Banking and Finance Law Daily Wrap Up, PREEMPTION—Illinois interchange fee law blocked for federal credit unions after NCUA fee rule, (Sept. 23, 2026)

Banking and Finance Law Daily Wrap Up

By Shashi Kant Yadav, B.A. LL.B., LL.M.

The court extended its permanent injunction against the Illinois interchange-fee limitation to federal credit unions following a federal fee rule.

A federal district court in Illinois has extended its permanent injunction against the Illinois Interchange Fee Prohibition Act (IFPA) interchange-fee limitation to federal credit unions, after concluding that a National Credit Union Administration (NCUA) interim final rule on federal credit unions' fee authority changed the preemption analysis. Granting the Illinois Bankers Association and co-plaintiffs' motion for partial reconsideration, the court held that Illinois may not enforce the IFPA's ban on charging or receiving interchange fees on the tax and tip portion of transactions against federal credit unions, national banks, banks chartered by states other than Illinois that are subject to Riegle-Neal, federal savings associations, or payment card networks (*Illinois Bankers Association v. Raoul*, No. 1:24-cv-07307 (N.D. Ill. Sept. 22, 2026)).

Background. The IFPA bars covered entities from charging or receiving interchange fees on the tax or gratuity portion of an electronic payment transaction. In February 2026, the court declined to enjoin the interchange-fee limitation as to federal credit unions. Applying ordinary conflict preemption principles, the court read the NCUA's lending preemption rule, then at 12 C.F.R. § 701.21(b), as referring to state laws regulating fees charged to credit union members in connection with a line of credit (*Banking and Finance Law Daily*, Feb. 11, 2026). The Office of the Comptroller of the Currency (OCC) then issued an interim final rule and an interim final order aimed at the IFPA (*Banking and Finance Law Daily*, Apr. 27, 2026). The Seventh Circuit vacated the February ruling and remanded. In June, the court extended its injunction of the interchange-fee limitation to national banks, certain out-of-state banks, federal savings associations, and payment card networks, but said the OCC actions did not change its analysis for credit unions (*Banking and Finance Law Daily*, Jun. 2, 2026).

NCUA rule. The NCUA issued its interim final rule on June 9, 2026, and it took effect June 30, 2026. The NCUA said it adopted language substantially similar to the OCC's. The rule moves the lending preemption provision to 12 C.F.R. § 701.5(b) and strikes the words "to members" from it. It also adds § 701.5(c), which states that federal credit unions may charge non-interest charges and fees, including interchange fees from credit and debit card operations. That provision defines "charge" to include obtaining fees directly or indirectly through intermediaries, partners, payment networks, interchanges, or other third parties. The NCUA said the rule preempts any state law affecting non-interest charges and fees related to payment card services, including the IFPA.

APA arguments. The court rejected the Illinois Attorney General's renewed arguments that the NCUA rule did not satisfy notice-and-comment requirements and lacked good cause under the Administrative Procedure Act (APA). The court called the Attorney General's and a supporting amicus's comparisons to constitutional challenges to statutes "apples and oranges" with its June ruling. The court said the core issue is a constitutional one arising under the Supremacy Clause, and it repeated that it "cannot grant an APA claim that does not exist."

Preemption standard. The court again declined the Illinois Bankers' request to apply the heightened preemption standard that governs national banks to the Federal Credit Union Act. Citing the Ninth Circuit's decision in *King v. Navy Federal Credit Union*, the court said ordinary conflict preemption principles apply.

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Fee authority. The Attorney General argued that, unlike the OCC, the NCUA lacks express congressional authority to preempt state law. The court said an agency may, in appropriate circumstances, determine that its authority is exclusive, but said the amendment to § 701.5(b) "stands on shakier ground." The court noted that the provision invokes the NCUA's exclusive authority under 12 U.S.C. § 1757(5), which allows federal credit unions to extend lines of credit "to its members," the same phrase the rule struck. The court did not decide that question, resolving the motion on narrower grounds under § 701.5(c). The court said the incidental powers grant reasonably fills the gap between the statute and that provision. It reasoned that if a federal credit union's coordination with third parties on fees related to members' credit lines is necessary to maintain those credit lines, the IFPA stands as an obstacle to the purposes of that power.

Permanent injunction. The court granted the plaintiffs' request for a permanent injunction preventing Illinois from enforcing the interchange-fee limitation against federal credit unions, adopting the injunction analysis from its June ruling. According to the court, its February ruling on the IFPA data-usage limitation stands in full, and that limitation is preempted or invalid as to federal credit unions and the other federally chartered entities.

Industry reaction. The Illinois Bankers Association, Illinois Credit Union League, American Bankers Association, and America's Credit Unions issued a joint statement welcoming the order. The groups said the ruling means that only certain state-chartered institutions, especially those chartered in Illinois, would have to comply with the law when it takes effect next July. They urged state lawmakers to repeal the IFPA in full.

The case is No. 1:24-cv-07307.

Judge: Kendall, V.

Attorneys: Amy Lynn Van Gelder (Meagher & Flom LLP) for Illinois Bankers Association. R. Douglas Rees, Office of the Illinois Attorney General, for Kwame Raoul.

Companies: Illinois Bankers Association; American Bankers Association; Community Bankers Association of Illinois; Illinois Credit Union League; America's Credit Unions; Illinois Retail Merchants Association; Independent Community Bankers of America

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