law purporting to limit or affect:

(i)(A) Rates of interest and amounts of finance charges, including:

(1) The frequency or the increments by which a variable interest rate may be changed;

(2) The index to which a variable interest rate may be tied;

(3) The manner or timing of notifying the borrower of a change in interest rate;

(4) The authority to increase the interest rate on an existing balance;

(B) Late charges; and

(C) Closing costs, application, origination, or other fees;

(ii) Terms of repayment, including:

(A) The maturity of loans and lines of credit;

(B) The amount, uniformity, and frequency of payments, including the accrual of unpaid interest if payments are insufficient to pay all interest due;

(C) Balloon payments; and

(D) Prepayment limits; and

(iii) Conditions related to:

(A) The amount of the loan or line of credit;

(B) The purpose of the loan or line of credit;

(C) The type or amount of security and the relation of the value of the security to the amount of the loan or line of credit;

(D) Eligible borrowers; and

(E) The imposition and enforcement of liens on the shares of borrowers and accommodation parties.

(2) *Matters not preempted.* Except as provided by paragraph (b)(1) of this section, it is not the Board's intent to preempt state laws that do not affect rates, terms of repayment and other conditions described above concerning loans and lines of credit, for example:

(i) Insurance laws;

(ii) Laws related to transfer of and security interests in real and personal property (see, however, paragraph (b)(5) of this section) concerning the use and exercise of due-on-sale clauses); and

(iii) Conditions related to:

(A) Collection costs and attorneys' fees;

(B) Requirements that consumer lending documents be in "plain language;" and

(C) The circumstances in which a borrower may be declared in default and may cure default.

(3) *Other Federal law.* Except as provided by paragraph (b)(1) of this section, it is not the Board's intent to preempt state laws affecting aspects of credit transactions that are primarily regulated by Federal law other than the Federal Credit Union Act, for

example, state laws concerning credit cost disclosure requirements, credit discrimination, credit reporting practices, unfair credit practices, and debt collection practices. Applicability of state law in these instances should be determined pursuant to the preemption standards of the relevant Federal law and regulations.

(4) *Examination and enforcement.* Except as otherwise agreed by the NCUA Board, the Board retains exclusive examination and administrative enforcement jurisdiction over Federal credit unions. Violations of Federal or applicable state laws related to the lending activities of a Federal credit union should be referred to the appropriate NCUA regional office.

(5) *Due-on-sale clauses.* (i) Except as otherwise provided herein, the exercise of a due-on-sale clause by a Federal credit union is governed exclusively by section 341 of Public Law 97-320 and by any regulations issued by the Federal Home Loan Bank Board implementing section 341.

(ii) In the case of a contract involving a long-term (greater than fifteen years), fixed rate first mortgage loan which was made or assumed, including a transfer of the lien property subject to the loan, during the period beginning on the date a State adopted a constitutional provision or statute prohibiting the exercise of due-on-sale clauses, or the date on which the highest court of such state has rendered a decision (or if the highest court has not so decided, the date on which the next highest court has rendered a decision resulting in a final judgment if such decision applies statewide) prohibiting such exercise, and ending on October 15, 1982, a Federal credit union may exercise a due-on-sale clause in the case of a transfer which occurs on or after November 18, 1982, unless exercise of the due-on-sale clause would be based on any of the following:

(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(D) The granting of a leasehold interest of 3 years or less not containing an option to purchase;

(E) A transfer to a relative resulting from the death of a borrower;

(F) A transfer where the spouse or children of the borrower become an owner of the property;

(G) A transfer resulting from a decree of a dissolution of marriage, a legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property;

(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property;
or

(I) Any other transfer or disposition described in regulations promulgated by the Federal Home Loan Bank Board.

(c) *Non-interest charges and fees*—(1) *Definition*. For the purposes of this paragraph (c), *charge* means to directly or indirectly, through intermediaries, partners, payment networks, interchanges, or other third parties, assess, collect, impose, levy, receive, reserve, take, or otherwise obtain, including through a fee sharing or similar economic relationship.

(2) *Authority to impose charges and fees.* An FCU may charge non-interest charges and fees, including share account service charges and interchange fees from credit and debit card operations.

(3) *Considerations.* (i) Business decisions regarding non-interest charges and fees permitted under this paragraph should be arrived at by each Federal credit union on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding, or discussion with other financial institutions or their officers.

(ii) Decisions regarding charging non-interest charges and fees, including their amounts, the method of calculating them, whether to enter into business relationships or lines of business, and whether they are set by or in consultation with third parties, are business decisions to be made by each Federal credit union, in its discretion, according to sound banking judgment and safe and sound banking principles. A Federal credit union establishes non-interest charges and fees in accordance with safe and sound banking principles if it employs a decision-making process through which it considers the following factors, among others:

(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.

(d) *State law.* For purposes of this section, *state law* means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

3. Amend § 701.21 by:

- a. Removing and reserving paragraph (b); and
- b. Revising paragraph (g)(6).

The revision reads as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(g) * * *

(6) *Due-on-sale clauses.* See § 701.5(b)(5).

* * * * *

§ 701.35 [Amended]

4. Amend § 701.35 by removing paragraphs (c) and (d).