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May 29, 2026

Via Electronic Submission

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

**RE: Interim Final Order: Order Preempting the Illinois Interchange Fee Prohibition Act
[Docket ID OCC-2026-0431] RIN 1557-ZA10**

Dear Madam or Sir:

The Independent Community Bankers of America (“ICBA”)¹ writes in strong support of the Office of the Comptroller of the Currency’s (“OCC”) interim final order concluding that federal law preempts the Illinois Interchange Fee Prohibition Act (“IFPA”) as applied to national banks and federal savings associations.

The order is grounded in the National Bank Act, in Supreme Court preemption doctrine, and in the operational realities of the national payment card system. By recognizing that the IFPA prevents and significantly interferes with the federally authorized powers of national banks, the order protects the uniform national standards that community banks depend on and prevents the operational disruption that would otherwise occur on the statute’s July 1, 2026 effective date.

ICBA has filed a separate comment letter in support of the OCC’s companion interim final rule clarifying § 7.4002.² That letter addresses the underlying federal authority to charge non-interest charges and fees, the operational features of the payment system that make IFPA compliance impossible, and the economic premises of the IFPA. This letter focuses on the preemption order itself, the Supreme Court doctrine the OCC applies, the patchwork problem the order addresses, and the dual banking concerns the order leaves to be resolved.

I. The OCC Applies the Conflict-Preemption Standard from *Barnett Bank* and *Cantero*

The OCC’s preemption analysis follows the Supreme Court’s framework for National Bank Act conflict preemption. In *Barnett Bank of Marion County, N.A. v. Nelson*, the Court held that state law is preempted where it “prevent[s] or significantly interfere[s]” with a national bank’s exercise of its federal powers.³ In *Cantero v. Bank of America, N.A.*, the Court reaffirmed *Barnett Bank* and explained that the standard

¹The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation’s community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America’s community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers’ financial goals and dreams. For more information, visit ICBA’s website at icba.org.

²ICBA Comment Letter on Interim Final Rule, National Bank Non-Interest Charges and Fees, Docket ID OCC-2026-0430 (May 29, 2026).

³*Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 33 (1996).

must rest on “a practical assessment of the nature and degree of the interference caused by a state law,” drawing on the Court’s preemption antecedents and “the text and structure of the laws, comparison to other precedents, and common sense.”⁴

The OCC’s order applies that assessment. As the order explains, the Court’s antecedents show that a state law prevents or significantly interferes with a federal power when it interferes with the flexibility federal law grants a national bank, when it interferes with a national bank’s efficiency or effectiveness in exercising its federal power, or when it qualifies a federal power in an unusual way. The IFPA does all three.

A. The IFPA Strips National Banks of Critical Flexibility, as in Fidelity

In *Fidelity Federal Savings & Loan Ass’n v. de la Cuesta*, the Court held that a state law restricting a federal savings association’s use of due-on-sale clauses interfered with the flexibility federal law granted the lender.⁵ The IFPA’s interchange fee prohibition does the same thing in the payment card context. Federal law authorizes national banks to charge non-interest fees, including interchange, and gives them discretion to set those fees under sound banking judgment. The IFPA does not regulate a discrete operational detail. It dictates which components of a payment card transaction may generate compensation to the bank. That kind of categorical restriction on a bank’s pricing of its federally authorized services is the type of interference *Fidelity* identified as fatal to a state law’s survival under the Supremacy Clause.

B. The IFPA Impairs National Bank Efficiency and Effectiveness, as in Franklin

The *Cantero* Court identified *Franklin National Bank of Franklin Square v. New York* as the “paradigmatic example of significant interference.”⁶ In *Franklin*, a state law that restricted national bank advertising for a service was preempted because the restriction impaired the bank’s efficient and effective exercise of its federal power. The IFPA imposes interference that is more severe in both scope and consequence.

Payment card activity is national in scale and depends on standardized network rules that allow issuers, acquirers, networks, and merchants to operate together across state lines. The IFPA disrupts that operation by requiring national banks to accommodate Illinois-specific taxation rules at the transaction level, in a payment system that was not designed to carry state-level taxation data. As the OCC concludes, this jeopardizes national banks’ ability to participate efficiently in the payment card system on a national scale, and through it to exercise their lending and deposit-taking powers. The interference is at least as significant as the advertising restriction in *Franklin*. As Judge Nelson observed last year in dissent in *Kivett v. Flagstar Bank*, a state law that “dictates a national bank’s pricing” imposes interference that “pales in comparison to” the advertising restriction *Franklin* already held preempted.⁷

⁴*Cantero v. Bank of America, N.A.*, 602 U.S. 205, 219-20 (2024).

⁵*Fidelity Federal Savings & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 155 (1982).

⁶*Cantero v. Bank of America* at 216 (describing *Franklin National Bank of Franklin Square v. New York*, 347 U.S. 373 (1954), as the “paradigmatic example of significant interference”).

⁷*Kivett v. Flagstar Bank, FSB*, 154 F.4th 640, 660 (9th Cir. 2025) (Nelson, J., dissenting).

Compliance with the interchange fee prohibition would force community banks and other participants to consider drastic responses. A national bank facing the IFPA's operational regime and its \$1,000 per-transaction penalty has limited choices. It can attempt to comply with a regime that cannot be operationally implemented in the time available. It can decline categories of transactions. It can raise costs for cardholders, cut rewards programs, or defer fraud-prevention investments. Or it can exit the card business. None of those outcomes is consistent with the efficient and effective exercise of federal banking powers, and together they describe the pattern of interference that *Franklin* preempts.

C. The IFPA Qualifies a Federal Power in an Unusual Way, as in San Jose

In *First National Bank of San Jose v. California*, the Court held that a state law qualifying a national bank's federal power in an unusual way was preempted.⁸ The *San Jose* Court warned that if one state may impose such qualifications, others may follow with varying limitations of their own. The IFPA fits that description. It singles out payment card activity for state-specific qualification, telling banks they may charge interchange except where it relates to taxes or gratuities at the level of an individual transaction. As the OCC observes, it is hard to imagine a more unusual qualification on a national bank's exercise of its powers.

D. The Role of Third-Party Networks Does Not Defeat Preemption

The order rejects the argument that the role of card networks in setting interchange rates defeats preemption. Federal law authorizes national banks to contract with third parties, and the OCC's concurrent rule confirms a national bank's power to charge fees set by third parties. Conditioning federal preemption on whether a national bank exercises its powers directly or through standardized third-party arrangements would expose broad swaths of banking activity to state regulation that would otherwise be preempted. That result would undermine National Bank Act preemption and the intent of Congress. ICBA agrees with the OCC's conclusion.

II. The Data Use Limitation Is Independently Preempted

ICBA supports the OCC's separate conclusion that the IFPA's data use limitation is preempted. Federal law gives national banks broad authority to collect, analyze, and use transaction data in the business of banking. That authority supports fraud detection, cybersecurity, dispute resolution, credit underwriting, and customer service. The IFPA's near-total prohibition on transaction data use deprives national banks of tools that are essential to safe and sound operation in an environment of constant cyber and fraud threats. The preemption conclusion on this provision is correct under *Barnett Bank* and its antecedents, and ICBA supports the OCC's severability determination that the two preemption conclusions stand independently.

III. The Patchwork Risk Justifies Federal Preemption

The *San Jose* Court's warning that one state's unusual qualification on a federal power invites others to follow is not hypothetical. ICBA tracks state legislation closely. At least a dozen states have introduced legislation similar to the IFPA. Some target taxes only. Others reach tips, charitable contributions, and additional categories. Each variation carries its own data requirement, its own enforcement regime, and

⁸First National Bank of San Jose v. California, 262 U.S. 366, 370 (1923).

its own compliance burden.

A national payment card system cannot function under a patchwork of state-by-state taxation rules at the transaction level. The federal interest the OCC is protecting is the ability of a national bank in Indiana to issue a card that works the same way when its cardholder uses it in Illinois, in Ohio, or in another state, and the corresponding ability of the bank to be compensated under uniform rules. The Supreme Court has long recognized that protecting that uniformity is core to National Bank Act preemption. In *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.*, the Court declined to interpret federal law in a way that would “throw into confusion the complex system of modern interstate banking.”⁹ In *Easton v. Iowa*, the Court explained that subjecting national banks to varying state limitations on their federally authorized powers would be intolerable as a matter of constitutional design.¹⁰ The IFPA and the bills modeled on it present the problem those decisions warned against.

The OCC's order does not foreclose state regulation of payment systems generally. It addresses an unusual state qualification on a specific federal power, holds that the qualification cannot stand under *Barnett Bank*, and protects the uniform national operation of payment cards. That outcome is consistent with the Supremacy Clause and with the structure of the dual banking system that Congress and the states have built together.

IV. The Dual Banking System and the Coverage Gap for State-Chartered Banks

ICBA strongly supports the dual banking system. It is a defining feature of the U.S. banking framework that promotes competition, innovation, and a healthy balance between national and local interests. The dual banking system allows institutions to choose between a national or state charter, and between primary federal and primary state regulators. That structure produces a diversity of financial institutions, supervision tailored to banks of different sizes and risk profiles, and a competitive marketplace.

ICBA supports the independence of each federal banking regulator. The OCC's order protects national banks while leaving state-chartered banks operating in Illinois exposed to the IFPA. That competitive imbalance matters to community banks. State-chartered community banks in Illinois compete directly with national community banks in the same markets, often for the same customers, and the IFPA's operational and penalty structures would fall on the state-chartered institutions while sparing their national counterparts.

The coverage gap is broader than Illinois. Even if state regulators in Illinois extend comparable relief to state-chartered banks within their authority, an out-of-state community bank whose customers transact in Illinois would remain exposed. A community bank headquartered in Indiana whose cardholders shop, dine, or travel in Illinois has no reasonable way to comply with a regime that demands transaction-level state-of-occurrence data the payment system does not produce. As similar legislation moves in other states, this coverage gap multiplies. Each new state-level enactment leaves another set of out-of-state community banks exposed to a regime they cannot operationally implement, regardless of how state regulators in the enacting state respond.

ICBA urges enhanced coordination among federal banking regulators and between federal and state

⁹*Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 312 (1978).

¹⁰*Easton v. Iowa*, 188 U.S. 220, 229 (1903).

regulators on the IFPA and on the wider set of state interchange bills. We urge the OCC to provide guidance and assistance when state or federal regulators seek clarity on the IFPA and similar state laws. The coverage gap that emerges from a charter-by-charter or state-by-state resolution is the kind of gap federal preemption exists to close, and the dual banking system functions best when federal regulators help ensure that state-chartered community banks do not bear burdens that the OCC has determined are inappropriate for federally chartered banks.

V. The OCC Acted Properly by Interim Final Order and on Good Cause

ICBA supports the OCC's determination that it was necessary to act by interim final order without prior notice and comment. The reversal in February 2026 of the preliminary injunction against the IFPA created immediate uncertainty just months before the statute's July 1, 2026 effective date. Absent the OCC's action, national banks would have been required to begin costly and disruptive preparations to comply with a statute that the order now confirms is preempted. They would also have been required to notify cardholders and merchants of potential changes to card availability, generating confusion about access to basic banking services.

Those dynamics are the kind of serious and imminent threat to safety and soundness that justifies acting by interim final order. The OCC's decision to invite post-issuance comment further ensures transparency while preventing imminent harm. The Seventh Circuit's recent vacatur and remand of the district court ruling in *Illinois Bankers Association v. Raoul*, which directed the lower court to address the impact of the OCC's actions, confirms that the order was both timely and consequential to the orderly resolution of the legal questions presented.

VI. Conclusion

ICBA supports the OCC's interim final order preempting the IFPA. The order applies the conflict-preemption standard of *Barnett Bank* and *Cantero*, protects the uniform national operation of the payment card system, and acts on the kind of good cause that interim final rulemaking exists to address. We urge the agency to finalize the order without delay and to continue its work with federal and state counterparts to address the broader patchwork of state interchange legislation.

ICBA appreciates the opportunity to comment and welcomes the opportunity to discuss any of these issues further with the OCC.

Respectfully submitted,

/s/

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