International Center for Law & Economics

Comments of the International Center for Law & Economics

Re: Preemption—Federal Credit Union Non-Interest Charges and Fees [Docket No. NCUA-2026-1189]

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Authored by:

Ben Sperry (Senior Scholar, Innovation Policy, ICLE)
Julian Morris (Senior Scholar, Innovation Policy, ICLE)
Todd Zywicki (Nonresident Scholar, ICLE)

I. Introduction

The International Center for Law & Economics (ICLE) submits these comments in response to the National Credit Union Administration's (NCUA) interim final rule (Rule), which clarifies that federal credit unions (FCUs) may charge noninterest charges and fees, including interchange fees from credit- and debit-card transactions, even when those fees are set by or in consultation with third parties.[1] The Rule further concludes that federal law preempts the Illinois Interchange Fee Prohibition Act (IFPA), which prohibits interchange fees on the tax and gratuity portions of payment-card transactions and restricts the use of payment-card transaction data.[2]

ICLE is a nonprofit, nonpartisan research center that applies law & economics to public-policy questions. Its work promotes sound economic analysis and consumer welfare. ICLE scholars have written extensively on payment-card markets, interchange fees, and payment regulation. These comments draw substantially from ICLE's white paper, "Regulating State Interchange Fees: Evaluating the Likely Effects of the IFPA,"[3] and related research,[4] largely adapting earlier comments submitted to the Office of the Comptroller of the Currency (OCC) regarding its interim final rule and order.[5]

The IFPA is a novel state law that, absent preemption or a stay, prohibits payment-card issuers, networks, and processors from collecting interchange fees on transaction amounts attributable to state and local sales taxes or gratuities. Although the law purports to reduce merchants' payment-acceptance costs, it would create economic and legal problems that far outweigh its claimed benefits.

The IFPA would impose a cumbersome two-track compliance regime. Under one approach, merchants would transmit tax and gratuity data in real time during payment authorization. Under the other, merchants would seek rebates for interchange fees collected on exempt amounts after the transaction. Both approaches would impose substantial technological, operational, and compliance costs on payment networks, processors, merchants, and financial institutions while making the payments system less efficient.

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[1] Preemption—Federal Credit Union Non-Interest Charges and Fees, 91 FED. REG. 34,725 (June 9, 2026), https://www.govinfo.gov/content/pkg/FR-2026-06-09/pdf/2026-11559.pdf [hereinafter Interim Final Rule].

[2] *See id.* at 34,726 ("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.").

[3] Julian Morris & Ben Sperry, *Regulating State Interchange Fees: Evaluating the Likely Effects of the IFPA*, INT'L CTR. L. & ECON. (July 7, 2025), https://laweconcenter.org/wp-content/uploads/2025/07/IFPA-Paper-2025.pdf.

[4] *See, e.g.*, Ben Sperry & Julian Morris, *Half a Swipe, Whole Lot of Mess: Platform Economics and the Interchange Fee Cases*, TRUTH ON THE MKT. (Feb. 26, 2026), https://truthonthemarket.com/2026/02/26/half-a-swipe-whole-lot-of-mess-platform-economics-and-the-interchange-fee-cases; Julian Morris, *State Regulation of Interchange Fees*, INT'L CTR. L. & ECON. (Nov. 15, 2024), https://laweconcenter.org/resources/state-regulation-of-interchange-fees.

[5] Int'l Ctr. L. & Econ., *Comments to the OCC on Preempting the Illinois Interchange Fee Act* (May 28, 2026), https://laweconcenter.org/resources/icle-comments-to-the-occ-on-preempting-the-illinois-interchange-fee-prohibition-act.

Interchange fees are not merely transaction costs. They help payment-card networks balance the two-sided market connecting cardholders and merchants. Interchange revenue supports fraud prevention, payment security, rewards programs, insurance benefits, and continued investment in payment-system innovation. Eliminating interchange fees on taxes and gratuities would disrupt that balance and reduce issuer revenue. Financial institutions would likely respond by reducing rewards, increasing account or card fees, raising borrowing costs, or some combination of the three. Experience with interchange-fee regulation under the Durbin Amendment, as well as in the European Union and Australia, suggests such interventions often reduce consumer benefits without producing corresponding reductions in retail prices. The IFPA also would shift a substantial share of its costs to consumers outside Illinois, giving the law significant extraterritorial effects.

Those effects would multiply if other states enacted similar laws. The IFPA effectively requires national payment systems to accommodate Illinois-specific rules, forcing costly nationwide changes. Numerous states have considered or are considering comparable legislation.[6] A patchwork of state requirements would fragment the national payments system, increase transaction costs, discourage innovation, and reduce efficiency. The risk is especially acute because states have proposed materially different exemptions and compliance mechanisms. As the NCUA recognized in the Rule, these laws also raise substantial constitutional and federal-preemption concerns.

FCUs have challenged the IFPA as preempted by the Federal Credit Union Act (FCU Act). In that litigation, the federal district court held that NCUA regulations issued under the FCU Act did not preempt the IFPA's Interchange Fee Provision under conflict-preemption principles, but that the FCU Act's grant of incidental powers did preempt the law's Data Usage Provision.[7]

Ultimately, the IFPA's limited benefits for some merchants would come at the expense of broader harms to consumers, financial institutions, and the payments ecosystem. If replicated nationwide, similar laws would undermine the efficiency and uniformity of the integrated national payments system on which modern commerce depends. The NCUA correctly concluded that FCUs may charge interchange fees and other noninterest charges necessary to participate in modern payment markets. The NCUA also correctly recognized that payment networks may establish those fees because they perform an essential coordinating function within the payment-card ecosystem. The Rule therefore properly preempts the IFPA's Interchange Fee Provision as applied to FCUs. Sound law & economics principles likewise support extending that preemption to all participants involved in the interchange-fee process.

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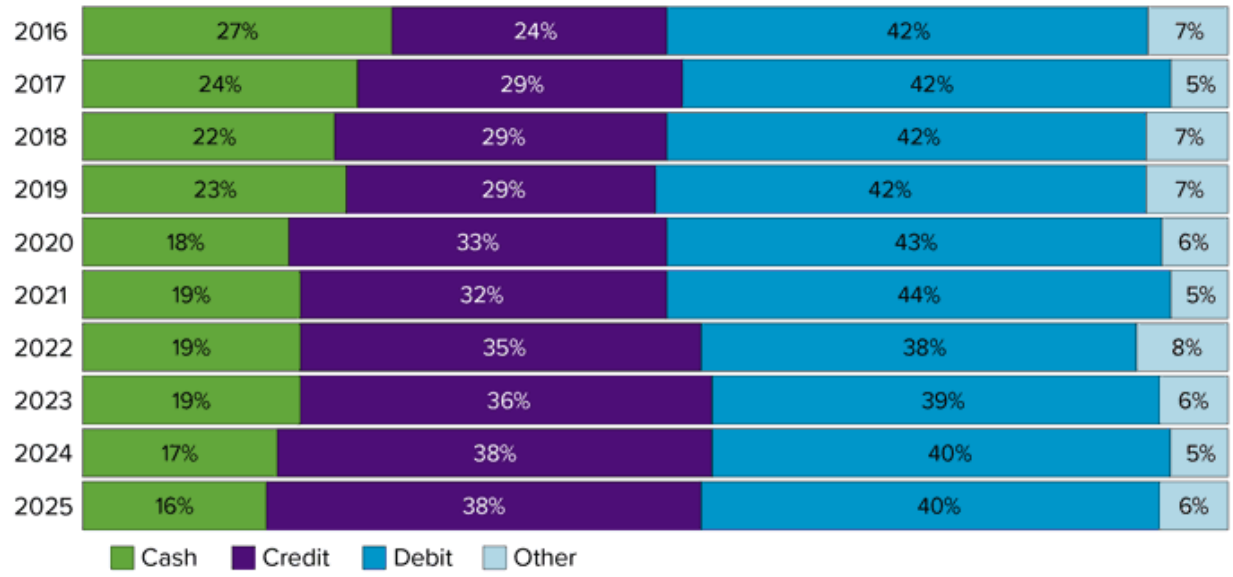
[6] *See, e.g.*, Emma Kinery, *States Advance Bills to Regulate Credit Card Fees on Taxes and Tips*, STATE AFFAIRS (Apr. 28, 2026), https://pro.stateaffairs.com/co/finance/interchange-fee-bills-2026.

[7] *See Illinois Bankers Ass'n v. Raoul*, 819 F. Supp. 3d 882, 907-08 (N.D. Ill. 2026), *vacated and remanded*, 2026 WL 1291987 (7th Cir. 2026).

II. Electronic Payments and Interchange Fees

Electronic payments are indispensable to modern commerce. During the COVID-19 pandemic, they helped sustain the U.S. and global economies as cash use and face-to-face transactions fell sharply.[8] Studies show that payment cards—whether physical cards or mobile wallets—offer substantial advantages over cash for most transactions.[9] Consumers benefit from greater convenience, stronger fraud protection, short-term liquidity through interest-free grace periods, and, in most cases, zero liability for fraud. Many cards also provide purchase protection, travel insurance, cashback rewards, airline miles, hotel points, and other benefits. These advantages help explain why most consumers prefer cards to cash or checks (Figure 1).

FIGURE 1: Payment-Instrument Share as Proportion of Number of Payments



SOURCE: *Federal Reserve Board* [10]

Merchants likewise benefit from electronic payments. Payment cards generally speed checkout, increase sales, and reduce the theft and fraud risks associated with cash.[11] When Chicago-based quick-service chain Epic Burger went cashless in 2017, founder David Friedman cited faster

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[8] *See, e.g.*, Julian Morris, Todd J. Zywicki & Geoffrey A. Manne, *The Effects of Price Controls on Payment-Card Interchange Fees: A Review and Update*, INT'L CTR. L. & ECON. (Mar. 4, 2022), https://laweconcenter.org/wp-content/uploads/2022/03/Payments-2021-Lit-Review.pdf.

[9] Julian Morris & Ben Sperry, *The Cost of Payments: A Review*, INT'L CTR. L. & ECON. (Aug. 28, 2024), https://laweconcenter.org/resources/the-cost-of-payments-a-review.

[10] Berhan Bayeh *et al.*, *2026 Diary of Consumer Payment Choice*, FED. RSRV. (2026), https://www.frbservices.org/news/research/2026-findings-diary-consumer-payment-choice.

[11] Morris & Sperry, *supra* note 9; Claire Wang, *Cash Me If You Can: The Impacts of Cashless Businesses on Retailers, Consumers, and Cash Use*, CASH PROD. OFF., FED. RSRV. SYS. (2019), https://www.frbsf.org/wp-content/uploads/sites/7/Cash-Me-If-You-Can-August2019.pdf.

transactions, improved safety, and fewer counting errors.[12] Mercedes-Benz Stadium in Atlanta similarly reported shorter transaction times, higher per-capita spending, and lower operating costs after going cashless in 2018.[13] Restaurants and sports venues in Illinois and nationwide have since followed suit.[14]

Payment systems succeed only when both consumers and merchants participate. That participation depends on trust. Payment networks, issuing banks, acquiring banks, and payment processors invest billions of dollars in fraud prevention, cybersecurity, infrastructure, and system maintenance to sustain that trust.[15] Consumers, in turn, use payment cards because they value security, convenience, insurance, rewards, and related benefits. Issuing banks recover much of the cost of providing those benefits through interchange fees.[16]

Interchange fees remain widely misunderstood. They are often described simply as "transaction costs."[17] That description is incomplete. Interchange fees do cover operating costs, including fraud prevention and network maintenance. They also transfer value from merchants to consumers by financing cardholder benefits, such as rewards, purchase protection, and short-term credit.

All payment systems impose costs.[18] Cash is expensive to print, transport, secure, and process, although many of those costs remain hidden because governments subsidize currency production and distribution.[19] Checks also entail costs and risks, including fraud, processing delays, and nonpayment. Merchants further benefit from legal rules requiring checks to clear at par, which shifts some costs to consumers and financial institutions.[20] Regardless of how costs are allocated, no

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[12] Daniel Gerzina, *Epic Burger Is Now Cashless, Tamale Spaceship Closes Wicker Park Restaurant, More Intel*, EATER CHI. (June 21, 2017), https://chicago.eater.com/2017/6/21/15846364/epic-burger-cashless-tamale-spaceship-closed-wicker-park-restaurant-am-intel.

[13] *Id.*

[14] *See* Morris & Sperry, *supra* note 9.

[15] *See* Julian Morris, *The Hidden Wealth of Payment Cards: How Innovations in Payments Transform Society*, INT'L CTR. L. & ECON. (Dec. 19, 2024), https://laweconcenter.org/resources/the-hidden-wealth-of-payment-cards-how-innovations-in-payments-transform-society.

[16] *See* Todd J. Zywicki, *The Economics of Payment Card Interchange Fees and the Limits of Regulation*, INT'L CTR. L. & ECON. (June 2, 2010), https://laweconcenter.org/images/articles/zywicki_interchange.pdf.

[17] *See* Aaron Klein *et al.*, *How Better Payment Systems Can Improve Public Transportation*, BROOKINGS CTR. REGUL. MKTS. (2023), https://www.brookings.edu/wp-content/uploads/2023/01/20230109_CRM_Klein_TransitPayments_final1.pdf.

[18] *See* Consumer Fin. Prot. Bureau, *Taskforce on Consumer Financial Law* 586-88 (2021).

[19] One frequently cited estimate found that a transition to a cashless economy could increase annual GDP by roughly 1% in advanced economies and by as much as 3% in developing economies. *See* Marks Massi, Godfrey Sullivan, Michael Strauß & Mohammad Khan, *How Cashless Payments Help Economies Grow*, BOS. CONSULTING GRP. (May 28, 2019), https://www.bcg.com/publications/2019/cashless-payments-help-economies-grow.

[20] The shift from checks to electronic payments financed by interchange fees helped drive the expansion of free checking accounts and reduce monthly maintenance fees as debit cards became more widely used.

payment system survives unless both merchants and consumers perceive net benefits from using it.[21] Continued market adoption demonstrates that both sides generally benefit.

Electronic payments differ from cash and checks primarily because the costs of those older payment systems are often obscured by subsidies or legal rules that shift costs away from merchants. There is therefore no economic basis for exempting taxes or gratuities from interchange fees, just as there would be no basis for exempting portions of cash or check transactions from the costs of those payment systems. The visibility of interchange fees does not justify selectively shifting payment-system costs away from merchants.

Economists describe these transfers as "cross-side subsidies" because one side of a two-sided market subsidizes participation on the other.[22] Such arrangements are common. Advertisers subsidize newspapers, search engines, smartphone applications, and large language models. The economics literature has long recognized the importance of cross-side subsidies, and the U.S. Supreme Court recognized their central role in payment-card markets:

> Sometimes indirect network effects require two-sided platforms to charge one side much more than the other. For two-sided platforms, "'the [relative] price structure matters, and platforms must design it so as to bring both sides on board.'" The optimal price might require charging the side with more elastic demand a below-cost (or even negative) price. With credit cards, for example, networks often charge cardholders a lower fee than merchants because cardholders are more price sensitive. In fact, the network might well *lose* money on the cardholder side by offering rewards such as cash back, airline miles, or gift cards. The network can do this because increasing the number of cardholders increases the value of accepting the card to merchants and, thus, increases the number of merchants who accept it. Networks can then charge those merchants a fee for every transaction (typically a percentage of the purchase price). Striking the optimal balance of the prices charged on each side of the platform is essential for two-sided platforms to maximize the value of their services and to compete with their rivals.[23]

The Supreme Court's discussion concerned American Express, a three-party payment-card network that combines network operations, card issuance, and acquiring functions within a single firm. The IFPA, by contrast, targets only four-party payment-card networks, in which network operations, issuing, and acquiring are performed by separate entities. Only four-party networks use interchange fees because issuing and acquiring institutions are distinct.

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[21] A consumer may choose to pay in Bitcoin and bear the associated costs. By contrast, a merchant that declines to accept Bitcoin incurs no comparable costs.

[22] *See* Morris, *supra* note 15.

[23] *Ohio v. Am. Express Co.*, 585 U.S. 529, 536-37 (2018) (internal citations omitted).

III. The IFPA's Economic Costs

Although the IFPA is unusual in exempting only portions of interchange fees, many jurisdictions have adopted interchange-fee caps and similar regulations. Those experiences offer useful lessons about the law's likely effects. The Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act is especially instructive.

Before the Durbin Amendment, debit-card interchange fees helped issuing banks fund consumer benefits, including debit-card rewards and free checking accounts with low minimum-balance requirements. After the Federal Reserve implemented Regulation II, many banks reduced or eliminated those benefits.

Empirical studies by Federal Reserve economists found that Regulation II's interchange-fee caps led covered banks to raise account fees, increase minimum-balance requirements, reduce access to free checking, and eliminate debit-card rewards.[24] Those changes disproportionately harmed lower-income households and increased the number of unbanked and underbanked consumers.[25] At the same time, there is little evidence that merchants passed their interchange-fee savings through to consumers as lower retail prices.[26]

The same economic logic applies to the IFPA. The law restricts interchange fees on both sales taxes and gratuities. It applies to credit cards, debit cards, and general-use prepaid cards, and reaches every major participant in the payments ecosystem, including issuers, payment-card networks, acquiring banks, and processors. In effect, it prohibits every participant in the payment chain from "charging or receiving" interchange fees on sales taxes and gratuities.

Compliance would require substantial technological and operational changes. Issuers and payment networks would need to upgrade information-technology systems and transaction-processing software to identify taxes and gratuities, modify authorization systems, and implement tracking or

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[24] *See, e.g.*, Morris, Zywicki & Manne, *supra* note 8; Mark D. Manuszak & Krzysztof Wozniak, *The Impact of Price Controls in Two-Sided Markets: Evidence from U.S. Debit Card Interchange Fee Regulation* (Fin. & Econ. Discussion Series No. 2017-074, Fed. Rsrv., July 2017), https://www.federalreserve.gov/econres/feds/the-impact-of-price-controls-in-two-sided-markets-evidence-from-us-debit-card-interchange-fee-regulation.htm; Benjamin S. Kay, Mark D. Manuszak & Cindy M. Vojtech, *Bank Profitability and Debit Card Interchange Regulation: Bank Responses to the Durbin Amendment* (Fin. & Econ. Discussion Series No. 2014-77, Fed. Rsrv., Sept. 2014), https://www.federalreserve.gov/econres/feds/bank-profitability-and-debit-card-interchange-regulation-bank-responses-to-thedurbin-amendment.htm.

[25] *See* Geoffrey A. Manne, Julian Morris & Todd J. Zywicki, *Unreasonable and Disproportionate: How the Durbin Amendment Harms Poorer Americans and Small Businesses*, INT'L CTR. L. & ECON. (Apr. 25, 2017), https://laweconcenter.org/wp-content/uploads/2017/08/icledurbin_update_2017_final-1.pdf; Vladimir Mukharlyamov & Natasha Sarin, *Price Regulation in Two-Sided Markets: Empirical Evidence from Debit Cards*, 172 J. FIN. ECON. 104090 (2025), https://www.sciencedirect.com/science/article/pii/S0304405X25001023.

[26] *See, e.g.*, Zhu Wang, Scarlett Schwartz & Neil Mitchell, *The Impact of the Durbin Amendment on Merchants: A Survey Study*, 100 ECON. Q. 183 (2014); Mukharlyamov & Sarin, *supra* note 25, at 10 ("Durbin-induced interchange fee savings for gas merchants were too small for their pass-through—even if full—to be discerned with statistical significance.").

rebate mechanisms for post-transaction adjustments.[27] Yet the IFPA appears not to apply to three-party networks, such as American Express and Discover, because those systems do not rely on interchange fees. The law therefore disadvantages four-party networks while favoring functionally similar competitors without any apparent economic justification.

Implementing the IFPA would require far more than simply "turning off" interchange fees on taxes and gratuities. It would require systemwide changes to the nation's electronic-payments infrastructure. Payment-card networks and processors would need to revise transaction-message formats and modify the algorithms used to calculate interchange fees for Illinois transactions. At a minimum, compliance would require:

- Reliably identifying Illinois sales taxes and gratuities, including precise amounts that vary by product and locality;
- Modifying authorization and settlement-message formats to transmit that information;
- Altering clearing and settlement systems so interchange fees apply only to permitted transaction amounts; and
- Maintaining recordkeeping and dispute-resolution systems to process merchant claims for reimbursement of interchange fees collected on taxes and gratuities.

Even while holding at summary judgment that the IFPA's Interchange Fee Provision was not preempted, the district court acknowledged the law's extraordinary operational complexity. The court observed that compliance would likely require technical capabilities that do "not currently exist, but could possibly exist through additional investment."[28] It likewise described the resulting compliance costs as "undeniable" and even "staggering."[29] The NCUA appropriately recognized the same concern, describing the IFPA as a "complex and potentially unworkable" regulatory scheme with enormous potential liability.[30]

Those compliance costs would be substantial on their own, particularly for smaller merchants that rely on the rebate mechanism, which would likely require labor-intensive manual processing. They would fall especially hard on FCUs. Nearly 90% of FCUs hold less than $1.1 billion in assets.[31] Their cooperative structure and limited statutory powers also constrain their revenue sources. Unlike commercial banks, for example, FCUs generally cannot engage in business lending. As a result, they

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[27] Morris, *supra* note 15, at 19.

[28] *See Illinois Bankers*, 819 F. Supp. 3d at 904.

[29] *Id.*; *see also id.* at 896 (noting evidence that complying with the IFPA would be "extraordinarily expensive and will drive institutions out of the market").

[30] Interim Final Rule, *supra* note 1, at 34,729 ("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. Given the upwards of 6.5 billion payment card transactions that occur yearly in Illinois, participants in the payment card [market] could be subject to as much as $6.5 trillion in liability per year for non-compliance with IFPA.").

[31] Nat'l Credit Union Admin., *Quarterly Credit Union Data Summary: Q1 2026*, at 2 (2026).

have fewer opportunities to absorb new compliance costs, making the IFPA disproportionately burdensome for smaller credit unions.

The reduction in interchange-fee revenue would impose an additional—and likely larger—cost. Interchange fees finance rewards programs, fraud prevention, and other cardholder benefits. Eliminating interchange fees on taxes and gratuities could reduce issuer revenue by roughly 0.1% of the transaction value for purchases involving Illinois merchants.[32] For large issuers, that could amount to tens of millions of dollars annually.[33] Issuers, both inside and outside Illinois, would likely respond in one or more of several ways.

A. Reduced Cardholder Rewards and Benefits

FCUs would likely respond to the IFPA first by reducing cardholder rewards and benefits. Credit-card issuers finance rewards programs primarily through interchange fees. If the IFPA reduces interchange-fee revenue from Illinois transactions by 10% or more, issuers will have less revenue to support existing rewards programs.

Experience elsewhere strongly suggests this outcome. Following interchange-fee regulation under the Durbin Amendment in the United States, Reserve Bank of Australia regulations, and the European Union's Interchange Fee Regulation, issuers reduced the generosity of rewards programs.[34] In many cases, those reductions were widespread.

Issuers could also scale back other benefits financed through interchange fees, including travel insurance, purchase protections, and related cardholder services. Australian and European issuers adopted similar measures after interchange-fee regulation.[35] If Illinois remains the only state to impose these restrictions, nationwide FCUs may be able to limit some reductions to Illinois cardholders. Illinois-based credit unions, by contrast, would have fewer options because their membership is concentrated in the state. Even so, any nationwide reduction in benefits would force cardholders outside Illinois to subsidize the Illinois operations of large merchants.

FCUs could instead create Illinois-specific rewards programs to offset lost revenue. That approach would require amendments to nearly every cardholder agreement, along with revisions to agreements

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[32] *See* Tax Found., *Taxes in Illinois*, https://taxfoundation.org/location/illinois (last visited June 30, 2026) (estimating Illinois's average combined state and local sales tax rate at 8.96%. Assuming gratuities average 7% of sales based on a 15% tip, taxes and tips account for roughly 10% of a typical transaction. At a 1% interchange fee, exempting taxes and tips would reduce interchange-fee revenue by about 0.1% of the transaction value).

[33] According to the U.S. Census Bureau, Illinois retail sales totaled roughly $244 billion in 2022. *See* U.S. Census Bur., *QuickFacts: Illinois*, https://www.census.gov/quickfacts/fact/table/IL/PST045223 (last visited May 22, 2026). Assuming modest growth, retail sales likely exceed $250 billion in 2026. Interchange-fee revenue attributable to sales taxes and gratuities could therefore approach $250 million annually. For issuers with market shares of 4% or more, that would imply annual revenue losses of at least $10 million.

[34] *See* Morris, Zywicki & Manne, *supra* note 8.

[35] *Id.*; Iris Chan *et al.*, *The Personal Credit Card Market in Australia: Pricing Over the Past Decade*, RSRV. BANK AUSTL. (2012), https://www.rba.gov.au/publications/bulletin/2012/mar/pdf/bu-0312-7.pdf.

with rewards partners such as airlines and hotels. State-specific programs would also complicate customer communications and increase administrative costs.

A more likely response would be modest nationwide reductions in rewards. For example, an FCU that currently offers 2% cashback might reduce rewards to 1.95%, or slightly devalue points across its card portfolio. Economically, reducing rewards functions as a price increase for consumers. Research consistently shows that consumers bear most of the costs of interchange-fee restrictions, while merchants pass through little, if any, of their savings as lower retail prices. Once compliance costs are taken into account, many merchants may realize no net savings at all and therefore have nothing to pass on.[36]

Although nationwide changes would still require amendments to cardholder and partner agreements, they would be simpler to administer than maintaining separate Illinois-specific programs. They would also spread the costs across all cardholders. In effect, Illinois policy would require consumers nationwide to subsidize the Illinois operations of large merchants.

The likelihood of reduced rewards and benefits would increase substantially if additional states adopted similar laws. Even if Illinois remains the only state to impose these restrictions, FCUs may still reduce benefits for Illinois-based members or for transaction categories with especially large tax components, such as gasoline purchases that include substantial fuel taxes.

B. Higher Card and Account Fees

Issuers have often responded to interchange-fee price controls by introducing or increasing cardholder fees. In Australia, for example, banks increased average annual credit-card fees by roughly 50% following interchange-fee regulation.[37] Illinois consumers could face similar outcomes. Cards that currently carry no annual fee could begin charging one, while cards with more generous rewards could become more expensive.

Debit cards and associated checking accounts could also become more costly. That is precisely what occurred after the Durbin Amendment. Some covered banks initially proposed monthly debit-card usage fees to offset lost interchange revenue. Following public backlash, many instead increased monthly account fees and raised minimum-balance requirements for free checking.[38]

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[36] For example, after enactment of the Durbin Amendment, many smaller merchants saw no price reductions because payment networks eliminated special discounts for small merchants and low-dollar transactions while acquirer fees increased. *See* Manne, Morris & Zywicki, *supra* note 25; *see also* Robert Shapiro & Jerome Davis, *The Unanticipated Costs and Consequences of Federal Reserve Regulation of Debit Card Interchange Fees* 4, PROGRESSIVE POL'Y INST. (2025), https://www.progressivepolicy.org/wp-content/uploads/2025/12/PPI_The-Unanticipated-Costs-and-Consequences-of-Federal-Reserve-Regulation-of-Debit-Card-Interchange-Fees_V3.pdf.

[37] Todd J. Zywicki *et al.*, *Price Controls on Payment Card Interchange Fees: The U.S. Experience* (Geo. Mason L. & Econ. Rsch. Paper No. 14-18, 2014), https://www.law.gmu.edu/pubs/papers/14_18.

[38] *Id.*; *see also* Manne, Morris & Zywicki, *supra* note 25.

Those changes disproportionately burden lower-income consumers, who are less likely to maintain large account balances and more likely to rely on low-cost banking products. Experience with interchange-fee regulation demonstrates that reduced interchange revenue can diminish access to affordable banking services and increase the number of unbanked and underbanked households.

Because FCUs issue a substantial share of the debit and credit cards used in Illinois, the IFPA's effects would likely extend beyond the state's borders. If FCUs increase fees across broader customer portfolios rather than creating Illinois-specific pricing, consumers nationwide would bear part of the cost of Illinois' interchange-fee restrictions. The IFPA would therefore produce significant extraterritorial effects.

Acquiring banks and payment processors could likewise increase their fees to offset both reduced revenue and higher compliance costs, particularly for smaller merchants that rely on the rebate process. As a result, many merchants may realize little, if any, net savings. Some small retailers that do not collect gratuities could even see their total payment-processing costs increase. As ICLE has previously documented, one reason merchants realized smaller-than-expected savings after the Durbin Amendment was that acquirers increased their own fees.[39]

C. Higher Borrowing Costs

Issuers could also respond to the IFPA by increasing borrowing costs, including annual percentage rates (APRs). After the European Union adopted the Interchange Fee Regulation—which capped interchange fees at 0.2% for debit transactions and 0.3% for credit transactions—the spread between the European Central Bank's policy rate and credit-card APRs widened.[40]

The IFPA alone may not produce a measurable increase in APRs. Even so, reduced interchange-fee revenue would place upward pressure on borrowing costs, particularly for higher-risk borrowers. Consumers ultimately would bear those costs.

If FCUs and other issuers apply higher borrowing costs across their broader card portfolios rather than limiting them to Illinois accounts, the effects would extend well beyond Illinois. As with reduced rewards and higher account fees, the IFPA would shift part of its costs to consumers nationwide.

D. Fragmentated State Payment Rules

Payment-card networks currently operate under largely uniform nationwide interchange-fee schedules. The IFPA would disrupt that system. If other states adopt similar laws exempting sales

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[39] *See* Zywicki *et al.*, *supra* note 37; Manne, Morris & Zywicki, *supra* note 25.

[40] *See* Julian Morris, *The Credit Card Competition Act's Potential Effects on Airline Co-Branded Cards, Airlines, and Consumers*, INT'L CTR. L. & ECON. (Nov. 17, 2023), https://laweconcenter.org/resources/the-credit-card-competition-acts-potential-effects-on-airline-co-branded-cards-airlines-and-consumers.

taxes, gratuities, or other transaction components from interchange fees, payment networks would likely have to maintain multiple state-specific interchange regimes.

That fragmentation would increase operational complexity, compliance costs, and administrative burdens. Networks and processors would need to track differing state requirements, identify covered transactions in real time, and apply different interchange calculations depending on the jurisdiction and transaction type.

The risk is not hypothetical. States have already proposed materially different approaches. Colorado, for example, recently considered legislation that would have exempted smaller banks from interchange-fee restrictions, while many other proposals would exempt sales taxes but not gratuities.[41] If states continue to adopt divergent rules, payment-card networks would face an increasingly complex patchwork of compliance obligations. At sufficient scale, that patchwork would undermine the efficiency and uniformity of the national payments system and could render the current nationwide interchange framework effectively unworkable.

E. Nationwide Increases in Interchange Fees

Payment-card networks could also respond by increasing default multilateral interchange-fee schedules nationwide to offset revenue losses from Illinois transactions. In practice, that would likely mean modest across-the-board increases in interchange fees throughout the country.

Such an approach would shift costs from Illinois merchants to merchants and consumers in other states. Out-of-state merchants would pay higher interchange fees, while consumers outside Illinois would likely bear part of those costs through higher retail prices, reduced rewards, or other pricing adjustments. The IFPA would therefore create another form of extraterritorial cost shifting, spreading its costs nationwide to subsidize Illinois merchants.

IV. The IFPA Conflicts with FCUs' Federally Authorized Powers

At the preliminary-injunction stage, the district court applied ordinary conflict-preemption principles and held that the IFPA's Interchange Fee Provision was not preempted because NCUA rules issued under the FCU Act appeared to address only "state laws regulating fees charged to credit union members in connection with an initial line of credit."[42] At summary judgment, the court rejected application of the broader *Barnett Bank* standard under the National Bank Act to the FCU Act and adopted its earlier conflict-preemption analysis.[43]

By limiting which portions of a transaction may carry interchange fees, the IFPA imposes a price control on a fee structure that payment networks continuously calibrate to balance merchants and

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[41] Julian Morris, *Colorado's Swipe-Fee Fix Is a Big-Box Gift That Would Burden Small Businesses*, COLO. SUN (May 28, 2026), https://coloradosun.com/2026/05/28/opinion-colorado-swipe-fee-legislation.

[42] *Illinois Bankers Ass'n v. Raoul*, 2025 WL 409060, at *3 (N.D. Ill. Feb. 6, 2025).

[43] *See Illinois Bankers*, 819 F. Supp. 3d at 906–07.

consumers. Disrupting that balance reduces the value of payment cards to consumers, which reduces usage and, in turn, diminishes value to merchants. The result harms both sides of the platform and materially interferes with FCUs' exercise of their federally authorized powers.

The NCUA is therefore correct that the IFPA's Interchange Fee Provision should be preempted as applied to FCUs. The Rule clarifies this preemptive effect by "stat[ing] explicitly that FCUs have authority to charge non-interest charges and fees related to permissible activities."[44] That includes authority to charge "interchange fees from credit and debit operations."[45]

The same logic extends further. Other participants whose activities are inseparable from FCUs' federally authorized payment-card operations—including payment networks and processors—should receive similar preemption from the IFPA and comparable state laws.

As the district court explained in addressing the Data Use Provision:

> Both parties admit that under the current system, if the Issuer associated with a transaction is exempt from the IFPA with respect to a transaction, then—to give effect to the Issuer's exemption—other participants in the payment card ecosystem would need relief from the requirements of the IFPA for purposes of that transaction, though the Attorney General notes that said result may not be necessary were the global payment card ecosystem structured a different way.[46]

Applying "longstanding principles of equity," the court concluded that the "Data Usage Limitation is so tied up in the federal entities' powers that the preemptive effect must run to the Payment Card Networks and others involved in the payment process."[47]

That reasoning accords with multisided-platform economics and applies equally to the IFPA's Interchange Fee Provision. Payment-card networks operate integrated systems that set interchange fees, participation requirements, authorization protocols, clearing and settlement rules, and liability standards. Networks connect merchants and cardholders through issuing banks, acquiring banks, and processors, while transmitting the information needed to complete transactions. Issuing banks, in turn, use interchange-fee revenue to process payments and fund services for cardholders and deposit customers.

Payment-card networks are integrated platforms, not isolated contracts among merchants, banks, and processors. The NCUA's Rule, like the OCC's rule for nationally chartered banks and federal savings associations, recognizes that reality. Interchange fees are the pricing mechanism that holds the system together. Exempting taxes and gratuities from interchange fees would alter the balance

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[44] Interim Final Rule, *supra* note 1, at 34,727.

[45] *Id.* at 34,728.

[46] *Illinois Bankers*, 819 F. Supp. 3d at 892.

[47] *Id.* at 913.

between merchants and consumers, shift costs to consumers, and force operational changes across a nationwide—and indeed global—payments network.

That reality bears directly on preemption. A law that prevents FCUs from recovering costs and funding cardholder services conflicts with their federally authorized powers, even if the law formally targets payment networks or transaction components rather than FCUs directly. The NCUA is right to define "charge" to mean "directly or indirectly, through intermediaries, partners, payment networks, interchanges, or other third parties" because payment-card networks charge interchange fees on behalf of issuers, including FCUs.[48]

For the same reason, equitable relief cannot stop with issuing FCUs alone. Because the payment-card system operates as a coordinated platform, obligations imposed on one participant necessarily spill over to networks, processors, and other participants. Partial injunctions therefore cannot fully remedy the interference. The NCUA's Rule and the OCC's earlier rule and order are necessary first steps. But the IFPA's Interchange Fee Provision should not apply to any participant in the interchange-fee process connected to federally regulated banks, savings associations, or FCUs, including payment networks and processors.

V. The Case for Preemption

Absent preemption, the IFPA and similar state laws would create a fragmented and increasingly unworkable regulatory patchwork. Multiple states have already followed Illinois by proposing or adopting nonuniform interchange-fee restrictions that apply to different institutions, transaction components, and fee categories.

The IFPA's inclusion of gratuities underscores the lack of any limiting principle. Taxes at least involve government levies that merchants collect and remit. Tips do not. Gratuities are voluntary payments from customers to service workers and function economically as wages. There is no meaningful economic distinction between interchange fees applied to wages embedded in the listed price of a meal or hotel room and interchange fees applied to tips paid through the same card transaction.

Illinois law still allows merchants to retain a limited sales-tax collection allowance for remitting taxes. No comparable state allowance or subsidy exists for processing gratuities. Including tips therefore suggests that the IFPA's objective is not merely to align interchange fees with government functions, but to impose broader price controls on payment-card processing fees. In practice, exempting gratuities transfers costs from merchants to issuing banks and consumers.

Once states begin carving selected transaction components out of interchange fees, there is little reason the process would stop with taxes and tips. Other politically influential industries could seek exemptions for food, gasoline, medical care, public transportation, child care, vehicle repairs,

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[48] Interim Final Rule, *supra* note 1, at 34,727.

electric-vehicle charging, or any other favored category. Legislatures would face constant pressure to create narrow and inconsistent exemptions based on political influence and public sentiment.

That logic quickly turns inward. If merchants selling goods on consignment do not retain the full purchase price, should interchange fees apply only to their markup? If a merchant collects government-imposed licensing or registration fees, should those amounts also be exempt? As carveouts multiply, the operational complexity of calculating interchange fees would increase dramatically.

The rapid spread of nonuniform state proposals shows why federal preemption is necessary. The FCU Act empowers the NCUA to prevent states from imposing inconsistent regulatory obligations on FCUs. Without preemption, interchange-fee regulation would become increasingly fragmented, politically driven, and economically disruptive.

VI. Conclusion

The NCUA correctly concluded that the IFPA is preempted as applied to entities subject to its supervision. It also correctly clarified that when payment-card networks set interchange fees on behalf of FCUs, state efforts to regulate those fees are preempted as applied to the networks as well.

The same logic supports broader equitable relief for other participants that operate the payment-card system. As the IFPA litigation returns to the district court, the reasoning that supports preemption for FCUs also supports relief for payment networks, processors, and other participants whose functions are inseparable from FCUs' federally authorized powers. Payment-card networks should therefore receive relief from both the IFPA's Interchange Fee Provision and its Data Use Provision.

If the court enjoins enforcement against those participants, it should also enjoin enforcement against other state-regulated financial institutions, including credit unions. Otherwise, the IFPA would create an uneven regulatory landscape, distort competition in favor of exempted institutions, and leave the payments system with another half-working legal contraption—never an ideal design principle.

More broadly, the IFPA shows why federal preemption remains necessary in nationally integrated financial and payments markets. Interchange fees are not stray transaction costs; they are the pricing mechanism that helps balance a two-sided market connecting consumers and merchants. Allowing states to impose inconsistent carveouts for taxes, gratuities, or other favored transaction components would fragment the payments system, increase operational complexity, shift costs to consumers, reduce cardholder benefits, and undermine the uniform national framework established by federal law.