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OCC & Northern District Preempt IL IFPA

June 4, 2026

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The Office of the Comptroller of the Currency (OCC) has begun to issue preemption determinations again for the first time since the Dodd-Frank Act went into effect in 2011, a development we explored **explored in our most recent issue of *Cabinet***. While the determination we recently explored sought to provide clarity on a national basis regarding which state laws were preempted, **the OCC issued a preemption interim final order in April** specifically preempting the law in one state, Illinois.

The law in question is the Illinois Interchange Fee Prohibition Act (IL IFPA), which was initially passed in 2024 and was supposed to go into effect July 1, 2025, but now will go into effect, if at all, on July 1, 2027. The IL IFPA is a merchant-friendly law that seeks to do two things: (1) prohibit the charging or receiving of interchange fees on the tax and gratuity portions of payment card transactions by "issuer banks, card networks, acquirer banks, and other participants" (the Interchange Fee Prohibition); and (2) restrict the use of payment card transaction data by any entity other than the merchant (Data Usage Limitation).

The Interchange Fee Prohibition is a logistical and operational nightmare for the payment card industry to implement, with the costs for modifying the system to be in compliance with the IL IFPA dwarfing the benefit to merchants, at least for many years (see the Bank Policy Institute's amicus brief, **here**), while also dealing a blow to payment card industry participants by causing them to lose a portion of interchange income forever. In addition, the Data Usage Limitation potentially upends payment card fraud controls managed by banks and the card networks and would most likely make it very difficult for banks to comply with their privacy and security obligations.

The fight over the IL IFPA has been raging in the courts since 2024. A collection of industry trade associations sought to enjoin enforcement of the law, including the American Bankers Association and the Illinois Bankers Association, and in February 2025 the Northern District of Illinois issued a partial permanent injunction barring enforcement of the IL IFPA as against the application of the law to national banks, national credit unions, federal savings associations, and out-of-state banks operating in the Illinois, as well as the payment card networks. The injunction was appealed to the Seventh Circuit, and upon issuance of the OCC's preemption determination in April 2026, the Seventh Circuit vacated the permanent injunction and directed that the Northern District needed to assess the impact of the regulatory changes. On June 1, **the Northern District issued an opinion and order** that effectively ruled that federal law preempts the IL IFPA, even with respect to banks and credit unions that only operate within Illinois.

The Court's decision is important on this particular issue for several reasons, not the least because the OCC's Interim Final Rule expanded the variety of parties that are impacted by its preemption determination to not only include national banks and federal savings associations, but also the payment networks and interchanges, as well as other parties that "assess, collect, impose, levy, receive, reserve, take or otherwise obtain" a part of interchange "through a fee sharing or similar economic relationship." The theory there being that due to the economic relationship between banks and these entities, the restrictions imposed on them by the IL IFPA would interfere the banks' ability to exercise their banking powers. There also is the ticklish issue of whether the OCC's preemption determinations need to be provided deference by courts, now that Chevron deference is gone. Chief Judge Virginia Kendall definitely indicated in her opinion and order that she was not bound by the OCC's actions.

Her analysis concludes that the broadened scope of parties is appropriate and agrees that "in a world where the national banks' powers will include the discretion to have third parties set their fees for them, it is difficult to see how the [IL IFPA] is not 'an obstacle to the accomplishment and execution of the full purposes and objectives' of" national banks' legitimate powers. In other words, the Interchange Fee Prohibition "is so tied up in the national banks' powers that the preemptive effect must run to the" payment card networks.

Accordingly, not only has the OCC rendered a preemptive determination on the IL IFPA, but the Northern District of Illinois has permanently enjoined the application of the Interchange Fee Prohibition and the Data Usage Limitation to national banks, banks charter by state other than Illinois, federal savings associations and the payment card networks. The Data Usage Limitation is also enjoined from being enforced against federal credit unions.

Going forward, the challenge for Illinois legislators will be whether to burden its own institutions with the operational challenges and limitations of the IL IFPA. And, the challenge for the industry will be fending off state laws that are similar to the IL IFPA that are under consideration in state legislatures right now.