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Via Regulations.gov

May 29, 2026

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 Rule: National Bank Non-Interest Charges and Fees
[RIN 1557-AF54; Docket ID OCC-2026-0430]

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 rule clarifying national banks' authority to charge non-interest charges and fees, including interchange fees from credit and debit card operations.

The OCC has correctly acted to clarify longstanding national bank powers under the National Bank Act in response to the regulatory confusion created by recent litigation surrounding the Illinois Interchange Fee Prohibition Act (IFPA).[2] As the OCC has described the IFPA, it is "an unworkable state law that threatens to upend the nation's intricately designed payments system"[3] The OCC's rule restores legal certainty for community banks and protects their ability to continue serving consumers and small businesses.

ICBA supports each of the OCC's clarifications to 12 C.F.R. § 7.4002. Our comments below address the rule, the operational realities of the payment card system, and the legal framework that supports the OCC's action.

I. ICBA Supports the OCC's Clarifications to 12 C.F.R. § 7.4002

The OCC's clarifications reaffirm that national banks have broad authority to impose non-interest charges and fees as part of the business of banking. That authority is grounded in the National Bank Act and has been recognized by courts and the OCC for decades under multiple administrations. The

[1]The 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.

[2] See also ICBA Comment Letter on Interim Final Order: Order Preempting the Illinois Interchange Fee Prohibition Act [Docket ID OCC-2026-0431] RIN 1557-ZA10 May 29, 2026.

[3]Brief of the Office of the Comptroller of the Currency as Amicus Curiae in Support of Plaintiffs-Appellants, Illinois Bankers Association v. Raoul, No. 25-1158 (7th Cir.).

rule does not expand national bank powers. It clarifies existing authority that community banks rely on to operate within the modern payment system.

A. Defining "Charge" Reflects How the Payment System Actually Works

ICBA supports the OCC's decision to define "charge" in paragraph (a) of § 7.4002 and to move the authority to impose non-interest charges and fees to paragraph (b). The definition clarifies that to "charge" includes assessing, collecting, imposing, levying, receiving, reserving, taking, or otherwise obtaining a fee, directly or indirectly, including through a fee-sharing or similar economic relationship.

The definition also confirms that national banks may obtain non-interest compensation through intermediaries, partners, payment networks, interchanges, or other third parties. This is essential. Payment card systems operate through standardized, multi-party arrangements because bilateral negotiations among countless banks and merchants would be unworkable. As the OCC noted in the rule's preamble, such a process "would be complex, inefficient, ineffective, and costly," and "most national banks do not have the resources to engage in such activities."[4] Conditioning national bank authority on bespoke fee-setting would undermine the interoperability, scale, and security on which the modern payment system depends.

B. The History of the Card System Illustrates the Necessity of Standardized National Arrangements

The current payment card system did not arise by accident. Before the modern card networks, credit cards were issued and processed on a bank-by-bank basis. Each bank had its own licensed card program, its own settlement procedures, and its own bilateral relationships with merchants and other banks. The result was a system that was inefficient and prone to error, fraud, and bad debt. The chaos was widespread enough to become a cultural reference: the 1962 Doris Day and Cary Grant film *That Touch of Mink* featured credit card billing errors as a plot device, an artifact of the pre-network era when card processing was a manual and unreliable affair.

The modern payment network was born in 1966, when Dee Hock took over the BankAmericard licensee program at the National Bank of Commerce in Seattle. The program was overwhelmed with fraud and bad debt. Hock recognized that the underlying problem was structural. A fragmented system of bilateral relationships could never achieve the scale, security, or efficiency that consumers, merchants, and banks required. He set about building what he later called a *"chaordic"* organization, a portmanteau of "chaos" and "order," to describe a system that balances decentralized experimentation with centralized rules. The result was Visa, a cooperative association of participating banks operating under a common set of rules and economic relationships.[5]

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[4] Office of the Comptroller of the Currency, National Bank Non-Interest Charges and Fees Interim Final Rules; (Docket ID OCC-2026-0430, RIN 1557-AF54).

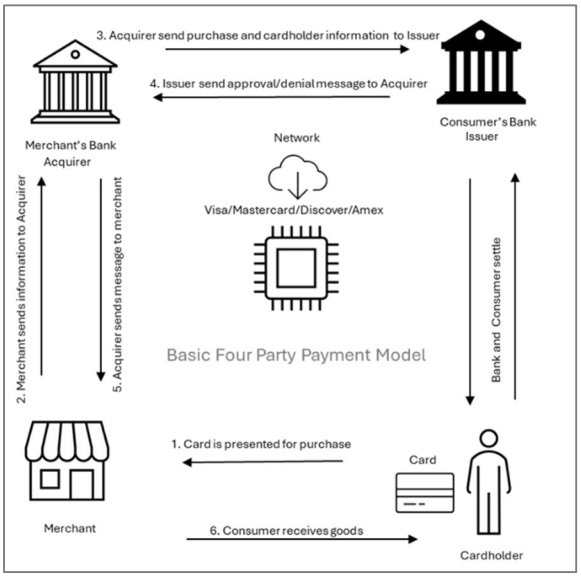
[5] Dee Hock, One from Many: VISA and the Rise of Chaordic Organization (Berrett-Koehler 2005); see also Robert D. Hershey Jr., Dee Hock, Visionary Creator of Visa Credit Card, Dies at 93, N.Y. Times (July 19, 2022).

Hock credited Visa's success to minimizing top-down control and letting participating banks experiment within a shared framework. Traditional command-and-control management, he argued, “extinguished creativity and wasted vast amounts of time” as employees worked to satisfy rule-making bosses rather than serve customers. The IFPA and similar state-level efforts force banks to divert resources to comply with conflicting state mandates, pulling them away from the work of serving their customers and communities.

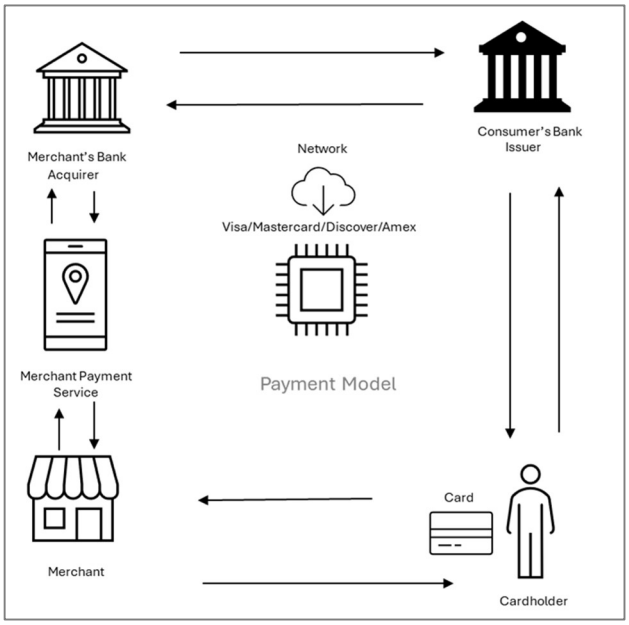
Without the OCC's action, the U.S. payment system would begin sliding back toward the fragmentation that the modern network was built to eliminate. The real-world consequences would show up in declined transactions, withdrawn card programs, and erosion of consumer and merchant confidence in basic banking services.

C. The Four-Party Card Model and the Role of Community Banks

In the traditional four-party card model,[6] the bank sits between the consumer and the merchant. As issuer, the bank assumes credit and fraud risk on the consumer side. As acquirer, it assumes settlement and operational risk on the merchant side. Interchange fees flow within this system to compensate participants for the risks they bear and the services they provide. The basic architecture of relationship banking, where deposits fund loans and the bank stands between counterparties, carries over into the electronic payments era.



[6]The four-party model consists of the cardholder, the cardholder's issuing bank, the merchant, and the merchant's acquiring bank, with the card network as the connective infrastructure.



New charters and fintech business models have shifted that balance. Where community banks once served as both issuer and acquirer for their local merchant customers, many have exited the acquiring side of the business in the years since the Durbin Amendment took effect. Today most small and medium-sized merchants rely on non-bank payment facilitators rather than their community banks to accept card payments. The clarifications in § 7.4002 are needed precisely because the realities of the modern payments ecosystem are increasingly distant from the bilateral, customer-by-customer model that the regulation's original text contemplated.

D. Removing "Customer" Clarifies Compensation Without Expanding Authority

ICBA supports removing the word "customer" from § 7.4002(b). As the revised definition of "charge" reflects, national banks often receive compensation through entities that do not have a direct customer relationship with the bank, such as merchants, acquiring banks, or networks. Removing "customer" aligns the regulation with how compensation actually flows in the modern system. The amendment does not alter the scope of bank authority.

This clarification matters in today's fintech landscape, where new charter types and partnership models have blurred or rearranged the traditional roles of issuers, acquirers, networks, and merchants. The amendment removes any ambiguity about whether the absence of a direct customer relationship affects a national bank's authority to be compensated for the services it provides.

E. Adding Interchange Fees as an Example Provides Needed Clarity

ICBA supports adding interchange fees as a non-exclusive example of non-interest charges permitted under § 7.4002. The OCC removed examples from the regulation in 2001 to avoid unintended limitations. The recent district court ruling in *Illinois Bankers Association v. Raoul* shows that explicit clarification is now warranted. The OCC properly emphasizes that interchange is offered as an example, not a limitation, and that national banks retain authority to impose other non-interest charges consistent with safe and sound banking principles.

II. The IFPA's Operational Requirements Are Unworkable

The OCC's preamble correctly identifies the operational impossibility of complying with the IFPA. ICBA reinforces those findings here, drawing on the practical realities of how the payment card system functions. These realities are central to evaluating the OCC's good cause determination and its conclusion that the IFPA prevents and significantly interferes with national bank powers.

A. The IFPA Automatic Process Cannot Run on Existing Card Systems

The IFPA's proposed automatic compliance mechanism would require the merchant to communicate the tax and gratuity portion of each transaction to the acquirer as part of the authorization or settlement message. The existing payment card infrastructure does not support this communication, and it cannot be modified by July 1, 2026. Implementation would require the card networks to develop new technical standards in coordination with international standards bodies, the acquiring and issuing banks to then implement those changes in their authorization and settlement systems, and merchants to develop and adopt point-of-sale systems capable of transmitting the required tax and tip data with each transaction. Each step takes years rather than weeks, and each is sensitive to implementation errors that could introduce fraud or outright payment failures.

B. Automated Fuel Dispensers Illustrates Why Implementation Fails

The IFPA defines the prohibited amount to include excise taxes. In Illinois, the price of gasoline at the pump already includes embedded excise taxes, which may vary by jurisdiction. No mechanism exists for a merchant to communicate to the acquirer at authorization the fuel-only amount of a gasoline purchase exclusive of tax. Merchants cannot strip the multiple taxes out at the pump because the pump's pricing display, the customer's receipt, and the merchant's accounting all show a single combined all in per-gallon price. To comply with the IFPA at a gas station, the merchant would need to reengineer point-of-sale technology, fuel dispensing equipment, and accounting systems to disaggregate excise tax at the moment of authorization. That exercise is operationally and economically prohibitive.

Gas is not an outlier. It is one example of a broader problem: distinguishing taxable from non-taxable components of a transaction at the moment of authorization is categorically difficult, especially where taxes are embedded in unit pricing, vary by locality, or are calculated on bases that are not visible to the payment system.

C. Transaction Location Cannot Be Reliably Determined

The IFPA applies to transactions in Illinois, but the data carried in a payment card authorization message does not reliably indicate where a transaction physically occurred. The majority of transactions now happen online where the merchant location field typically reflects the merchant's headquarters or registered address. For online marketplaces the difficulty compounds with merchants operating through cloud-based infrastructure platforms such as eBay, Etsy, or Amazon with no single identifiable physical location.

An issuing bank attempting to comply with the IFPA on a transaction-by-transaction basis cannot determine with confidence whether a given transaction is subject to the law. A purchase made by an Illinois consumer from an out-of-state merchant may or may not be covered, depending on facts the issuer cannot reliably see. A transaction that appears in payment data as occurring in Illinois may actually have been conducted in Michigan at a merchant whose card terminal reflects its Illinois

headquarters address. The IFPA effectively requires issuers to apply a state-specific compliance regime in a payment system that was not designed to provide physical state-level transaction data.

D. The Manual Refund Process Does Not Work

The IFPA's proposed manual compliance mechanism gives the merchant 180 days to submit documentation (invoices, receipts, journals, ledgers, or tax returns) to the acquiring bank, after which the issuer has 30 days to credit the merchant for any interchange charged on the tax or gratuity portion of the transaction. Several fundamental features of the modern payment system make this process unworkable.

Acquirers cannot reliably identify the relevant issuer. Modern payment card receipts include only a truncated card number, typically the last four digits, to comply with industry security standards designed to prevent card number theft. The issuing bank is identified by the first six to eight digits of the card number, known as the Bank Identification Number (BIN). Because the last four digits do not identify the issuer, an acquirer attempting to process a manual refund request cannot determine which issuing bank should be attributed, let alone reach that issuer with the refund request.

There is no communication channel between acquirers and issuers for this purpose. Card transactions are settled through the networks, not bilaterally between banks. No industry mechanism exists through which an acquirer can send a tax-documentation refund request to an issuer, and there is no standardized format for such a request. Building such a channel would require coordination among the networks, the acquirers, the issuers, and the merchants. None of that has happened, and none of it could happen in the time available.

The documentation the merchant may submit is unstructured and varies in form. The IFPA contemplates that merchants may submit “invoices, receipts, journals, ledgers, and tax returns,” among other documents. An issuing bank cannot reliably extract from those documents the specific tax and gratuity amounts attributable to a specific card transaction, particularly across the millions of transactions an active issuer processes each year.

The manual process places all liability on the bank. If a merchant submits documentation that is inaccurate, incomplete, or fraudulent, the bank that fails to issue a corresponding credit faces $1,000 per transaction in penalties. The merchant faces no comparable liability. The structure gives merchants a strong incentive to submit refund requests and no comparable incentive to ensure their accuracy.

E. The $1,000 Per-Transaction Penalty Creates Existential Risk

The IFPA imposes a civil penalty of $1,000 per violation.[7] Approximately 6.5 billion payment card transactions occur in Illinois each year.[8] The OCC has estimated that participants in the payment card

[7] 815 Ill. Comp. Stat. 151/150-15(a).

[8] See OCC, Order Preempting the Illinois Interchange Fee Prohibition Act, Docket ID OCC-2026-0431, at 13-14 (estimating up to 6.5 billion payment card transactions per year in Illinois).

system could face penalty exposure as high as $6.5 trillion annually for non-compliance. For an individual community bank, even a modest share of that exposure could exceed total assets, creating risks that cannot be priced, hedged, or insured.

A community bank facing this exposure has limited options. It can try to comply with a regime that is operationally impossible. It can decline to authorize transactions they believe are covered, harming customers and merchants. It can exit the card business altogether. Or it can wait for litigation to resolve the question of preemption while bearing the risk that it does not. The OCC's rule sets aside the first three options so the legal question can be decided on the merits. That is the essence of good-cause rulemaking.

F. Payment Processor Liability Under the IFPA Remains Unclear

The IFPA addresses compensation provided to card issuers via interchange, but its application to the compensation collected by merchant processors and payment facilitators is less clear.[9] The non-bank payment facilitators that capture the largest share of merchant swipe fees are largely outside the regulatory framework that governs banks. The IFPA's structure exposes banks to penalties they cannot avoid while leaving open significant questions about how, if at all, the law applies to the intermediaries with the most direct economic relationship with the merchant. This asymmetry reinforces the OCC's conclusion that the law's operational burden falls most heavily on national banks.

III. The Policy Premise of the IFPA Is Flawed: Interchange Is Not the Principal Driver of Merchant Acceptance Costs

Community banks are sensitive to the cost pressures small merchants face. Small merchants are among our members' most important customers, and the financial health of Main Street businesses is essential to the communities our members serve. The policy debate around interchange has been distorted by a misunderstanding of where merchant payment acceptance costs actually originate. ICBA wishes to draw a clear distinction between interchange fees and the broader category of “swipe fees,” and to identify where merchant costs are being assessed. These distinctions matter so that bankers, merchants, and regulators are working from the same facts.

A. Swipe Fees, Interchange, Network Fees, and Acquirer Fees

Swipe fees are what the merchant pays the acquirer or merchant processor to accept the card. Swipe fees have three components: interchange, network fees, and acquirer fees. If an acquirer processes a $50 sale for a merchant, the acquirer may return $48.25 to the merchant and keep $1.75 to cover interchange, network, and acquirer fees combined. These three components were historically grouped under the term “merchant discount rate.”

Interchange is the portion paid to the issuing bank, whose name appears on the consumer’s card. Interchange, when set by the networks, is calibrated to the risk of the transaction. Safer transaction

[9] 815 ILCS 151/Art 5, https://ilga.gov/Legislation/ILCS/Articles?ActID=4515&ChapterID=67&Print=True

methods, such as chip, tokenized, and contactless payments, carry lower interchange rates. Riskier transactions, such as magnetic stripe and online key-entered transactions, carry higher interchange. The risk of consumer disputes is also priced into interchange. Credit card interchange runs higher than debit interchange to help offset credit risk. As discussed below, the majority of debit card transactions carry a nearly flat, government-set interchange of about twenty-five cents.

Network fees are the portion that card networks such as Visa and Mastercard collect. This is generally the smallest part of swipe fees. It functions as the toll for using the payment rail and funding the security infrastructure.

Acquirer fees are the portion the acquirer keeps. Historically the acquirer was the merchant's community bank, which as part of relationship banking provided business accounts, lines of credit, and card services together. Today most small businesses use fintech card processors rather than their community banks as their acquirer, and the acquirer fee component has grown accordingly.

Merchant card processing uses two main pricing models:

- **Interchange-plus** pricing passes the direct interchange and network fee through to the merchant and adds a fixed fee per transaction.
- **Blended** pricing offers the merchant a flat rate per transaction. Card processor acquirers such as Square, Clover, Toast, Stripe, and PayPal publish their blended swipe fees on their websites.

The following table shows the published blended swipe fees of several major non-bank payment facilitators for a $50 debit card transaction subject to Regulation II. Each row breaks the swipe fee into the portion that flows to the issuing bank, the network, and the merchant processor.[10]

Processor	Merchant Pays (Swipe Fee)	Debit Interchange (Issuer)	Network Fee	Merchant Processor
Square (2.6% + $0.10)	$1.40	$0.25	$0.10	**$1.06**
Stripe (2.9% + $0.30)	$1.75	$0.25	$0.10	**$1.41**
Toast	$1.42	$0.25	$0.10	**$1.08**
Clover (2.3% + $0.10)	$1.25	$0.25	$0.10	**$0.91**

[10]Square, Payments Pricing, available at https://squareup.com/us/en/payments/our-fees (last visited May 12, 2026); Stripe, Pricing, available at https://stripe.com/pricing (last visited May 12, 2026); Toast, Pricing, available at https://pos.toasttab.com/pricing (last visited May 12, 2026); Clover, Pricing, available at https://www.clover.com/pricing (last visited May 12, 2026).

The largest component of what the merchant pays in each row flows to the non-bank processor. The IFPA, however, targets the interchange paid to the issuer rather than the larger acquirer fee paid to the processor. The result is a regulatory regime that imposes serious operational burdens on banks while doing little to address the merchant-cost concerns typically cited as the law's justification.

B. Community Bank Impacts

Community banks and small businesses are vital to local economies. Community banks provide roughly 60% of small business loans nationwide and consistently receive the highest satisfaction ratings among small business borrowers.[11] Since the Durbin Amendment took effect, many community banks have stopped offering merchant acceptance services because the economics no longer support a community bank acquiring operation. For community banks not directly covered by the Durbin Amendment's interchange cap, average debit interchange is $0.50 per transaction[12].

Swipe fees and interchange are distinct, and the acquirer fees charged by non-bank fintech card processors often account for the bulk of what merchants pay to accept card payments. In today's ecosystem, most small and medium-sized businesses rely on non-bank payment facilitators rather than their community banks to accept and process debit card payments. These entities offer proprietary services and technological infrastructure to route transactions and settle funds, and they charge merchants for these services.[13] Square, Stripe, Toast, and Clover are increasingly recognized by consumers at the point of sale. Despite their growing market share and central role in the payment ecosystem, these intermediaries are not subject to the Durbin Amendment, are not required to pass interchange savings through to merchants, and would not bear the operational burden of IFPA compliance in the way that issuing and acquiring banks would.

For community banks that remain active in payment card programs, interchange revenue must support fraud detection and prevention systems, customer service, dispute resolution, technology upgrades, and the basic economics of card issuance. Community banks do not have the scale advantages of the largest issuers and must allocate this revenue carefully. State-level mandates that disrupt interchange economics, impose new compliance burdens, or threaten exorbitant penalties affect community banks hardest. Some community banks may be forced to decline covered transactions, exit card programs entirely, or reduce services to absorb compliance costs. The consumers and small businesses they serve would bear the cost.

C. Excluding Tax and Tip From Debit Interchange Generates No Real Merchant Savings

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[11] ICBA analysis of FDIC Call Report data; see also ICBA, About Community Banking, available at https://www.icba.org/about/community-banking.

[12] Board of Governors of the Federal Reserve System, 2023 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions (2024).

[13] Stripe, What is a Payment Facilitator?, available at https://stripe.com/guides/payfacs (last visited May 12, 2026).

A common claim advanced in support of the IFPA is that excluding taxes and tips from interchange would generate meaningful savings for merchants. The claim does not hold up under the actual mathematics of debit interchange.

Debit card transactions are the most common consumer payment method.[14] The average debit card transaction is $48.[15] Debit interchange is already capped for the majority of transactions under Regulation II, commonly known as the "Durbin interchange." Under Regulation II, the debit interchange formula for covered issuers is $0.21 base rate plus 0.05% of the transaction value plus a $0.01 fraud adjustment. The formula yields an interchange amount that is essentially flat. The following example illustrates why removing tax from the interchange calculation produces no savings.

Consider a $92 purchase with $8 in sales tax, for a $100 total charge:

- **Current interchange:** $0.21 + (0.05% × $100) + $0.01 = **$0.27**
- **IFPA-adjusted interchange (tax excluded):** $0.21 + (0.05% × $92) + $0.01 = **$0.27**

The merchant gets no debit interchange savings. The IFPA's consumer-protection benefit collapses on inspection, while the operational, compliance, and litigation costs fall on banks.

IV. The OCC Properly Acted on Good Cause and Preemption Grounds

ICBA agrees with the OCC's determination that good cause existed to issue the rule without prior notice and comment. The reversal of the preliminary injunction against the IFPA in February 2026 created immediate uncertainty and risked severe operational disruption ahead of the statute's July 1, 2026 effective date. The OCC's contemporaneous interim final order preempting the IFPA depends on and reinforces the rule's clarifications. Together the two actions give national community banks the legal certainty they need to plan and operate.

ICBA also supports the substantive preemption analysis reflected in the rule and the companion order. The OCC applies the conflict-preemption standard the Supreme Court articulated in *Barnett Bank of Marion County, N.A. v. Nelson*[16] and reaffirmed last term in *Cantero v. Bank of America, N.A.*[17] Under that standard, state law is preempted where it prevents or significantly interferes with a national bank's exercise of its federal powers, based on "a practical assessment of the nature and degree of the interference caused by a state law."

The IFPA meets that standard. The interchange fee prohibition prevents or significantly interferes with national bank powers in ways recognized by the Supreme Court's preemption antecedents. It interferes with the flexibility granted to national banks under federal law, as in *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*. It interferes with national banks' efficiency and effectiveness in exercising their

[14]Federal Reserve Payments Study (FRPS), available at https://www.federalreserve.gov/paymentsystems/fr-payments-study.htm (last visited May 12, 2026).
[15]Pulse 20th Debit Issuer Study (2025), available at https://www.pulsenetwork.com/public/debit-issuer-study/ (last visited May 12, 2026).
[16]Barnett Bank of Marion Cnty., N.A. v. Nelson, 517 U.S. 25, 33 (1996).
[17]Cantero v. Bank of America, N.A., 602 U.S. 205, 219-20 (2024).

federal powers, the principle the *Cantero* Court identified as the "paradigmatic example of significant interference" from *Franklin National Bank of Franklin Square v. New York*. And it qualifies a federal power in an "unusual" way, as in *First National Bank of San Jose v. California*. By dictating which components of a payment card transaction may generate compensation, the IFPA strips national banks of the discretion federal law gives them to set non-interest charges and fees under sound banking judgment. By imposing an operationally unworkable compliance regime on a uniform national payment system, it impairs the efficiency and effectiveness with which national banks exercise their deposit-taking, lending, and payment-processing powers. By singling out payment card activity for state-specific qualification, it imposes the kind of unusual restriction the Court's preemption antecedents have long held insufficient to survive Supremacy Clause scrutiny.

The OCC's revised § 7.4002 removes any doubt that federal law authorizes national banks to charge interchange fees and vests them with the flexibility to do so. The rule and the preemption order work together: the rule confirms the federal power that the order then identifies as preemptively superior to conflicting state law.

V. The Supremacy Clause and Interstate Commerce Considerations Support the OCC's Action

The Supremacy Clause and the federal interest in interstate commerce support the OCC's action. The U.S. payment card system is fundamentally interstate. Cardholders use their cards across state lines without thinking about it. Merchants in one state accept payments from cardholders in another. Issuers, acquirers, networks, and processors operate national infrastructure that could not function in a regime where each state's tax code reshapes the underlying compensation architecture. A patchwork of state interchange laws would fracture the national payment rails, undermine consumer confidence, and impose compliance burdens that fall hardest on community banks.

This concern is not theoretical. At least a dozen states have introduced legislation similar to the IFPA, with bills active or recently considered in Colorado, Pennsylvania, Delaware, Georgia and elsewhere. None of these bills can be implemented coherently in a payment system that operates as a single national network. The OCC's action protects the integrity of that network against an emerging patchwork that benefits no party except the non-bank payment facilitators that stand outside the affected regulatory regime.

VI. The Dual Banking System and Regulatory Coordination

ICBA strongly supports preservation of the dual banking system. The dual banking system is a defining feature of the U.S. banking framework. It promotes competition, innovation, and a healthy balance between national and local interests. Allowing institutions to choose between a national or state charter, and between primary federal and primary state regulators, fosters diversity in business models, tailors supervision to banks of different sizes and risk profiles, and strengthens the resilience of the financial system. The dual banking system must be preserved because it allows for a diversity of financial institutions, accounts for differences in large and small bank supervision, and supports a competitive marketplace.

ICBA supports the independence of each federal banking regulator. At the same time, we urge enhanced coordination and consultation among the agencies, and between federal and state regulators, so that the protections appropriately afforded to national banks under the OCC's preemption order do not leave a fractured competitive landscape across charter types. The OCC's preemption order protects national banks, but state-chartered banks operating in Illinois remain exposed to the IFPA. The resulting competitive imbalance underscores the need for coordinated federal and state regulatory action to preserve a level playing field.

The competitive imbalance has a further dimension. State-chartered banks in Illinois and in other states that may enact similar legislation could obtain comparable relief through state regulators acting within their authority. But even where state-level relief is extended, out-of-state community banks whose customers transact in Illinois would remain exposed. A community bank headquartered in Michigan 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. 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.

VII. Conclusion

ICBA strongly supports the OCC's interim final rule on national bank non-interest charges and fees. The OCC acted to preserve the uniform operation of the national banking system, protect consumers' and small businesses' access to electronic payments, and give community banks the clarity they need to operate in an increasingly complex payments landscape. The clarifications to 12 C.F.R. § 7.4002 do not expand national bank authority. They reaffirm authority that has long existed and that is essential to the safe and sound operation of the modern payment system. We urge the agency to finalize the rule without delay.

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

Respectfully submitted,

Kari Neckel

Kari Neckel
Vice President, Payments Policy