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May 18, 2026

The Honorable Scott Bessent  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Dear Mr. Secretary:

RE: Department of the Treasury Office of the Comptroller of the Currency Interim Final Rule Titled “National Bank Non-Interest Charges and Fees,” RIN 1557–AF54, 91 *Fed. Reg.* 22989 (April 29, 2026), and Interim Final Order Titled “Order Preempting the Illinois Interchange Fee Prohibition Act,” RIN 1557-ZA10, 91 *Fed. Reg.* 23150 (April 29, 2026).

This letter presents the comments of the National Federation of Independent Business (NFIB)<sup>1</sup> in response to the Department of the Treasury’s (The Department) interim final rule and interim final order cited above, concerning the National Bank Act’s (NBA) interaction with state laws such as the Illinois Interchange Fee Prohibition Act (IFPA), 815 ILCS § 151/150-1 *et seq.*<sup>2</sup>

Visa and Mastercard, the two major credit card processing companies, charge merchants 2-4% on average per credit card transaction as an interchange fee, more commonly known as a “swipe fee.” For small businesses, these fees add up quickly—in 2025, swipe fees totaled \$198.25 billion, more than \$11 billion higher than the previous year, and have become the second-highest overhead cost for

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<sup>1</sup> NFIB is an incorporated nonprofit association representing small and independent businesses across America. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that the governments of the United States and the fifty states hear the voice of small business as they formulate public policies.

<sup>2</sup> The IFPA prevents issuers, payment card networks, banks, or processors from receiving or charging merchants any interchange fee on the tax amount or gratuity of an electronic payment transaction. 815 ILCS § 151/150-1 *et seq.*

small business owners.<sup>3</sup> President Trump has highlighted the unique harm of credit card swipe fees, urging support for the Credit Card Competition Act of 2026, S. 3623 to “stop the out of control Swipe Fee ripoff.”<sup>4</sup>

Yet, the Department’s interim final rule and interim final order 1) allow banks to collude with card processors to set swipe fees,<sup>5</sup> resulting in higher swipe fees, which the President has opposed, and 2) interpret the NBA as preempting state laws like the IFPA,<sup>6</sup> and declare that the IFPA is explicitly preempted.<sup>7</sup> The interim final rule and interim final order constitute a complete change in position from the current rule, misinterpret the NBA, and will harm small businesses.

### Card Processors Should Not Be Allowed to Set Swipe Fees for Banks

The preamble to the interim final rule states the Department’s belief that the current 12 CFR 7.4002 “already allows national banks to impose fees that are set by a third party.”<sup>8</sup> However, this assertion contradicts the text of the current rule.

Currently, 12 CFR 7.4002(b)(1) requires non-interest fees to be set “by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding, or discussion with other banks or their officers.” When a third party contracts with each bank to set the same rate, fees are established by agreement rather than competitively by each bank. The current rule reveals as much—a national bank can only be said to have “establishe[d] non-interest charges and fees in accordance with safe and sound banking principles” if it considers the following factors:

- (i) The cost incurred by the bank in providing the service;
- (ii) The deterrence of misuse by customers of banking services;
- (iii) The enhancement of the competitive position of the bank in accordance with the bank's business plan and marketing strategy; and

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<sup>3</sup> Merchants Payments Coalition, *Credit and Debit Card ‘Swipe’ Fees Reach Record \$198.25 Billion as President and Congress Call for Action*, March 18, 2026, <https://merchantspaymentscoalition.com/credit-and-debit-card-swipe-fees-reach-record-19825-billion-president-and-congress-call-action#:~:text=Swipe%20fees%20for%20credit%20cards,up%2080%25%20since%20the%20pandemic.>

<sup>4</sup> President Donald J. Trump (@realDonaldTrump), Truth Social (Jan. 13, 2026, 12:15 AM), <https://truthsocial.com/@realDonaldTrump/posts/115886085338434959>.

<sup>5</sup> See Proposed 12 CFR 7.4002(c)(2).

<sup>6</sup> See 91 *Fed. Reg.* at 22991, col. 3 – 22993, col. 3.

<sup>7</sup> 91 *Fed. Reg.* at 23150, col. 2.

<sup>8</sup> 91 *Fed. Reg.* at 22991, col. 1.

(iv) The maintenance of the safety and soundness of the institution.<sup>9</sup>

The interim final rule, in contrast, adds to § 7.4002 to explicitly allow what the current rule, in its unaltered state, clearly forbids. First, it provides that “[a] national bank may charge non-interest charges and fees, including . . . interchange fees from credit and debit card operations.”<sup>10</sup> This immediately puts swipe fees in compliance with the rule, regardless of whether the other considerations are met, rendering the current rule’s requirement that a bank set its own fees competitively and in accordance with safe and sound banking principles a dead letter.

Second, the interim rule allows “[d]ecisions regarding charging non-interest charges and fees . . . whether they are set by or in consultation with third parties” to be considered as “business decisions to be made by each national bank[.]”<sup>11</sup> This is a contradiction in terms—when credit card processors are setting the fees, a bank is decidedly *not* setting its own fees as an independent business decision.

Third, the interim final rule further adds a factor to the “safe and sound banking principles” analysis: “[t]he use of third parties to provide or facilitate the provision of a product or service[.]”<sup>12</sup> This provides yet another layer of insulation for banks, permitting them to abandon the responsibility of setting their own fees.

If § 7.4002 already allowed banks to do precisely what the interim final rule says, then it would not be necessary to add so many new provisions. Indeed, the interim final order admits as much: “As revised, 12 CFR 7.4002 should remove any doubt that Federal law . . . authorizes national banks to charge interchange fees[.]”<sup>13</sup> If there is significant doubt about what the rule means to the point that revision is required, then the original rule does not clearly do what the Department claims. Instead, the Department has gutted 12 CFR 7.4002, abrogating the requirement for banks to set their own fees by adding contradictory elements to the rule, thereby undermining it to cater to big banks and the two major credit card companies.

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<sup>9</sup> 12 CFR 7.4002(b)(2).

<sup>10</sup> Proposed 12 CFR 7.4002(b).

<sup>11</sup> Proposed 12 CFR 7.4002(c)(2).

<sup>12</sup> Proposed 12 CFR 7.4002(c)(2)(iv).

<sup>13</sup> 91 *Fed. Reg.* at 23152, col. 3.

## The NBA Does Not Preempt the IFPA

The Department's regulatory analysis and interim final order declare that the NBA preempts State laws like the IFPA.<sup>14</sup> Though the interim final order makes clear that it views the IFPA as preempted and states that "National banks and Federal savings associations are neither subject to nor required to comply with these provisions of State law,"<sup>15</sup> the text of the interim final rule does not go that far, stating instead that "[t]he OCC applies preemption principles derived from the United States Constitution, as interpreted through judicial precedent, when determining whether State laws apply that purport to limit or prohibit charges and fees described in this section."<sup>16</sup> It is unclear why this section was added at all, since it merely restates that the federal government applies preemption principles in every instance. Aside from that, the Department is mistaken in its claim that the NBA preempts the IFPA.

The NBA only preempts State consumer financial protection laws in three narrow circumstances: 1) when a State consumer financial law discriminates against national banks in favor of State-chartered banks,<sup>17</sup> 2) when a State consumer financial law prevents or significantly interferes with national banks' ability to directly provide banking services,<sup>18</sup> or 3) when a State consumer financial law is preempted by a provision of Federal law other than title 62 of the Revised Statutes.<sup>19</sup> None of the three apply to Illinois' law.

First, the IFPA does not discriminate against national banks over State banks, because it applies to "an issuer, a payment card network, an acquirer bank, or a processor" and contains no language differentiating between State and national banks.<sup>20</sup> It applies equally to State and national banks; thus, the NBA cannot preempt it on those grounds. Second, the NBA does not prevent or significantly interfere with national banks' exercise of their lending and deposit-taking powers. Card payment processors, not national banks, set interchange fees, and the NBA explicitly does not preempt the application of State consumer financial laws to

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<sup>14</sup> See 91 *Fed. Reg.* 22991, col. 3 – 22993, col. 3 (interim final rule); 91 *Fed. Reg.* 23152, col. 1 – 23154, col. 1 (interim final order).

<sup>15</sup> 91 *Fed. Reg.* at 23154, col. 3.

<sup>16</sup> Proposed 12 CFR 7.4002(e).

<sup>17</sup> See 12 U.S.C. § 25b(b)(1)(A).

<sup>18</sup> See *id.* § 25b(b)(1)(B).

<sup>19</sup> See *id.* § 25b(b)(1)(B).

<sup>20</sup> See 815 ILCS § 150-10(a): "An issuer, a payment card network, an acquirer bank, or a processor may not receive or charge a merchant any interchange fee on the tax amount or gratuity of an electronic payment transaction if the merchant informs the acquirer bank or its designee of the tax or gratuity amount as part of the authorization or settlement process for the electronic payment transaction."

nonbanks.<sup>21</sup> Third, the IFPA's prohibitions on swipe fees are not preempted by another federal statute, nor does the Department claim that they are.<sup>22</sup>

Since the IFPA does not fit within the narrow conditions that would justify preemption, the Department lacks authority to claim that the IFPA is preempted by the NBA or subject to the interim final rule or order.<sup>23</sup>

### Conclusion

Earlier this month, President Trump recognized that “[f]or 250 years, American small businesses have been the foundation of our national strength and empowered our citizens to achieve the American Dream.” America’s small businesses “employ more than 45 percent of [the Nation’s] workforce.”<sup>24</sup>

Consistent with the President’s statement and agenda,<sup>25</sup> the IFPA provides much-needed financial and regulatory relief for Main Street by no longer requiring Illinois’ 1.4 million small businesses<sup>26</sup> to pay swipe fees on money—sales tax and gratuities—that was never theirs to begin with.

The Department’s interim final rule and order flout the President’s statements, aligning the federal government with the interests of big banks and credit card companies at the expense of small businesses. NFIB urges the Department to withdraw the interim final rule and order to support the growth and prosperity of our Nation’s small businesses.

<sup>21</sup> See 12 U.S.C. § 25b(h)(2): “No provision of title 62 of the Revised Statutes or section 371 of this title shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank)”.

<sup>22</sup> See 91 Fed. Reg. at 23152, col. 1 – 23154, col. 3.

<sup>23</sup> *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 374 (1986) (“First, an agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it.”); *NFIB v. Department of Labor, OSHA*, 595 U.S. 109, 117 (2022) (“Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.”).

<sup>24</sup> The White House, *Presidential Message on National Small Business Week*, May 3, 2026, <https://www.whitehouse.gov/briefings-statements/2026/05/presidential-message-on-national-small-business-week/>.

<sup>25</sup> The White House, *President Trump Celebrates Small Business Revival During National Small Business Week*, May 4, 2026, <https://www.whitehouse.gov/releases/2026/05/president-trump-celebrates-small-business-revival-during-national-small-business-week/> (detailing financial and regulatory victories for Main Street during this Administration).

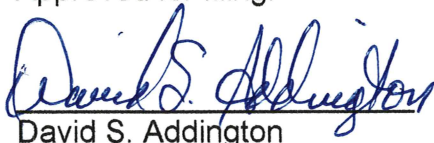
<sup>26</sup> Illinois accounts for 1.4 million of the Nation’s small businesses. U.S. Small Business Administration Office of Advocacy, *2025 Small Business Profile Illinois*, [https://advocacy.sba.gov/wp-content/uploads/2025/06/Illinois\\_2025-State-Profile.pdf](https://advocacy.sba.gov/wp-content/uploads/2025/06/Illinois_2025-State-Profile.pdf).

Sincerely,

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