Banking and Finance Law Daily Wrap Up, PREEMPTION—OCC issues interim final actions preempting Illinois interchange law, clarifying national bank fee authority, (Apr. 27, 2026)

Banking and Finance Law Daily Wrap Up

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OCC issued interim actions preempting Illinois' interchange-fee law for federally regulated banks and clarifying national banks' authority to charge fees.

The Office of the Comptroller of the Currency has issued two interim final actions aimed at the Illinois Interchange Fee Prohibition Act, concluding that federal law preempts the state statute as applied to national banks and federal savings associations (OCC Bulletin 2026-17) and separately amending its regulations to clarify that national banks may charge non-interest fees, including interchange fees, regardless of whether those fees are set by the bank or a third party (OCC Bulletin 2026-18). The OCC said both actions are intended to prevent what it described as the imminent destabilizing effects of the Illinois law before its July 1, 2026, effective date. Both interim actions take effect June 30, 2026, and comments are due 30 days after publication in the *Federal Register*.

The Illinois law bars the charging or receipt of interchange fees on the tax and gratuity portions of payment card transactions and limits how transaction data may be used. In its interim order, the OCC said the National Bank Act preempts the law as applied to national banks and that the Home Owners' Loan Act does the same for federal savings associations. The agency said the Illinois statute would impose a complex, potentially unworkable regime on OCC-supervised institutions and could force major changes to the national payments system.

IFPA significantly interferes with federally authorized banking powers. The OCC's preemption order states that national banks have broad federal authority to receive compensation for banking products and services, including interchange fees tied to debit and credit card transactions. The order says the IFPA interferes with critical flexibility that federal law grants national banks in exercising their deposit-taking, lending, and payment-processing powers, and that it also restricts use of transaction data needed for risk management, fraud detection, dispute resolution, and related banking functions. The OCC said those restrictions meet the Supreme Court's "prevent or significantly interfere" preemption standard under *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25 (1996), as recently discussed in *Cantero v. Bank of America, N.A.*, 602 U. S. 205 (2024).

The OCC also said the IFPA's effective date created enough urgency to justify proceeding by interim final order. Citing letters and litigation materials submitted by industry participants, the agency said some banks were considering ceasing to issue payment cards in Illinois or declining certain transactions because of compliance risks and costs. The OCC said uncertainty over whether payment cards would function after July 1 could create customer and merchant confusion and pose safety-and-soundness risks to national banks and the national banking system.

Companion interim rule amends fee regulation. At the same time, the OCC adopted an interim final rule revising 12 C.F.R. § 7.4002, its regulation on national bank non-interest charges and fees. The rule states that national banks may "assess, collect, impose, levy, receive, reserve, take, or otherwise obtain" non-interest charges and fees, including interchange fees from credit and debit card operations. It also provides that decisions about charging such fees, including whether the fees are set by or in consultation with third parties, are business decisions for each national bank to make in its discretion under sound banking judgment and safe and sound banking principles. In the preamble, the OCC said the interim rule was needed to eliminate ambiguity

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created by the Northern District of Illinois's February ruling, which held that payment card networks rather than banks set interchange fees and concluded that the existing fee regulation did not protect fees centrally established by third parties. The OCC said that interpretation conflicted with longstanding agency views and with the economic realities of card networks, in which banks use third parties to facilitate payment processing while still exercising federally authorized banking powers. Last month, the OCC filed an amicus brief in the Seventh Circuit supporting the trade-group plaintiffs' appeal of that district court ruling. (*Banking and Finance Law Daily*, Mar. 17, 2026).

Reactions split along industry lines. Banking and credit union trade groups that are co-plaintiffs in the IFPA litigation welcomed the OCC's actions. In a joint statement, the Illinois Bankers Association, Illinois Credit Union League, American Bankers Association, and America's Credit Unions said the interim actions confirm both federal preemption of the IFPA and national banks' federal powers, and they said the agency's move reinforces the legal foundation of their pending appeal. The groups also urged the NCUA to take similar action with respect to federal credit unions.

Payments industry groups also supported the OCC. The Electronic Transactions Association said the preemption decision provided clarity and stability for the payments system and would prevent a patchwork of state-level requirements that could disrupt commerce nationwide. The Electronic Payments Coalition similarly called on Illinois lawmakers to repeal the statute, arguing that the state law still threatens community banks, credit unions, consumers, and small businesses not covered by the OCC's action.

Merchant groups sharply disagreed. The Merchants Payments Coalition called on the administration to retract the OCC actions, saying they contradict President Trump's statements in favor of lowering swipe fees and amount to an endorsement of price fixing by Visa and Mastercard. FMI, The Food Industry Association, likewise condemned the OCC's actions, saying they override Illinois' swipe-fee reform law and could discourage other states from adopting similar measures. FMI President and CEO Leslie G. Sarasin said grocers and other merchants act as agents for state and local governments in collecting taxes yet still must pay interchange fees on those tax amounts, which she characterized as a "tax on a tax." FMI also said the OCC's action conflicts with President Trump's affordability agenda and urged the agency to rescind the rulemaking.

Companies: American Bankers Association; America's Credit Unions; Electronic Payments Coalition; Electronic Transactions Association; FMI, The Food Industry Association; Illinois Bankers Association; Illinois Credit Union League; Merchants Payments Coalition

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