



## Office of the Comptroller of the Currency

Washington, DC 20219

*Via CM/ECF*

April 28, 2026

Christopher G. Conway  
Clerk of the Court  
U.S. Court of Appeals for the Seventh Circuit  
Everett McKinley Dirksen U.S. Courthouse  
219 S. Dearborn Street, Room 2722  
Chicago, IL 60604

Subject: *Ill. Bankers Ass'n v. Raoul*, Nos. 26-1354 (lead), 26-1371, 26-1440,  
26-1441 (argument scheduled for May 13, 2026)

Amicus Curiae Office of the Comptroller of the Currency's Rule 28(j)  
Letter Submitting Supplemental Authority

Dear Mr. Conway:

Pursuant to Federal Rule of Appellate Procedure 28(j), the Office of the Comptroller of the Currency ("OCC") provides this letter to advise the Court of pertinent and significant authorities relevant to its amicus brief. *See* OCC Br. (Dkt. No. 30) at 11-18, 19-21.

On Friday, April 24, 2026, the OCC issued an interim final rule clarifying and codifying the power of national banks to charge non-interest fees, regardless of whether those fees are set by the bank or a third party. OCC, National Bank Non-Interest Charges and Fees, Docket ID OCC-2026-0430 (Apr. 24, 2026), <https://public-inspection.federalregister.gov/2026-08328.pdf> (set to be published in the Federal Register on Wednesday, April 29, 2026). Considering that interim final rule, the OCC also issued an interim final order concluding that federal law preempts the Illinois Interchange Fee Prohibition Act ("IFPA") under its congressionally delegated authority. OCC, Order Preempting the Illinois Interchange Fee Prohibition Act, Docket ID OCC-2026-0431 (Apr. 24, 2026), <https://public-inspection.federalregister.gov/2026-08341.pdf>; *see also* 5 U.S.C. § 554(e); *Aguayo v. U.S. Bank*, 653 F.3d 912, 919 (9th Cir. 2011) (the OCC's "regulatory authority, which carries the same weight as federal statutes, includes interpretation of state law preemption under the" National Bank Act); *Wells Fargo Bank N.A. v. Boutris*, 419 F.3d 949, 962 (9th Cir. 2005) ("once the OCC's authority" to rule-make "is established, its authority to displace contrary state regulation where the Bank Act itself preempts contrary state regulation of national banks follows"); *Wachovia Bank, N.A. v. Burke*, 414 F.3d 305, 314 (2d Cir. 2005) ("Federal courts have recognized that the OCC may issue regulations with preemptive effect."). Both interim final measures become effective on June 30, 2026, the day before the IFPA is set to become effective.

The OCC believes that these interim final measures, which themselves have the force and effect of law, have significant effects on the questions presented in this matter and stands ready to provide the Court with further briefing on the impact of these measures. Copies of the interim final rule and interim final order are enclosed.

Respectfully submitted,

/s/ Hannah Hicks

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cc: All counsel of record through CM/ECF

Enclosures: Interim Final Rule, Interim Final Order

#### **CERTIFICATE OF SERVICE AND COMPLIANCE**

I, Hannah Hicks, counsel for Amicus Curiae Office of the Comptroller of the Currency, hereby certify that on April 28, 2026, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I hereby certify that this filing is 335 words and therefore complies with the word limitations of Federal Rule of Appellate Procedure 28(j).

/s/ Hannah Hicks

Hannah Hicks

*Counsel for Amicus Curiae  
Office of the Comptroller of the Currency*



## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 7

[Docket ID OCC-2026-0430]

RIN 1557-AF54

### National Bank Non-Interest Charges and Fees

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The OCC is adopting an interim final rule to clarify that national banks' power to charge non-interest charges and fees includes the power to assess, collect, impose, levy, receive, reserve, take, or otherwise obtain non-interest charges and fees, including interchange fees from credit and debit card operations. Further, the interim final rule explains that national banks may charge non-interest charges or fees, even when such charges and fees are set by or in consultation with third parties. The OCC invites public comments on this interim final rule.

**DATES:** The interim final rule is effective June 30, 2026. Comments on the interim final rule must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title "National Bank Non-Interest Charges and Fees" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal*—"Regulations.gov":

Go to <https://regulations.gov/>. Enter Docket ID "OCC-2026-0430" in the Search Box and click "Search." Public comments can be submitted via the "Comment" box below the displayed document information or by clicking on the document title and then

effective comments, please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday-Friday, 9 a.m.-5 p.m. ET, or e-mail [regulationshelpdesk@gsa.gov](mailto:regulationshelpdesk@gsa.gov).

- **Mail:** Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- **Hand Delivery/Courier:** 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.

*Instructions:* You must include “OCC” as the agency name and Docket ID “OCC-2026-0430” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically – Regulations.gov:*

Go to <https://regulations.gov/>. Enter Docket ID “OCC-2026-0430” in the Search Box and click “Search.” Click on the “Dockets” tab and then the document’s title. After clicking the document’s title, click the “Browse All Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Comments Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Browse Documents” tab. Click on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen checking the “Supporting & Related Material”

free) Monday-Friday, 9 a.m.-5 p.m. ET, or e-mail [regulationshelpdesk@gsa.gov](mailto:regulationshelpdesk@gsa.gov).

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

**FOR FURTHER INFORMATION CONTACT:** Karen McSweeney, Special Counsel, Priscilla Benner, Counsel, and Elizabeth Small, Counsel, Chief Counsel’s Office, 202-649-5490; Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219. If you are deaf, hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

In the National Bank Act (NBA), Congress granted national banks enumerated powers, including to “loan[] money on personal security” and to “receiv[e] deposits,” as well as “all such incidental powers as shall be necessary to carry on the business of banking.”<sup>1</sup> As the OCC and courts have long recognized, national banks thus have broad powers to engage in activities that are part of, or incidental to, the business of banking, including issuing debit cards and credit cards (payment cards) and processing payments.<sup>2</sup>

National banks also have the authority to receive compensation for the products and services they provide, including to charge and receive interchange fees<sup>3</sup> for processing payment

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<sup>1</sup> 12 U.S.C. 24 (Seventh).

<sup>2</sup> *See, e.g.*, OCC Conditional Approval No. 773, 2006 WL 4589434, at \*1 (Nov. 30, 2006) (“[M]erchant processing activities are part of, or incidental to, the business of banking[.]”); OCC Corporate Decision 99-50, at 4 (Dec. 23, 1999) (“processing credit and debit card transactions and other electronic payments are clearly part of the business of banking”), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2000/cd99-50.pdf>; OCC Conditional Approval No. 248, at 4 (June 27, 1997) (“It is clear that merchant processing activities are permissible for national banks[.]”), <https://www.occ.gov/topics/chartersand-licensing/interpretations-and-actions/1997/ca248.pdf>.

<sup>3</sup> An “interchange fee” is generally the fee paid to an issuer bank as part of a payment card transaction.

banks' broad authority to impose non-interest charges and fees and provides each national bank with the discretion to make business decisions about how to impose these charges and fees.<sup>5</sup>

Recently, a Federal district court in the Northern District of Illinois created ambiguity about the scope of § 7.4002, asserting that national banks do not “set” interchange fees and finding that “[t]he thrust of 12 CFR 7.4002 is not to protect fees centrally established by a third-party company.”<sup>6</sup> Such a finding is, however, inapposite to the OCC and courts' longstanding interpretation of § 7.4002 and fails to recognize the reality of the payment card systems and the modern economy. The OCC is issuing this interim final rule to clarify the scope of this national bank power.

National banks routinely rely on third parties for a range of products and services.<sup>7</sup> In particular, third parties are crucial to national banks' provision of payment cards, which are vital and deeply rooted components of the American and global economy. These cards are among the most universally accepted and common methods of payment and are routinely used by millions of consumers to pay for products and services worldwide.<sup>8</sup>

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<sup>4</sup> 12 CFR 7.4002. With respect to Federal savings associations, 12 CFR 145.17 authorizes Federal savings associations “to transfer, with or without fee, its customers' funds.” This interim final rule does not address savings associations because we interpret Federal law, including § 145.17, to clearly provide Federal savings associations with comparable authority.

<sup>5</sup> See *Baptista v. JPMorgan Chase Bank, N.A.*, 640 F.3d 1194, 1198 & n.2 (11th Cir. 2011) (concluding that “the OCC specifically authorizes banks to charge fees to non-accountholders presenting checks for payment” and “the significant objective of 12 C.F.R. § 7.4002 is to allow national banks to charge fees and to allow banks latitude to decide how to charge them”); *Monroe Retail, Inc. v. RBS Citizens, N.A.*, 589 F.3d 274, 283-84 (6th Cir. 2009) (agreeing that a national bank is authorized by 12 CFR 7.4002 and 12 U.S.C. 24 (Seventh) to “exact[.]” or “collect” garnishment fees by debiting a depositor); *Bank of Am. v. City & Cnty. of S.F.*, 309 F.3d 551, 5624 (9th Cir. 2002) (holding that, consistent with OCC regulations including 12 CFR 7.4002, “national banks may charge ATM fees to non-depositors”).

<sup>6</sup> *Ill. Bankers Ass'n v. Raoul*, --- F. Supp. 3d ---, 2026 WL 371196, at \*9, \*13 (N.D. Ill. Feb. 10, 2026) (“*Raoul* SJ opinion”).

<sup>7</sup> See, e.g., *Request for Information Regarding Community Banks' Engagement with Core Service Providers and Other Essential Third-Party Service Providers*, 90 FR 54882 (Nov. 28, 2025) (discussing community banks' reliance on third parties to operate effectively and competitively).

<sup>8</sup> OCC, *Comptroller's Handbook*, “Credit Card Lending,” 1 (2021). See also Berhan Bayeh et al., Fed. Reserve Fin. Servs., *2025 Findings from the Diary of Consumer Payment Choice* 5 (2025) (finding that, in 2024, credit and debit cards were used for approximately 65 percent of consumer payments).

exercising their statutory deposit-taking and lending powers. National banks contract with card networks (*e.g.*, Visa and Mastercard) and others to facilitate payment card transactions. As the issuers of credit and debit cards, they provide payment cards to customers, assess cardholder risk, and offer services including fraud detection and prevention, dispute resolution, and rewards programs. As acquirers, they contract with merchants who accept payment cards and connect these merchants to the card network so that transactions are seamlessly processed and settled.

As compensation, national banks are paid fees for their payment card services. These fees, which include interchange fees, compensate these institutions for the costs of their participation, incentivize their provision of services and continued participation in the network, and enable enhancements, such as fraud detection and prevention, rewards programs, and technology upgrades.

National banks could engage in bilateral negotiations with myriad merchants and other banks involved in processing payment card transactions to establish the terms of this activity, including fees.<sup>9</sup> Given the global nature of payment card systems, however, such a process would be complex, inefficient, ineffective, and costly. Moreover, most national banks do not have the resources to engage in such activities. Accordingly, most national banks agree to the interchange fees set by the card networks. The NBA clearly permits national banks to make this decision, along with decisions about the payment card services to offer, the card networks with which to contract, and the terms of the agreements. Therefore, the applicability of § 7.4002 should not be read to change simply because a third party has a role in setting the non-interest charges and fees.

## **II. Description of the Proposed Rule**

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<sup>9</sup> A national bank may also establish a proprietary card network. *See, e.g.*, OCC, *Comptroller's Handbook*, "Payment Systems," 14 (2021).

that are set by a third party, the OCC is revising § 7.4002 to make that explicit and resolve any uncertainty about the scope of the regulation. The OCC is also revising § 7.4002 to specifically include interchange fees as a type of non-interest charge or fee national banks may impose.

### *Defining “Charge”*

Some of the confusion about the scope of § 7.4002 appears to be related to the lack of clarity about what it means for a national bank to “charge ... non-interest charges and fees.” Accordingly, the OCC is adding a definition of “charge” to paragraph (a) of § 7.4002 and moving the authority to impose non-interest charges and fees to paragraph (b) of the section. This definition clarifies that charge means to assess, collect, impose, levy, receive, reserve, take, or otherwise obtain, including through a fee sharing or similar economic relationship. This definition also clarifies that national banks may take such actions directly or through intermediaries, partners, payment networks, interchanges, or other third parties. These amendments are intended to encompass various means by which a national bank may obtain non-interest compensation for providing a product or service, regardless of which entity sets the amount of the non-interest charge or fee or exactly how the national bank obtains the charge or fee.<sup>10</sup>

### *Removing “Customer”*

The OCC is also amending the authority to impose non-interest charges and fees, now redesignated as paragraph (b) of § 7.4002, to remove the word “customer.” As reflected in the new definition of “charge,” the purpose of revised § 7.4002 is to clearly articulate national banks’ power to receive non-interest compensation for providing products or services, regardless of whether that compensation comes directly from the individual or entity receiving the product or service or via a third party that may not have a “customer” relationship with the bank.

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<sup>10</sup> See *Fawcett v. Citizens Bank, N.A.*, 919 F.3d 133, 138 (1st Cir. 2019) (“[U]nder OCC’s regulations, a charge is either ‘interest’ or it is a ‘non-interest charge[,]’ which includes ‘deposit account service charges.’”) (alteration in original) (quoting 12 CFR 7.4002(a)).

Current § 7.4002 contains only one example of the types of non-interest charges and fees national banks can impose—deposit account service charges. Although previous iterations of § 7.4002 contained additional examples of non-interest charges and fees, the OCC generally removed the examples in 2001, noting that “explicit reference to the ... types of fees is unnecessary and could be misinterpreted as a limitation on a national bank’s ability to charge other types of fees.”<sup>11</sup> Given recent confusion, however, the OCC is adding interchange fees as another nonexclusive example of the charges and fees covered by § 7.4002 to provide additional clarity. The agency continues to emphasize, however, that the inclusion of this example does not imply the exclusion of other non-interest charges and fees.<sup>12</sup>

#### *The Role of Third Parties in Setting Non-Interest Charges and Fees*

The OCC is also amending several parts of newly redesignated paragraph (c)(2) of § 7.4002 to explicitly include scenarios where non-interest charges or fees may be set by, or in conjunction with, third parties. The existing paragraph (b)(2) provides that the establishment of non-interest charges and fees, their amounts, and the method of calculating them are business decisions to be made by each national bank, in its discretion, according to sound banking judgment and safe and sound banking principles. This paragraph also describes the factors a national bank considers when making the business decision to establish non-interest charges and fees in accordance with safe and sound banking principles. This interim final rule amends this paragraph to make explicit that a national bank’s choices regarding charging non-interest charges

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<sup>11</sup> See *Investment Securities; Bank Activities and Operations; Leasing*, 66 FR 34784, 34787 (July 2, 2001) (finalizing the removal of the examples of dormant account fees and fees for credit reports and investigations from § 7.4002).

<sup>12</sup> Additionally, this amendment will make clearer that § 7.4002 permits national banks to charge non-interest charges and fees related to both debit and credit accounts. In 1995, the OCC proposed stating in § 7.4002(a) that “a national bank may charge its customers deposit account service charges and *loan-related fees*.” Interpretive Rulings, 60 FR 11924, 11940 (Mar. 3, 1995) (emphasis added). The final rule removed the reference to “loan-related fees” in response to comments that asked the OCC to clarify that the proposed phrase did not include interest governed by § 7.4001. Interpretive Rulings, 61 FR 4849, 4859 (Feb. 9, 1996). Although this change did not reflect a determination that 7.4002 was inapplicable to credit accounts, additional clarity in § 7.4002 regarding non-interest charges and fees related to both credit and debit accounts should be helpful. In addition, the distinction between interest and non-interest charges and fees is still addressed by paragraph (d) (as redesignated) of § 7.4002.

set by or in consultation with third parties, are also business decisions to be made by each bank, in its discretion according to sound banking judgment and safe and sound banking principles.

These amendments also clarify that the factors a national bank considers include the use of third parties to provide or facilitate the provision of a product or service. The amendments reflect the reality of the modern financial system and global economy, where products and services may be more efficiently and effectively provided through the use of third parties, which may also make or influence decisions regarding pricing.

The OCC is also making conforming edits to paragraph (c)(1) of § 7.4002 to clarify that it applies to the business decisions a national bank makes regarding non-interest charges and fees. Consistent with this provision and applicable antitrust law, national banks are prohibited from engaging in illegal anticompetitive conduct in making business decisions regarding non-interest charges and fees.<sup>13</sup>

### **III. Regulatory Analysis**

#### **A. Administrative Procedure Act**

The OCC is issuing this interim final rule without prior notice and the opportunity for public comment that are ordinarily prescribed by the Administrative Procedure Act (APA).<sup>14</sup> Pursuant to 5 U.S.C. 553(b)(B), general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

The OCC has found that prior notice and public comment are impracticable for this interim final rule due to the regulatory confusion created by the February 2026, *Raoul* SJ opinion, which found that Federal law does not preempt a key provision of the Illinois Interchange Fee

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<sup>13</sup> The OCC is also making other nonsubstantive technical and clarifying edits to § 7.4002.

<sup>14</sup> 5 U.S.C. 553.

opinion, the district court removed its December 2024 preliminary injunction of the IFPA as applied to national banks and other depository institutions.<sup>16</sup> The court’s analysis in the *Raoul* SJ opinion was based, in part, on a misunderstanding of the NBA and § 7.4002. As a result, absent this interim final rule, there likely will be significant uncertainty as to whether national banks are required to comply with the IFPA by July 1, 2026.

As explained below, the IFPA creates a complex and potentially unworkable standard, and it imposes significant potential liability for non-compliance. Therefore, national banks may take drastic actions to avoid these risks, up to and including declining payment card transactions subject to the IFPA.<sup>17</sup> Given the complexity of the payment card systems and the modern economy, these effects may not be limited to Illinois.

For national banks that choose to continue to support these payment card transactions, the OCC understands that these banks will need to inform customers, in advance of the IFPA’s July 1, 2026 effective date, that the terms and conditions of their payment cards may soon change.<sup>18</sup> The OCC also understands that national banks will need to inform merchants about possible changes, including updates to how they process payments, the need for new software or hardware, or that some transactions may be declined.<sup>19</sup> These communications, as well as the potential for national banks to stop supporting covered payment card transactions, may generate significant customer and merchant confusion about whether, or how, payment cards will work

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<sup>15</sup> 815 Ill. Comp. Stat. 151/150.

<sup>16</sup> See also *Ill. Bankers Ass’n v. Raoul*, 760 F. Supp. 3d 636, 657 (N.D. Ill. 2024) (issuing a preliminary injunction of IFPA in the same matter, finding that the Illinois Bankers Association was “likely to prevail on the merits of their claim that the IFPA’s Interchange Fee Prohibition violates the federal rights of national banks and is preempted by the NBA under the *Barnett Bank* standard”).

<sup>17</sup> E.g., Letter from H. Carney, Exec. Vice President, Fin. Inst. Pol’y & Regul. Affs., Am. Bankers Ass’n, to W. Giles, Principal Deputy Chief Couns., OCC 3 (Mar. 30, 2026) (“ABA Letter”) (“We are also hearing that some issuing financial institutions—particularly smaller and mid-sized banks—are concluding that the IFPA’s risks and costs are too great, and have indicated they may simply cease issuing credit or debit cards to their customers, while also exploring options for declining card transactions in Illinois.”).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

to basic lending and deposit services, which could lead to economic harm and disruption and pose significant risks to the safety and soundness of national banks and the national banking system as a whole.

In light of these potential consequences, the OCC, for good cause, finds that advance notice and comment is impracticable and is issuing this interim final rule. This rule will provide certainty that the IFPA is preempted with respect to national banks before it goes into effect and therefore help prevent the imminent negative effects of the IFPA's application to national banks. Given the importance of this issue, however, the OCC invites public comment on all aspects of this interim final rule and intends to issue a final rule as soon as possible after the close of the comment period and sufficient time to consider and address comments.

### *Background*

In the modern economy, millions of customers and merchants worldwide rely on payment cards every day, including an estimated 1.3 million merchants in Illinois.<sup>20</sup> As discussed above, national banks serve an essential function in the U.S. payment card systems.<sup>21</sup> A significant disruption of these payment networks could cause substantial economic harm.

On June 7, 2024, Illinois enacted the IFPA, which, among other things, prohibits card issuer banks, card networks, acquirer banks, and other participants from receiving or charging a merchant an interchange fee on the tax or gratuity amount of a payment card transaction.<sup>22</sup> This prohibition, known as the interchange fee prohibition, applies if the merchant informs the acquirer of the tax or gratuity amount as part of the authorization or settlement of the transaction

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<sup>20</sup> See U.S. Small Bus. Admin., *2024 Small Business Profile: Illinois* (reporting 1.4 million small businesses, representing 99.6% of all Illinois businesses); Clearly Payments, *How Many Businesses in the US and Canada Accept Credit Cards in 2025* (2025) (estimating that approximately 94 percent of U.S. and Canadian merchants accept payment cards).

<sup>21</sup> Any payment cardholders could make purchases subject to the IFPA, such as when traveling to Illinois or shopping online.

<sup>22</sup> 815 Ill. Comp. Stat. 151/150-10(a). The IFPA defines an interchange fee as “a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.” *Id.* at 151/150-5.

documentation (e.g., paper receipts) to the acquirer bank, after which the issuer has 30 days to credit the merchant for any interchange fee charged on the tax or gratuity amount (manual process).<sup>24</sup> Violations of the interchange fee prohibition carry a civil penalty of \$1,000 per transaction.<sup>25</sup> The IFPA goes into effect on July 1, 2026.

In August 2024, the Illinois Credit Union League, Illinois Bankers Association, America's Credit Unions, and American Bankers Association (collectively, IBA) sought to enjoin the IFPA.<sup>26</sup> On December 20, 2024, the district court for the Northern District of Illinois granted a preliminary injunction as applied to national banks.<sup>27</sup> In February 2026, however, approximately four months before the IFPA's effective date, the district court reversed course. It found that the interchange fee prohibition was not preempted by federal law, reasoning that "[t]he thrust of 12 C.F.R. § 7.4002 is not to protect fees centrally established by a third-party company."<sup>28</sup>

#### *IFPA's Application to National Banks*

The OCC understands that current payment card infrastructure does not support the IFPA's automatic process and cannot be updated by the IFPA's effective date.<sup>29</sup> To implement this process would appear to require, at a minimum: (1) the card networks to develop new technological and standards changes in coordination with relevant U.S. and international standards bodies; (2) acquirer and issuer banks to implement these changes; and (3) merchants to

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<sup>23</sup> *Id.* at 151/150-10(a).

<sup>24</sup> *Id.* at 151/150-10(b).

<sup>25</sup> *Id.* at 151/150-15(a).

<sup>26</sup> Compl. for Decl. & Inj. Relief, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 15, 2024); Pl.'s Mot. for Prelim. Inj., *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024).

<sup>27</sup> *Ill. Bankers Ass'n v. Raoul*, 760 F.Supp.3d. 636.

<sup>28</sup> *Raoul* SJ opinion, *supra*, 2026 WL 371196, at \*13.

<sup>29</sup> *See id.* at 14 ("It is an open question whether the transaction process could adapt to the impact of the IFPA in time."); *see also* ABA Letter, *supra*, at 3.

changes likely would entail lengthy and careful planning because implementation glitches or failures could disrupt global payment card systems or create opportunities for fraud or misuse.<sup>31</sup>

As an alternative, certain merchants may invoke IFPA's manual process by submitting tax documentation. It is unclear, however, how this process could be implemented. Acquirer national banks may not be able to identify the issuer national bank in a given transaction.<sup>32</sup> Even if identification were possible, there is generally no mechanism for direct communication between these banks.<sup>33</sup> Furthermore, based on the broad definition of tax documentation, which includes "invoices, receipts, journals, ledgers, and tax returns," an issuer bank may not be able to reliably identify the tax and gratuity amount for each transaction or calculate the corresponding interchange fee credit.<sup>34</sup> Even if each of these hurdles could be overcome, building new systems and hiring staff to facilitate this highly manual process would require time to develop and test.<sup>35</sup>

Despite the complex and potentially unworkable nature of the interchange fee prohibition, the IFPA exposes national banks to penalties of \$1,000 per transaction for failing to comply with its provisions.<sup>36</sup> Given the upwards of 6.5 billion payment card transactions that occur yearly in Illinois, participants in the payment card systems could be subject to as much as \$6.5 trillion in

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<sup>30</sup> Declaration of Chiro Aikat ¶¶ 33-40, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) (Decl. C. Aikat); Declaration of Dierdre P. Cohen ¶¶ 6-7, 20-26, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) ("Decl. D. Cohen").

<sup>31</sup> Decl. D. Cohen, *supra*, ¶ 26.

<sup>32</sup> See Decl. C. Aikat, *supra*, ¶ 43 ("The statute's text seems to contemplate that the information that a merchant possesses, such as what it can identify from receipt or ledger, specifying the amount of tax and gratuity, will be sufficient for the acquiring bank to determine which issuing bank was involved in the transaction. In nearly all circumstances, however, that will not be true. This is because modern payment card transaction receipts include only a truncated payment card number, specifically the last four digits of the 16-digit payment card number, to minimize the risk of payment card number theft (and as specifically permitted by applicable banking law). But the issuer of a payment card is not identifiable from the last four digits. Rather, it is the first six digits of a payment card number that identify the issuing bank.").

<sup>33</sup> See Declaration of Raju Sitaula ¶ 20, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) ("Decl. R. Sitaula").

<sup>34</sup> 815 ILCS 151/150-5.

<sup>35</sup> Decl. R. Sitaula, *supra*, ¶ 26.

<sup>36</sup> 815 ILCS 151/150-15(a).

risk to a national bank's safety and soundness as well as the national banking system.

In light of the above, the card networks and banks may seek to mitigate their liability, for example, by advising merchants in Illinois not to accept payment cards for tax and gratuity, attempting to decline certain classes of transactions (*e.g.*, purchases of gasoline, where excise tax is imbedded in the product's price),<sup>38</sup> or denying payment card transactions originating in Illinois or elsewhere.<sup>39</sup> Some smaller banks may even be forced to stop offering payment cards altogether.<sup>40</sup> Some have stated that compliance with the IFPA could lead to "potentially business-ending consequences" for some participants.<sup>41</sup>

The OCC understands that banks will need to communicate with customers and other stakeholders about the effects of the IFPA, including potential changes to the functionality of payment cards.<sup>42</sup> As noted above, these communications may generate significant confusion and doubt about access to basic lending and deposit services, especially when combined with

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<sup>37</sup> See Federal Reserve, *Federal Reserve Payments Study, 2024 Accessible Version of Trends in Noncash Payments* (March 6, 2025); U.S. Bureau of Economic Analysis (BEA), *SQGDP1 State Quarterly Gross Domestic Product Summary* (accessed Thursday, April 9, 2026). The number of payment card transactions in Illinois was estimated by aggregating the estimated number of 2022 card transactions in the United States as reported in the Federal Reserve Payment Study's 2024 Accessible Version of Trends in Noncash Payments and multiplying by 3.9 percent, which is Illinois's share of the current United States dollar Gross Domestic Product in 2025 according to the BEA.

Note that each party in a single transaction seemingly could be subject to the \$1,000 fine, so the total fines attributable to one transaction could be more than \$1,000.

<sup>38</sup> Since the excise tax is included in the price of gas in Illinois and varies by grade of fuel, it may be impossible for merchants to transmit only the cost of the fuel and not the excise tax.

<sup>39</sup> See ABA Letter, *supra*. Currently, the data provided to the payment card network as a part of an electronic transaction includes the physical location of the merchant. However, that data may reflect the merchant's headquarters or other location and not the location where the transaction occurred. Further, for online purchases, determining where the purchase took place is even trickier and that information is also not currently conveyed through the payment card networks. Decl. D. Cohen, *supra*, ¶ 25. As a result, blocking every transaction subject to the IFPA, and only those transactions, may be technically difficult to achieve. Such efforts may result in transactions that are not subject to IFPA being blocked, *e.g.*, a transaction that occurs in Indiana, but where a merchant's payment card terminal reflects its headquarters location in Illinois.

<sup>40</sup> Declaration of Rick Francois ¶ 15, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) ("[The] manual reimbursement solution as currently proposed under the legislation creates an unsustainable burden on debit card issuers of our size. If the debit card product becomes unprofitable for banks of our size, they will be forced to consider no longer offering these cards to their consumers. Not offering the debit card product would be harmful not only to banks of our size, but to our consumer clients.").

<sup>41</sup> *Ill. Bankers Ass'n*, 2026 WL 371196, at \*6.

<sup>42</sup> ABA Letter, *supra*, at 3.

lead to economic harm and disruption and pose significant risks to the safety and soundness of national banks and the national banking system as a whole.

To avoid these potentially grave consequences, the OCC is acting by interim final rule.

### **B. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA),<sup>43</sup> the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed this interim final rule and determined that it does not create any new or revise any existing collections of information. Accordingly, no PRA submissions to OMB will be made with respect to this interim final rule.

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA)<sup>44</sup> requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.<sup>45</sup> The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed above, consistent with § 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is impracticable and therefore is not issuing a notice of proposed rulemaking. Accordingly, the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply to this interim final rule.

However, the OCC evaluated whether the interim final rule will have a significant economic impact on a substantial number of small entities. The OCC currently supervises

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<sup>43</sup> 44 U.S.C. 3501-21.

<sup>44</sup> 5 U.S.C. 601 *et seq.*

<sup>45</sup> Under regulations issued by the Small Business Administration (SBA), as of June 2025, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$850 million or less and trust companies with total assets of \$47 million or less. The SBA may adjust these thresholds annually, so check the citation for the most recent asset thresholds. *See* 13 CFR 121.201.

interim final rule.

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number. Thus, at present, 30 OCC-supervised small entities would constitute a substantial number. Therefore, since the interim final rule will affect all 420 OCC-supervised national banks, a substantial number of OCC-supervised small entities would be impacted.

However, the interim final rule imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. Therefore, the OCC believes that the interim final rule will not have a significant economic impact on a substantial number of small entities.

#### **D. Unfunded Mandates Reform Act of 1995**

As a general matter, the Unfunded Mandates Reform Act of 1995 (UMRA) requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (\$193 million as adjusted annually for inflation).<sup>46</sup> However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. As discussed above, consistent with § 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is impracticable and therefore is not issuing a notice of proposed rulemaking. Moreover, the OCC has analyzed the interim final rule under the factors in UMRA. Because this interim final rule imposes no new mandates, it will not require additional expenditure of \$193 million or more annually by any State, local, or tribal governments, in the

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<sup>46</sup> 2 U.S.C. 1531 *et seq.*

### **E. Riegle Community Development and Regulatory Improvement Act of 1994**

Pursuant to § 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994,<sup>47</sup> in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest, (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the final rule. This rulemaking does not impose any reporting, disclosure, or other requirements on insured depository institutions. Therefore, § 302(a) does not apply to this interim final rule.

### **F. Executive Orders 12866 and 14192**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) within OMB will review all “significant regulatory actions” as defined therein. OIRA has determined that this interim final rule is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866.

As discussed above and in the *Supplementary Information* section of the OCC’s concurrent interim final order finding that Federal law preempts the IFPA (Preemption Order), the IFPA would impose substantial costs on banks. This interim final rule clarifies the scope of national banks’ power to charge non-interest charges and fees. As explained in the Preemption Order, the IFPA prevents or significantly interferes with this power and is preempted with

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<sup>47</sup> 12 U.S.C. 4802(a).

the Preemption Order, will result in significant cost savings.

Executive Order 14192, titled “Unleashing Prosperity Through Deregulation,” separately requires that an agency, unless prohibited by law, identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. The OCC has determined that the interim final rule will be a deregulatory action under Executive Order 14192 because it may provide legal clarity for affected OCC-supervised institutions.

### **G. Congressional Review Act**

Before a rule can take effect, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA)<sup>48</sup> provides that the OCC must submit to Congress and to the Comptroller General the rule along with a report indicating whether it is a “major rule.” In general, if a rule is a “major rule,” the CRA provides that the rule may not take effect until 60 days after Congress receives the required report or publication of the rule in the Federal Register.<sup>49</sup> The CRA defines a “major rule” as any rule that the Administrator of OIRA finds has resulted in or is likely to result in (1) an annual effect on the economy of \$100,000,000; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.<sup>50</sup> OIRA has determined that this interim final rule is a major rule.

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<sup>48</sup> 5 U.S.C. 801 *et seq.*

<sup>49</sup> 5 U.S.C. 801(a)(3).

<sup>50</sup> 5 U.S.C. 804(2).

Congressional Review Act, the OCC will submit the interim final rule and other appropriate reports to Congress and the Government Accountability Office for review.

#### **H. Providing Accountability Through Transparency Act of 2023**

The Providing Accountability Through Transparency Act of 2023<sup>51</sup> requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website *www.regulations.gov*. While the OCC is not issuing a notice of proposed rulemaking, a summary of this interim final rule can be found below and at *https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html*.

The OCC is adopting an interim final rule to clarify that national banks' power to charge non-interest charges and fees includes the power to assess, collect, impose, levy, receive, reserve, take, or otherwise obtain non-interest charges and fees, including interchange fees from credit and debit card operations. Further, the interim final rule explains that national banks may charge non-interest charges or fees, even when such charges and fees are set by or in consultation with third parties. The OCC invites public comments on this interim final rule.

#### **List of Subjects in 12 CFR Part 7**

Bonds, Computer technology, Credit, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds, Usury.

#### **DEPARTMENT OF THE TREASURY**

#### **Office of the Comptroller of the Currency**

#### **12 CFR Chapter I**

#### **Authority and Issuance**

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<sup>51</sup> 5 U.S.C. 553(b)(4).

the Code of Federal Regulations as follows:

## **PART 7—ACTIVITIES AND OPERATIONS**

### **Subpart D—Preemption**

1. The authority citation for part 7 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1462a, 1463, 1464, 1465, 1818, 1828, 3102(b), and 5412(b)(2)(B).

2. Revise and republish § 7.4002 to read as follows:

#### **§ 7.4002 National bank non-interest charges and fees.**

(a) *Definition.* For the purposes of this section:

*Charge* means to directly or indirectly, through intermediaries, partners, payment networks, interchanges, or other third parties, assess, collect, impose, levy, receive, reserve, take, or otherwise obtain, including through a fee sharing or similar economic relationship.

(b) *Authority to impose charges and fees.* A national bank may charge non-interest charges and fees, including deposit account service charges and interchange fees from credit and debit card operations.

(c) *Considerations.* (1) Business decisions regarding non-interest charges and fees permitted under this section should be arrived at by each national bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding, or discussion with other banks or their officers.

(2) Decisions regarding charging non-interest charges and fees, including their amounts, the method of calculating them, whether to enter into business relationships or lines of business, and whether they are set by or in consultation with third parties, are business decisions to be made by each national bank, in its discretion, according to sound banking judgment and safe and sound banking principles. A national bank establishes non-interest charges and fees in accordance with

considers the following factors, among others:

- (i) The cost incurred by the national bank in providing the service;
  - (ii) The deterrence of misuse by customers of banking services;
  - (iii) The enhancement of the competitive position of the national bank in accordance with its business plan and marketing strategy;
  - (iv) The use of third parties to provide or facilitate the provision of a product or service; and
  - (v) The maintenance of the safety and soundness of the national bank.
- (d) *Interest.* Charges and fees that are “interest” within the meaning of 12 U.S.C. 85 are governed by § 7.4001 and not by this section.
- (e) *State law.* The 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.
- (f) *National bank as fiduciary.* This section does not apply to charges imposed by a national bank in its capacity as a fiduciary, which are governed by 12 CFR part 9.

**Katherine S. Tyrrell**  
*First Deputy Comptroller of the Currency.*



## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

[Docket ID OCC-2026-0431]

RIN 1557-ZA10

### Order Preempting the Illinois Interchange Fee Prohibition Act

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Interim final order; request for comments.

**SUMMARY:** The OCC is issuing an interim final order concluding that Federal law preempts the Illinois Interchange Fee Prohibition Act, which purports to prohibit national banks and Federal savings associations from charging or receiving interchange fees on the tax and gratuity portions of payment card transactions; and restrict the use of payment card transaction data. The OCC invites public comments on this interim final order.

**DATES:** The interim final order is effective June 30, 2026. Comments on the interim final order must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title “Order Preempting the Illinois Interchange Fee Prohibition Act” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal – Regulations.gov:*

Go to <https://regulations.gov/>. Enter Docket ID “OCC-2026-0431” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments, please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please

*regulationshelpdesk@gsa.gov.*

- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.

*Instructions:* You must include “OCC” as the agency name and Docket ID “OCC-2026-0431” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically – Regulations.gov:*

Go to <https://regulations.gov/>. Enter Docket ID “OCC-2026-0431” in the Search Box and click “Search.” Click on the “Dockets” tab and then the document’s title. After clicking the document’s title, click the “Browse All Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Comments Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Browse Documents” tab. Click on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen checking the “Supporting & Related Material” checkbox. For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday-Friday, 9 a.m.-5 p.m. ET, or e-mail *regulationshelpdesk@gsa.gov.*

during the comment period.

**FOR FURTHER INFORMATION CONTACT:** Karen McSweeney, Special Counsel, Priscilla Benner, Counsel, and Elizabeth Small, Counsel, Chief Counsel’s Office, 202-649-5490; Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219. If you are deaf, hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

**A. Background**

Credit and debit cards (payment cards) are vital and deeply rooted components of the modern American and global economy. They are among the most universally accepted and common payment methods, routinely used by millions of customers to pay merchants for products and services worldwide.<sup>1</sup>

National banks and Federal savings associations serve essential roles within card networks, which are a crucial means of exercising their statutory deposit-taking and lending powers. They contract with card networks (*e.g.*, Visa and Mastercard) and others to facilitate payment card transactions. As the issuers of credit and debit cards, they provide payment cards to customers, assess cardholder risk, and offer services including fraud detection and prevention, dispute resolution, and rewards programs. As acquirers, they contract with merchants who accept payment cards and connect these merchants to the card network so that transactions are seamlessly processed and settled.

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<sup>1</sup> OCC, *Comptroller’s Handbook*, “Credit Card Lending,” 1 (2021) (“Credit Card Lending Handbook”). *See also* Berhan Bayeh et al., Federal Reserve 2025 Findings from the Diary of Consumer Payment Choice at 5 (finding that, in 2024, credit and debit cards were used for approximately 65 percent of consumer payments).

payment card services. These fees, which include interchange fees,<sup>2</sup> compensate these institutions for the costs of their participation, incentivize their provision of services and continued participation in the network, and enable enhancements, such as fraud detection and prevention, rewards programs, and technology upgrades.

Interchange fees have often been the focus of lawmakers. In 2010, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Congress limited certain debit card interchange fees in a provision generally known as “the Durbin Amendment.”<sup>3</sup> In 2024, in an effort to balance the State’s budget,<sup>4</sup> the Illinois legislature enacted the Interchange Fee Prohibition Act (IFPA), which becomes effective on July 1, 2026.<sup>5</sup> The IFPA (1) prohibits charging or receiving interchange fees on the tax and gratuity portions of payment card transactions; and separately (2) restricts the use of payment card transaction data.

The IFPA may have a destabilizing effect on the nation’s payment card systems. At a minimum, the systems’ participants, including national banks and Federal savings associations, may have to spend “staggering” sums to comply with this single State’s law.<sup>6</sup> Card network participants may have to significantly alter their operations, which could include national banks or Federal savings associations declining payment card transactions subject to the IFPA. Some have stated that compliance with the IFPA could lead to “potentially business-ending consequences” for some participants.<sup>7</sup>

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<sup>2</sup> An “interchange fee” is generally the fee paid to an issuer bank as part of a payment card transaction.

<sup>3</sup> Pub. L. 111-203, 124 Stat. 1376, Title X, Sec. 1075, codified at 15 U.S.C. 1693o-2.

<sup>4</sup> See *American Banker*, *Why Illinois’ Budget Bill has Bankers Sounding the Alarm* (June 10, 2024), available at <https://www.americanbanker.com/news/why-illinois-budget-bill-has-bankers-sounding-the-alarm>; *Bloomberg Law*, *Illinois Credit Card Swipe Fee Law Sparks Legal Fight with Banks* (Aug. 8, 2024), available at <https://news.bloomberglaw.com/banking-law/illinois-credit-card-swipe-fee-law-sparks-legal-fight-with-banks>.

<sup>5</sup> 815 Ill. Comp. Stat. 151/10-1 *et seq.*

<sup>6</sup> *Ill. Bankers Ass’n v. Raoul*, --- F. Supp. 3d ---, 2026 WL 371196, at \*13 (N.D. Ill. Feb. 10, 2026).

<sup>7</sup> *Id.* at \*6.

of the Supremacy Clause of the U.S. Constitution and is preempted.<sup>8</sup> Although the OCC believes that this conclusion is clear under relevant Supreme Court precedent, the IFPA has been the subject of litigation since shortly after its enactment, which has led to substantial uncertainty for national banks and Federal savings associations.<sup>9</sup> As such, the OCC is issuing this interim final order concluding that the IFPA is preempted by (1) the National Bank Act with respect to national banks; and (2) the Home Owners' Loan Act of 1933 (HOLA) respect to Federal savings associations.<sup>10</sup> This order will provide urgently needed clarity to help ensure national banks' and Federal savings associations' continued safe, sound, reliable, efficient, and effective participation in the payment card system.<sup>11</sup> Given the importance of this issue, the OCC also invites public comment on all aspects of this order and intends to issue a final order as soon as possible after the close of the comment period and after sufficient time to consider and address comments. The agency notes that nothing in this order would change the applicability of any other federal laws that do or may in the future apply to national banks or Federal savings associations regarding payment cards or otherwise.

## **B. Summary of the IFPA**

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<sup>8</sup> U.S. Const. art. VI, cl. 2.

<sup>9</sup> See, e.g., *Ill. Bankers Ass'n*, 2026 WL 371196.

<sup>10</sup> The analysis in this interim final order focuses on national bank powers and preemption of the IFPA by the National Bank Act. However, the HOLA and its implementing regulations provide Federal savings associations with comparable powers. See 12 U.S.C. 1464; 12 CFR 145.17, 155.200. The HOLA also applies “the laws and legal standards applicable to national banks” in determining whether Federal law preempts State regulation of Federal savings associations. 12 U.S.C. 1465(a). As such, this interim final order applies equally to Federal savings associations and preemption by the HOLA.

<sup>11</sup> Congress and courts have long recognized the OCC's authority to provide clarity on preemption. See 5 U.S.C. 554(e) (authorizing agencies to issue declaratory orders “to terminate a controversy or remove uncertainty”); see also 12 U.S.C. 25b (expressly granting the OCC authority to issue preemption determinations on State consumer financial laws by regulation or order); 12 U.S.C. 43 (recognizing the OCC's authority to issue interpretive rules or opinion letters on preemption); *Aguayo v. U.S. Bank*, 653 F.3d 912, 919 (9th Cir. 2011) (concluding that the OCC's “regulatory authority, which carries the same weight as federal statutes, includes interpretation of state law preemption under the NBA”); *Wells Fargo Bank N.A. v. Boutris*, 419 F.3d 949, 962 (9th Cir. 2005) (“once the OCC's authority to allow the creation of and to regulate operating subsidiaries as it has done is established, its authority to displace contrary state regulation where the Bank Act itself preempts contrary state regulation of national banks follows”); *Wachovia Bank, N.A. v. Burke*, 414 F.3d 305, 314 (2d Cir. 2005) (“Federal courts have recognized that the OCC may issue regulations with preemptive effect.”).

issuer banks, card networks, acquirer banks, and other participants from receiving or charging a merchant an interchange fee on the tax or gratuity amount of a payment card transaction.<sup>12</sup> This prohibition applies if the merchant informs the acquirer bank of the tax or gratuity amount as part of the authorization or settlement of the transaction.<sup>13</sup> Alternatively, the merchant has 180 days to transmit the relevant documentation (*e.g.*, paper receipts) to the acquirer bank, after which the issuer bank has 30 days to credit the merchant for any interchange fee charged on the tax or gratuity amount.<sup>14</sup> Violations of the interchange fee prohibition carry a civil penalty of \$1,000 per transaction.<sup>15</sup>

*Data Use Limitation.* The second operative provision of the IFPA provides that no “entity, other than the merchant, involved in facilitating or processing” a payment card transaction may “distribute, exchange, transfer, disseminate, or use” transaction data except to facilitate or process the transaction or as otherwise required by law.<sup>16</sup> Violations of the data use limitation are violations of the Illinois Consumer Fraud and Deceptive Business Practices Act.<sup>17</sup>

## II. Preemption Analysis

### A. Preemption Standard

The Supremacy Clause of the U.S. Constitution provides that Federal law is “the supreme Law of the Land” and contrary State law is preempted.<sup>18</sup> In applying this principle, the Supreme Court has identified several ways in which Federal law may preempt State law, including when

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<sup>12</sup> 815 Ill. Comp. Stat. 151/150-10(a). The IFPA defines an interchange fee as “a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.” *Id.* at 151/150-5.

<sup>13</sup> *Id.* at 151/150-10(a).

<sup>14</sup> *Id.* at 151/150-10(b).

<sup>15</sup> *Id.* at 151/150-15(a).

<sup>16</sup> *Id.* at 151/150-15(b).

<sup>17</sup> *Id.*

<sup>18</sup> *Supra* note 8 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

the standard for conflict preemption in the national banking context, holding that State law is preempted when it “prevent[s] or significantly interfere[s]” with a national bank’s exercise of its Federal powers.<sup>20</sup> The *Barnett Bank* Court also stated that Federal grants of authority in the national banking context are “not normally limited by, but rather ordinarily pre-empt[], contrary state law.”<sup>21</sup>

In 2024, in *Cantero v. Bank of America*, the Supreme Court reaffirmed the *Barnett Bank* standard and explained that its application must be based on “a practical assessment of the nature and degree of the interference caused by a state law.”<sup>22</sup> This assessment may include consideration of *Barnett Bank* and its antecedents and be based on “the text and structure of the laws, comparison to other precedents, and common sense.”<sup>23</sup> In addition to *Barnett Bank*, the *Cantero* Court specifically discussed six antecedent cases, noting that they “furnish content” regarding the *Barnett Bank* standard:<sup>24</sup> *Fidelity Federal Savings & Loan Ass’n v. de la Cuesta*,<sup>25</sup> *Franklin National Bank of Franklin Square v. New York*,<sup>26</sup> *First National Bank of San Jose v. California*,<sup>27</sup> *Anderson National Bank v. Lockett*,<sup>28</sup> *McClellan v. Chipman*,<sup>29</sup> and *First National Bank v. Kentucky*.<sup>30</sup>

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<sup>19</sup> *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25 (1996).

<sup>20</sup> *Id.* at 33.

<sup>21</sup> *Id.* at 32. As this language in *Barnett Bank* reflects, there is no presumption against preemption in the context of National Bank Act preemption. *See, e.g., Bank of Am. v. City & Cnty. of S.F.*, 309 F.3d 551, 558 (9th Cir. 2002).

<sup>22</sup> 602 U.S. 205, 219-20 (2024).

<sup>23</sup> *Id.* at 220 n.3; *see id.* 219-21.

<sup>24</sup> *Id.* at 219-20. The Court also stated that “courts addressing preemption questions in this context must do as *Barnett Bank* did and likewise take account of those prior decisions of this Court and similar precedents.” *Id.* at 215-16.

<sup>25</sup> 458 U.S. 141 (1982).

<sup>26</sup> 347 U.S. 373 (1954).

<sup>27</sup> 262 U.S. 366 (1923).

<sup>28</sup> 321 U.S. 233 (1944).

<sup>29</sup> 164 U.S. 347 (1896).

<sup>30</sup> 76 U.S. 353 (1869). The OCC recently proposed a preemption determination on several State interest-on-escrow laws, which contains an extensive discussion of these antecedent cases. *See Preemption Determination: State*

When the OCC charters a national bank, the bank “gains various enumerated and incidental powers.”<sup>31</sup> For example, national banks have express statutory authority to “loan[] money on personal security,” “receiv[e] deposits,” and engage in “all such incidental powers as shall be necessary to carry on the business of banking.”<sup>32</sup> As the OCC and courts have long recognized, national banks thus have broad powers to engage in activities that are part of, or incidental to, the business of banking, including issuing payment cards and processing payments.<sup>33</sup>

National banks also have the authority to be compensated for the products and services they provide, including to charge and receive interchange fees for processing payment card transactions.<sup>34</sup> To address any confusion and expressly reaffirm this authority, at the same time that the OCC is issuing this preemption order, the agency is also issuing an interim final rule to amend 12 CFR 7.4002.<sup>35</sup> The interim final rule codifies national banks’ authority to charge non-interest charges and fees, specifically stating that they have the power to “assess, collect, impose, levy, receive, reserve, take, or otherwise obtain” non-interest charges and fees, including interchange fees from payment card activity, regardless of whether those fees are set by the bank or a third party.

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Interest-on-Escrow Laws, 90 FR 61093 (Dec. 30, 2025). The application of these cases to the IFPA is discussed below.

<sup>31</sup> *Cantero*, 602 U.S. at 210.

<sup>32</sup> 12 U.S.C. 24(Seventh); *see also* 12 CFR 7.1000.

<sup>33</sup> *See, e.g.*, OCC Conditional Approval No. 773, 2006 WL 4589434, at \*1 (Nov. 30, 2006) (“[M]erchant processing activities are part of, or incidental to, the business of banking[.]”); OCC Corporate Decision 99-50, at 4 (Dec. 23, 1999) (“[P]rocessing credit and debit card transactions and other electronic payments are clearly part of the business of banking[.]”), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2000/cd99-50.pdf>; OCC, Conditional Approval No. 248, at 4 (June 27, 1997) (“It is clear that merchant processing activities are permissible for national banks[.]”), <https://www.occ.gov/topics/chartersand-licensing/interpretations-and-actions/1997/ca248.pdf>.

<sup>34</sup> *See, e.g.*, 12 CFR 7.4002; OCC Interpretive Letter 932 (Aug. 17, 2001) (discussing national banks’ authority to charge non-interest charges and fees), <https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-actions/2002/int932.pdf>. *See also* 15 U.S.C. 1693o-2 (demonstrating Congress’s recognition that credit and debit card “issuers,” including national banks, may charge “interchange transaction fees.”).

<sup>35</sup> The interim final rule on non-interest charges and fees is published elsewhere in this issue of the *Federal Register*.

establish a clear line to demarcate” which State laws are and are not preempted, they offer a lens through which the standard comes into focus.<sup>36</sup> Specifically, these cases demonstrate that, at a minimum, a State law prevents or significantly interferes with a Federal power when it (1) interferes with critical flexibility granted to a national bank under Federal law (*Fidelity*); (2) interferes with a national bank’s efficiency or effectiveness in exercising its Federal power (*Franklin*); or (3) qualifies a Federal power in an unusual way (*San Jose*). The interchange fee prohibition does all three.<sup>37</sup>

As revised, 12 CFR 7.4002 should remove any doubt that Federal law both authorizes national banks to charge interchange fees and vests them with wide flexibility to charge such fees in accordance with sound business judgment and safe and sound banking principles.<sup>38</sup> This flexibility supports a national bank’s efficient and effective exercise of its deposit-taking, lending, and payment processing powers, as well as its corollary authority to be compensated. Federal law grants these powers to national banks “without relevant qualification,” and as such, these grants are “not normally limited by, but rather ordinarily preempt[], contrary state law.”<sup>39</sup> As was the case in *Fidelity*, where a State law restricting the use of due-on-sale clauses interfered with the flexibility granted by Federal law, the IFPA’s interchange fee prohibition restricts a

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<sup>36</sup> *Cantero*, 602 U.S. at 215.

<sup>37</sup> As the First Circuit recently observed, certain State laws can create an “obvious” or direct conflict with Federal law that results in preemption under the *Barnett Bank* standard. *Conti v Citizens Bank NA*, 157 F.4th 10, 17-18 (1st Cir. 2025).

<sup>38</sup> See *Baptista v. JPMorgan Chase Bank, N.A.*, 640 F.3d 1194, 1198 n.2 (11th Cir. 2011) (“[T]he significant objective of 12 CFR § 7.4002 is to allow national banks to charge fees and to allow banks latitude to decide how to charge them.”). The revised 12 CFR 7.4002 also makes clear that “charge” means to assess, collect, impose, levy, receive, reserve, take, or otherwise obtain, including through a fee sharing or similar economic relationship. It also clarifies that national banks may take such actions directly or through intermediaries, partners, payment networks, interchanges, or other third parties.

<sup>39</sup> *Barnett Bank*, 517 U.S. at 32. In *Barnett Bank*, the State law forbade national banks from engaging in a power (selling insurance in small towns) that Congress had expressly authorized “without relevant qualification” so the State law was preempted. *Id.*

activity, thereby interfering with the flexibility granted by Federal law.<sup>40</sup>

*Franklin*, which the Supreme Court described as the “paradigmatic example of significant interference,”<sup>41</sup> is also apt. Much like the State law advertising restriction in *Franklin*,<sup>42</sup> which interfered with a national bank's efficient and effective exercise of its powers, the IFPA's prohibition on certain interchange fees has a comparable effect. Participation in one or more card networks supports a national bank's efficient and effective exercise of its deposit-taking and lending powers by providing benefits that national banks can leverage, including expertise, technological infrastructure, and economies of scale. For example, participation in a card network avoids the need for national banks to engage in complex, inefficient, ineffective, and costly bilateral negotiations with myriad counterparties to establish the terms of payment card activity. Instead, the card networks have a comprehensive set of rules that govern use of the network and interactions among its participants. The card networks also provide other important services, including risk management services to detect and prevent fraud. This framework improves safety, certainty, and interoperability, thereby increasing the efficiency and effectiveness of payment card activity. Compliance with the interchange fee prohibition, however, is likely to introduce significant complexity into the payment card systems, including

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<sup>40</sup> See *Fidelity*, 458 U.S. at 155 (finding preempted a California State law that forbade a Federal savings and loan association from exercising a due-on-sale clause at its option and thus “deprived the lender of the ‘flexibility’” given to it by Federal law); see also, e.g., *Gutierrez v. Wells Fargo Bank, NA*, 704 F.3d 712, 723, 730 (9th Cir. 2012) (holding that “[b]oth the ‘business of banking’ and the power to ‘receiv[e] deposits’ necessarily include the power to post transactions” and that a State law purporting “to dictate a national bank’s order of posting” is preempted (second alteration in original) (quoting 12 U.S.C. 24)), *abrogated in part on other grounds by TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021); *Baptista*, 640 F.3d at 1198 (“The state’s prohibition on charging fees to non-account-holders, which reduces the bank’s fee options by 50%, is in substantial conflict with federal authorization to charge such fees.”); *Monroe Retail, Inc. v. RBS Citizens, N.A.*, 589 F.3d 274, 284 (6th Cir. 2009) (holding that the State law would “‘significantly interfere’ not only with the [b]anks’ ability to collect and set their service fees, but also with the [b]anks’ federal authority to complete other transactions and balance their accounts” (citation omitted)); *Wells Fargo Bank of Tex. NA v. James*, 321 F.3d 488, 495 (5th Cir. 2003) (“[N]ational banks are authorized by federal regulation 12 CFR 7.4002(a) to charge non-account holding payees a check-cashing fee. Thus, because [the State law] prohibits the exercise of a power which federal law expressly grants the national banks, [it] is in irreconcilable conflict with the federal regulatory scheme, and it is preempted by operation of the Supremacy Clause.”); *Bank of Am.*, 309 F.3d at 564 (“[T]he National Bank Act and OCC regulations together preempt conflicting state limitations on the authority of national banks to collect fees for provision of deposit and lending-related electronic services.”).

<sup>41</sup> *Cantero*, 602 U.S. at 216.

<sup>42</sup> *Id.*; see *Franklin*, 347 U.S. at 377-78.

This jeopardizes national banks' ability to effectively and efficiently participate in the payment card systems, and thereby exercise their lending and deposit-taking powers, on a national scale.<sup>44</sup>

In addition, interchange fees are an important aspect of the compensation structure that a national bank evaluates when deciding whether to participate in a card network. These fees compensate the bank for the cost of processing a payment card transaction, as well as its assumption of related risks such as fraud and non-payment.<sup>45</sup> The fees also support the bank's broader payment card infrastructure, such as its fraud detection and prevention tools, and they fund valuable customer services like rewards programs. Under the interchange fee prohibition, however, a national bank would be required to process the entirety of a card transaction but be denied compensation for the portion of the transaction related to taxes and tips. To offset the uncompensated portion, a national bank could pursue less efficient and less effective alternatives, such as increasing costs for credit and debit card users, limiting or eliminating rewards programs, or deferring investments in tools to detect and prevent fraud. For some national banks, the consequences of this State law may even be "business-ending."<sup>46</sup> This interference with a national bank's efficient and effective exercise of its powers is at least as significant as the

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<sup>43</sup> See 815 Ill. Comp. Stat. 151/150-5 (defining "tax" as "any use and occupation tax or excise tax imposed by the State or a unit of local government in the state").

<sup>44</sup> See, e.g., *Rose v. Chase Bank, USA, N.A.*, 513 F.3d 1032, 1037-38 (9th Cir. 2008) (concluding that, under *Barnett Bank* and *Franklin*, State disclosure requirements on certain credit products known as convenience checks are preempted based on their interference with a national bank's exercise of its lending power, even though such disclosures did not directly affect the terms of the bank's lending); *Parks v. MBNA Am. Bank, N.A.*, 278 P.3d 1193, 1200 (Cal. 2012) ("However, to say that [a national bank] *may* offer convenience checks *so long* as it complies with [State disclosure laws on certain credit products] is equivalent to saying that [the bank] *may not* offer convenience checks *unless* it complies with [the State law]. Whether phrased as a conditional permission or as a contingent prohibition, the effect of [the State law] is to forbid national banks from offering credit in the form of convenience checks unless they comply with state law.").

<sup>45</sup> See OCC, *Comptroller's Handbook*, "Merchant Processing" 32, 82 (2014); OCC, *Comptroller's Handbook*, "Payment Systems" 97 (2021) ("Payment Systems Handbook") (describing the interchange fee is a "fee paid by one bank to another to handle costs and credit risk"); Credit Card Lending Handbook, *supra*, at 60, 172 ("The [interchange] fee takes into account authorization costs, fraud and credit losses, and the average bank cost of funds.").

<sup>46</sup> *Ill. Bankers Ass'n*, 2026 WL 371196, at \*6.

national bank’s exercise of its powers.<sup>48</sup>

A national bank’s decision to contract with a card network to facilitate its payment card activity does not change this analysis. National banks have clear authority to contract with third parties,<sup>49</sup> and the OCC’s concurrent interim final rule unambiguously reaffirms a national bank’s power to charge interchange and other fees “set” by third parties. As outlined above, contracting with third parties, including the card networks, provides many benefits to a national bank. Reliance on a third-party service like a card network is thus “one of the most usual and useful of weapons” in the modern economy.<sup>50</sup> Absent “some affirmative indication” from Congress,<sup>51</sup> then, the role of the card networks does not change the conclusion that the interchange fee prohibition is preempted. To hold otherwise would expose broad swaths of national bank activity to State law that would otherwise be preempted, simply because the bank contracts with a third party to facilitate its exercise of its powers. Such an odd result would undermine National Bank Act preemption and the intent of Congress.

As the foregoing demonstrates, the nature and degree of the interchange fee prohibition’s interference with a national bank’s Federal powers is “more akin” to the interference in the cases where the Court found preemption, including *Franklin*, *Fidelity*, *Barnett Bank*, and *San Jose*.<sup>52</sup>

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<sup>47</sup> See *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640, 660 (9th Cir. 2025) (Nelson, J., dissenting) (concluding that the advertising restriction in *Franklin* “pales in comparison to a state law that dictates a national bank’s pricing”).

<sup>48</sup> See *First Nat’l Bank of San Jose*, 262 U.S. at 370. For similar reasons, the interchange fee prohibition is clearly not comparable to the State law at issue in *Anderson*, which applied a rule that was as “old as the common law itself.” 321 U.S. at 251-52.

<sup>49</sup> See, e.g., 12 U.S.C. 24(Third); see also 12 U.S.C. 1867 (authorizing the OCC to regulate and examine certain services performed for national banks by third parties “to the same extent as if such services were being performed by the [national bank] itself,” which further demonstrates Congress’s recognition that national banks routinely use third-party services).

<sup>50</sup> See *Franklin*, 347 U.S. at 377.

<sup>51</sup> *Id.*

<sup>52</sup> *Cantero* also referenced three antecedent cases in which the Court found that a State law was not preempted. In each of these cases (*Anderson*, *Kentucky*, and *McClellan*), the State law at issue was one of general applicability. See *Cantero*, 602 U.S. at 217-19. These cases are inapposite to this analysis. The interchange fee prohibition, which is targeted at payment card activity, is hardly a law of general applicability.

Therefore, the interchange fee prohibition “must give way” to Federal law and is preempted with respect to national banks.<sup>53</sup>

### C. Data Use Provision

Under Federal law, national banks have the power to use data in a variety of ways. Specifically, as part of the business of banking, national banks may engage in a range of services related to banking, financial, or economic data.<sup>54</sup> Banks may provide these services, which include collecting, transcribing, analyzing, and storing data, for themselves or others.<sup>55</sup> One type of this data is transaction data,<sup>56</sup> which can be used to strengthen risk management, support fraud analysis, tailor products and services to customer needs, and increase operational efficiency.<sup>57</sup> Accordingly, Federal regulations and guidance afford national banks the flexibility to integrate risk management principles “within the bank’s risk management system commensurate with the bank’s size, complexity, and risk profile,” to include utilizing transaction data in support of fraud detection and prevention.<sup>58</sup>

The IFPA’s data use limitation imposes a near-complete ban on a national bank’s use of electronic payment transaction data. Such a prohibition is clearly preempted under *Cantero*,

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<sup>53</sup> See *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 12-13 (2007). As explained above (*supra* n.10), the interchange fee prohibition is also preempted with respect to Federal savings associations.

<sup>54</sup> 12 CFR 7.5006(a); *see also* 12 CFR 7.5006(b) (discussing when a national bank may perform these activities with respect to other types of data).

<sup>55</sup> OCC. Interpretive Letter 928, 4 (Dec. 24, 2001) <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2002/int928.pdf>; *id.* n.12 (stating that “as part of the business of banking, national banks may collect, transcribe, process, analyze, and store for itself and others banking, financial, or economic data” and listing OCC interpretive rulings and letters that support this view); OCC Interpretive Letter 1077, 4 (Jan. 11, 2007) <https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-decisions/2007/int1077.pdf>.

<sup>56</sup> 12 CFR 7.5006(a) (“[E]conomic data includes anything of value in banking and financial decisions[.]”).

<sup>57</sup> *See, e.g.*, Payment Systems Handbook, *supra*, at 48 (explaining that banks use real-time monitoring of customer behavior to identify irregular payment patterns and prevent fraud); OCC, *Federal Regulators Issue Joint Statement on the Use of Alternative Data in Credit Underwriting*, News Release 2019-142 (Dec. 3, 2019) (attaching an interagency statement on the use of alternative data in credit underwriting); *see also* OCC, Operational Risk Description: Fraud Risk Management Principles, Bulletin 2019-37, 4 (July 24, 2019) (stating that national banks may “deploy solutions that serve to detect anomalies and prevent potential fraudulent transactions or activities . . . monitor transactions and behaviors, employ layered or multifactor authentication, monitor networks for intrusions or malware, analyze transactions on internal bank platforms, and compare data with consortium or publicly available data”).

<sup>58</sup> OCC, *Operational Risk Description*, *supra*, at 3.

addressed in *Barnett Bank*, the IFPA purports to prohibit a national bank from exercising a broad and unqualified Federal power—use of transaction data. Compliance with the IFPA would thus deprive a national bank of its flexibility to use transaction data for innumerable important purposes, including as a critical element of fraud and cybersecurity risk management. This deprivation clearly runs afoul of *Fidelity*. As such, the data use limitation would undermine not only a national bank's efficient and effective operations but also its ability to manage risks in a safe and sound manner. This clearly exceeds the significant interference identified that resulted in preemption in *Franklin* and imposes a far more “unusual qualification” than the preempted State law in *San Jose*. Accordingly, the data use limitation unambiguously prevents or significantly interferes with national banks' exercise of their Federally authorized powers.<sup>59</sup>

#### **D. The Patchwork Effect**

Ultimately, the IFPA will create significant uncertainty for consumers and impose incredible operational challenges for national banks and other participants in the nation's card networks. In addition to the challenges with complying with the IFPA alone, other States and localities could enact laws governing interchange fees and use of transaction data. Some of these laws may be substantially similar to the IFPA while others could differ vastly.<sup>60</sup> Such a fractured patchwork of State laws would undermine the uniformity necessary for the functioning of the nation's payment card systems, thereby materially disrupting interstate commerce.<sup>61</sup> This is precisely what preemption, as provided for in the U.S. Constitution, is designed to address.

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<sup>59</sup> See *supra* n.10.

<sup>60</sup> See *First Nat'l Bank of San Jose*, 262 U.S. at 370 (“If California may thus interfere other states may do likewise; and . . . varying limitations may be prescribed.”); see also *Kivett*, 154 F. 4th at 662-63 (Nelson, J., dissenting) (citing *Watters*, 550 U.S. at 13-14, and *Easton v. Iowa*, 188 U.S. 220, 229 (1903)).

<sup>61</sup> Cf. *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 312 (declining to interpret Federal law to incorporate State law in a way that would “throw into confusion the complex system of modern interstate banking”).

The National Bank Act, the Home Owners' Loan Act, and the regulations promulgated thereunder preempt the IFPA's interchange fee prohibition and, separately, the IFPA's data use limitation with respect to national banks and Federal savings associations.<sup>62</sup> National banks and Federal savings associations are neither subject to nor required to comply with these provisions of State law.

## V. Preemption Procedures

### A. 12 U.S.C. 25b

As part of Dodd-Frank, Congress established procedural requirements for OCC "preemption determinations." A preemption determination is an OCC regulation or order that concludes that a "State consumer financial law" is preempted in accordance with the *Barnett Bank* standard.<sup>63</sup> A State consumer financial law is "a State law that . . . directly and specifically regulates the manner, content, or terms and conditions of any financial transaction . . . or any account related thereto, with respect to a consumer."<sup>64</sup>

The IFPA is not a "State consumer financial law." Although the interchange fee prohibition may directly and specifically regulate the manner, content, or terms and conditions of a financial transaction, the relevant interchange fee transaction is between a merchant and the other participants in the card network (*e.g.*, issuer bank, acquirer bank), rather than a consumer. Similarly, the data use limitation does not directly and specifically regulate a financial transaction or a related account. Instead, it limits how a national bank may use data generally. Therefore, this order is not a "preemption determination" within the meaning of 12 U.S.C. 25b.<sup>65</sup>

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<sup>62</sup> The OCC's preemption conclusions with respect to the interchange fee prohibition and data use limitation are separate and severable from one another. The OCC has determined that these conclusions operate independently. Accordingly, if either conclusion is vacated, overruled, or otherwise disturbed, it is the OCC's intention that the remaining conclusion remains in effect, which will provide clarity to stakeholders.

<sup>63</sup> 12 U.S.C. 25b(b)(1)(B)

<sup>64</sup> 12 U.S.C. 25b(a)(2).

<sup>65</sup> Even if the IFPA were a State consumer financial law, the preemption standard and analysis would be the same under 12 U.S.C. 25b(b)(1)(B), which incorporates the *Barnett Bank* standard. See *Cantero*, 602 U.S. at 214 n.2.

Under 12 U.S.C. 43, the OCC generally must provide notice and at least 30 days for comment before issuing “any opinion letter or interpretive rule” concluding that “Federal law preempts the application to a national bank of any State law” relating to specified categories, including consumer protection.<sup>66</sup> While there are strong arguments that section 43 does not apply to this order, the OCC does not need to affirmatively reach this conclusion. Section 43 permits the OCC to make exceptions to the notice-and-comment requirement if the agency “determines in writing that the exception is necessary to avoid a serious and imminent threat to the safety and soundness of any national bank.”<sup>67</sup>

As explained in the interim final rule that the OCC is publishing concurrently with this order, the IFPA creates a complex and potentially unworkable standard, and it imposes significant potential liability for non-compliance. Therefore, national banks may take drastic actions to avoid these risks, up to and including declining payment card transactions subject to the IFPA.<sup>68</sup> Given the complexity of the payment card systems and the modern economy, these effects may not be limited to Illinois.

For national banks that choose to continue to support these payment card transactions, the OCC understands that these banks will need to inform customers, in advance of the IFPA’s July 1 effective date, that the terms and conditions of their payment cards may soon change.<sup>69</sup> The OCC also understands that national banks will need to inform merchants about possible changes, including updates to how they process payments, the need for new software or hardware, or that

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<sup>66</sup> 12 U.S.C. 43(a). Under paragraph (b), the OCC must publish any final such opinion letter or interpretive rule in the *Federal Register*.

<sup>67</sup> 12 U.S.C. 43(c)(3).

<sup>68</sup> *E.g.*, Letter from H. Carney, Executive Vice President, Financial Institution Policy & Regulatory Affairs, American Bankers Association, to W. Giles, Principal Deputy Chief Counsel, OCC at 3 (March 30, 2026) (ABA Letter) (“We are also hearing that some issuing financial institutions—particularly smaller and mid-sized banks—are concluding that the IFPA’s risks and costs are too great, and have indicated they may simply cease issuing credit or debit cards to their customers, while also exploring options for declining card transactions in Illinois.”)

<sup>69</sup> *Id.*

national banks to stop supporting covered payment card transactions, may generate significant customer and merchant confusion about whether, or how, payment cards will work after the IFPA's effective date. These potential actions may cause doubt about continued access to basic lending and deposit services, which could lead to economic harm and disruption and pose significant risks to the safety and soundness of national banks and the national banking system as a whole.

With respect to the data use provision, compliance could also seriously and imminently threaten the safety and soundness of national banks. As discussed above, national banks use transaction data for a variety of critical purposes in support of their safety and soundness, including risk management and fraud detection and prevention. Preventing national banks from using data for these purposes would place them in an untenable position, fraught with both known and unknown risks. National banks face unrelenting threats from fraudsters, cybercriminals, and other malicious actors; the IFPA would deny them access to the tools necessary to combat these serious and imminent threats.

For these reasons, the OCC determines that, if section 43 were to apply to this order, an exception to section 43's notice-and-comment requirement is necessary to avoid a serious and imminent threat to the safety and soundness of national banks.<sup>71</sup>

## **VI. Other Analysis**

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<sup>70</sup> *Id.*

<sup>71</sup> In addition, section 43 does not apply when the OCC's action "raises issues of Federal preemption of State law that are essentially identical to those previously resolved by the courts." 12 U.S.C. 43(c)(1). The U.S. District Court for the Northern District of Illinois has addressed whether the National Bank Act preempts the IFPA and resolved this in the affirmative for the data use limitation. Therefore, the OCC concludes that, at a minimum, preemption of the data use limitation raises essentially identical preemption issues to those that have been resolved by a court.

The OCC is issuing this interim final order without prior notice and the opportunity for public comment. These Administrative Procedure Act (APA) requirements, codified at 5 U.S.C. 553, apply to agency rulemakings and are thus inapplicable to this order.

In addition, even if these requirements were applicable, the APA provides that notice-and-comment is not required when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>72</sup> Consistent with the discussion above and as explained in the OCC’s concurrent interim final rule, the OCC has good cause because notice-and-comment is impracticable. Nevertheless, the agency is interested in the views of the public and requests comment on all aspects of this interim final order.

### **B. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA),<sup>73</sup> the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed this interim final order and determined that it does not create any new or revise any existing collections of information. Accordingly, no PRA submissions to OMB will be made with respect to this interim final order.

### **C. Regulatory Flexibility Act**

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<sup>72</sup> 5 U.S.C. 553(b)(B).

<sup>73</sup> 44 U.S.C. 3501-21.

it proposes will have a significant economic impact on a substantial number of small entities.<sup>75</sup>

The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed above, the OCC is acting by order, rather than by rule. Further, consistent with § 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is impracticable. Therefore, the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply to this interim final order.

While not required, the OCC evaluated whether the interim final order will have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 609 small entities, all of which will be impacted by the interim final order.

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number. Thus, at present, 30 OCC-supervised small entities would constitute a substantial number. Therefore, since the interim final order will affect all OCC-supervised banks, a substantial number of OCC-supervised small entities would be impacted.

However, the interim final order imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. Therefore, the OCC believes that the interim final order will not have a significant economic impact on a substantial number of small entities.

#### **D. Unfunded Mandates Reform Act of 1995**

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<sup>74</sup> 5 U.S.C. 601 *et seq.*

<sup>75</sup> Under regulations issued by the Small Business Administration (SBA), as of June 2025, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$850 million or less and trust companies with total assets of \$47 million or less. The SBA may adjust these thresholds annually, so check the citation for the most recent asset thresholds. *See* 13 CFR 121.201.

preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (\$193 million as adjusted annually for inflation).<sup>76</sup> However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. As discussed above, the OCC is acting by order, rather than by rule. Further, consistent with § 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is impracticable. While not required, the OCC has analyzed the interim final order under the factors in UMRA. Because this interim final order imposes no new mandates, it will not require additional expenditure of \$193 million or more annually by any State, local, or tribal governments, in the aggregate, or by the private sector. Accordingly, for these reasons, the OCC has not prepared the written statement described in § 202 of UMRA.

#### **E. Riegle Community Development and Regulatory Improvement Act of 1994**

Pursuant to § 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994,<sup>77</sup> in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest, (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the final rule. As discussed above, the OCC is acting by order, rather than by regulation. In addition, this order does not impose any

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<sup>76</sup> 2 U.S.C. 1531 *et seq.*

<sup>77</sup> 12 U.S.C. 4802(a).

these reasons, § 302(a) does not apply to this interim final order.

#### **F. Executive Orders 12866 and 14192**

The Office of Information and Regulatory Affairs has determined that this interim final order is economically significant as defined by section 3(f)(1) of Executive Order 12866. The OCC conducted an analysis consistent with Executive Order 12866.<sup>78</sup> If OCC-supervised banks were required to comply with the IFPA, they would incur costs (1) to upgrade their systems to transmit tax and gratuity information when interfacing with other participants in the payment card systems, including merchants and card networks; and (2) to manually process tax documentation. With respect to system upgrades, we estimate an initial cost savings of more than \$232 million, of which \$72 million would accrue to acquirer banks and \$160 million to issuer banks. With respect to manually processing tax documentation, we estimate cost savings of \$145 million per year for the first several years, of which \$121 million would accrue to acquirer banks and \$24 million to issuer banks. In addition, if OCC-supervised issuer banks were required to comply with the IFPA, these issuer banks would no longer receive revenue from the interchange fees on taxes and gratuity in Illinois for payment cards. We estimate that OCC-supervised card issuers would lose a total of \$200 million of revenue if required to comply with the IFPA.<sup>79</sup> The OCC's quantification of these effects is described below.

However, as discussed above and in the interim final rule published concurrently with this order, the IFPA creates a complex and potentially unworkable standard. There is substantial uncertainty about whether and how banks can implement these changes by the IFPA's effective date, which may lead to banks to take drastic actions. Other costs and negative effects to the

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<sup>78</sup> The analysis uses a baseline that assumes that OCC-supervised institutions would be required to comply with the interchange fee prohibition but not the data use limitation of IFPA on July 1, 2026. In addition, the OCC based its analysis on publicly available data and made assumptions as described throughout. Accordingly, these estimates may be imprecise.

<sup>79</sup> There may also be indirect impacts for acquirer and issuer banks, card networks, merchants, and others. Because these indirect impacts are difficult to determine, they are not included in our estimates.

customer confusion and doubt about continued access to basic lending and deposit services, were not as readily quantified under the circumstances but are nonetheless grave risks.

### *Estimated Direct Cost Savings*

#### A. Cost Savings to Acquirer Banks

Based on Consolidated Reports of Condition and Income (Call Report) data, we estimate that there are approximately 49 OCC-supervised acquirer banks, six of which operate some or all of their own core payment card processing systems. One of these banks estimated a one-time cost of \$16 million to upgrade its systems to comply with the IFPA.<sup>80</sup> These costs are mainly related to software development, and as such, we do not expect the cost to vary with institution size. We assume that the institutions that fully operate their own systems will incur the same cost of \$16 million each, while those that operate only some of their systems will incur half the cost. We believe that the remaining OCC-supervised acquirer banks would not incur any direct upfront system upgrade costs, as we expect these costs will be absorbed by core payment service providers instead.<sup>81</sup> We thus estimate that, absent this interim final order, OCC-supervised acquirer banks would incur a one-time system upgrade cost of \$72 million.

If merchants elect to submit tax documentation manually to their acquirer bank, the bank will also incur costs. One acquirer bank with an acquiring transaction volume of 400 million in Illinois estimates that implementing this process may cost up to \$50 million per year.<sup>82</sup> This acquirer bank's sales volume amounts to 41 percent of total sales volume for all OCC acquirer banks.<sup>83</sup> Assuming that this acquirer's share of paper submission costs is the same as its share of

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<sup>80</sup> Declaration of Mark C. Williams ¶ 15, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) (Decl. M. Williams).

<sup>81</sup> While these providers may pass costs on to their client acquirer banks over time, we do not have sufficient information to estimate this cost.

<sup>82</sup> Decl. M. Williams, *supra*, ¶ 22.

<sup>83</sup> See Call Report, Schedule RC-L, Item 11.a and 11.b.

acquirer banks.

#### B. Cost Savings to Issuer Banks

Based on Call Report data, there are approximately 152 banks that issue both credit cards and debit cards, one that issues only credit cards, and 702 that only issue debit cards. We first evaluate the cost savings for credit card issuer banks. Six of these issuer banks process their own payment card transactions or have hybrid processing models, while the rest outsource the processing to other providers. The largest system upgrade costs would be incurred by issuer banks who operate their own processing. One large issuer that conducts its own credit card processing estimates system upgrade costs of \$25 million.<sup>84</sup> We assume that this cost is for software development, that this cost does not vary with issuer size, and that costs for issuers with a hybrid processing model are half. We thus estimate that total upgrade costs are \$137.5 million. Issuers that outsource their processing will incur considerably lower upfront system upgrade costs. One smaller institution estimates that system upgrades for interfacing with two credit card and two debit card networks would cost \$45,000.<sup>85</sup> Thus, we estimate that the remaining 147 credit card issuers may spend an additional \$6.6 million. We next estimate costs for the 702 banks that issue only debit cards. We assume that they participate in two debit card networks (the minimum required)<sup>86</sup> and that their upgrade costs would be \$22,500 per institution (half of the cost upgrading to interface with four networks noted above). Thus, we estimate that the combined upgrade cost would be \$16 million. Overall, we estimate the combined system upgrade costs for all OCC-supervised issuer banks would be \$160 million.

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<sup>84</sup> Declaration of Christopher Conrad ¶ 19, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) (Decl. C. Conrad).

<sup>85</sup> Declaration of Hope M. Garrett ¶ 16, *Ill. Bankers Ass'n v. Raoul*, No. 24-cv-07307 (N.D. Ill. Aug. 21, 2024) (Decl. H. Garrett).

<sup>86</sup> See 12 CFR § 235.7(a)(1).

would require at least 100 analysts,<sup>87</sup> which we estimate would cost \$4.5 million per year.<sup>88</sup>

According to the Call Report, this issuer accounts for 19% of total credit card balances for all OCC-supervised banks. Assuming that this bank therefore also accounts for 19% of costs related to paper submissions, the estimated cost for paper submission for all OCC-supervised issuer banks is \$24 million.

### *Estimated Revenue Impacts for Issuer Banks*

#### A. Tax

To estimate this revenue impact for credit cards, we used publicly available, aggregate Y-14M data from the Federal Reserve.<sup>89</sup> We scale to total market based on the reported share of credit card balance of four-fifths of total U.S. bankcard balances,<sup>90</sup> and we assume that OCC-supervised institutions hold 81.2 percent of the credit card purchase volumes.<sup>91</sup> We also assume that the share of Illinois interchange fee income for a credit card issuer is 3.9 percent of its total

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<sup>87</sup> See Decl. C. Conrad, *supra* ¶ 22.

<sup>88</sup> See Decl. M. Williams, *supra* ¶ 22.

<sup>89</sup> Federal Reserve Bank of Philadelphia, *Large Bank Consumer Credit Card Balances: Total Purchase Volume*, <https://fred.stlouisfed.org/series/RCCCBPURCHASETOT>, April 10, 2026; Federal Reserve Bank of Philadelphia, *FR Y-14M Data*, <https://www.philadelphiafed.org/surveys-and-data/large-bank-credit-card-and-mortgage-data>, April 10, 2026. This data is limited to consumer credit cards for largest banks.

<sup>90</sup> Federal Reserve Bank of Philadelphia, *FR Y-14M Data*, <https://www.philadelphiafed.org/surveys-and-data/large-bank-credit-card-and-mortgage-data>, April 10, 2026.

<sup>91</sup> See Office of Comptroller of the Currency, *2025 Annual Report*, <https://www.occ.gov/publications-and-resources/publications/annual-report/files/2025-annual-report.pdf>.

Finally, we use 2 percent to calculate the interchange fee revenue for credit cards. Based on this analysis, we estimate that OCC-supervised credit card issuer banks would lose approximately \$173 million of interchange fee revenue if required to comply with the IFPA.

With respect to debit cards, we estimate this revenue impact using publicly available, aggregate Y-14M data from the Federal Reserve.<sup>94</sup> We assume the following: OCC-supervised institutions hold 81.2 percent of relevant purchase volumes; the ratio of debit card purchase volume to credit card purchase volume is 82 percent;<sup>95</sup> the share of Illinois interchange fee income for a debit card issuer is 3.9 percent of its total revenue from debit card interchange fees; the share of interchange fee income attributable to Illinois sales taxes is 6.25 percent; and an interchange fee of 0.05 percent for all OCC-supervised banks.<sup>96</sup> Accordingly, we estimate that OCC-supervised debit card issuer banks would lose approximately \$4 million of interchange fee revenue if required to comply with the IFPA.

## B. Gratuity

To calculate the impact of removing interchange fees on tips, we rely on reported income in Illinois from occupations that are traditionally associated with tips such as Food Services, Waiters and Waitresses, Bartenders, etc.<sup>97</sup> We assume that approximately 55 percent of this income is from tips and 15 percent of these tips are paid in cash. We use the same ratio of debit

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<sup>92</sup> See U.S. Bureau of Economic Analysis (BEA), *SQGDPI State Quarterly Gross Domestic Product Summary* (accessed Thursday, April 9, 2026) (indicating Illinois's share of the current United States dollar Gross Domestic Product in 2025 is 3.9 percent).

<sup>93</sup> See 35 ILCS 105/1 to 105/22. We do not account for the local and excise taxes that are also subject to the IFPA.

<sup>94</sup> Federal Reserve Bank of Philadelphia, *Large Bank Consumer Credit Card Balances: Total Purchase Volume*, <https://fred.stlouisfed.org/series/RCCCBPURCHASETOT>, April 10, 2026; Federal Reserve Bank of Philadelphia, *FR Y-14M Data*, <https://www.philadelphiafed.org/surveys-and-data/large-bank-credit-card-and-mortgage-data>, April 10, 2026.

<sup>95</sup> See Federal Reserve, *Federal Reserve Payments Study, 2024 Accessible Version of Trends in Noncash Payments* (March 6, 2025).

<sup>96</sup> See 12 CFR 235.3 (applicable to issuers with total assets equal to or greater than \$10 billion).

<sup>97</sup> Bureau of Labor Statistics, *May 2023 State Occupational Employment and Wage Estimates*, [https://www.bls.gov/oes/2023/may/oes\\_il.html](https://www.bls.gov/oes/2023/may/oes_il.html) (inflation adjusted to 2025).

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to credit card purchase volume to split the tips paid with cards into those paid with a credit card (55 percent) and those paid with a debit card (45 percent) to differentiate the applicable interchange fees. We apply the same average interchange fee of 2 percent for credit cards and .05 percent for debit cards. We also assume that OCC issuers hold 81.2 percent of payment card balances and purchase volumes. Accordingly, we estimate that OCC-supervised card issuers would lose approximately \$23 million of interchange fees related to tips if required comply with the IFPA.

Executive Order 14192, titled “Unleashing Prosperity Through Deregulation,” separately requires that an agency, unless prohibited by law, identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. The OCC has determined that the interim final order will be a deregulatory action under Executive Order 14192 because it will result in cost savings for OCC-supervised institutions as discussed above. The OCC estimates that this rule generates \$37 million in annualized cost savings at a seven percent discount rate, discounted relative to year 2024, over a perpetual time horizon.

#### **G. Congressional Review Act**

Because the OCC is acting by order, rather than by rule, the OCC believes that Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act)<sup>98</sup> does not apply. Nevertheless, the OCC will submit the interim final order and other appropriate reports to Congress and the Government Accountability Office for review.

#### **H. Providing Accountability Through Transparency Act of 2023**

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<sup>98</sup> 5 U.S.C. 801 *et seq.*

of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website *www.regulations.gov*. While the OCC is not issuing a notice of proposed rulemaking, a summary of this interim final order can be found below and at <https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html>.

The OCC is issuing an interim final order concluding that Federal law preempts the Illinois Interchange Fee Prohibition Act, which purports to (1) prohibit national banks and Federal savings associations from charging or receiving interchange fees on the tax and gratuity portions of payment card transactions; and (2) restrict the use of payment card transaction data. The OCC invites public comments on this interim final order.

**Katherine S. Tyrrell**  
*First Deputy Comptroller of the Currency.*

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<sup>99</sup> 5 U.S.C. 553(b)(4).