May 29, 2026

Via Electronic Submission

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

RE: Order Preempting the Illinois Interchange Fee Prohibition Act
91 Fed. Reg. 23150 (Apr. 29, 2026), Docket ID OCC-2026-0431

To Whom It May Concern:

The American Bankers Association (ABA)[1], the Illinois Bankers Association[2], America's Credit Unions[3], and the Illinois Credit Union League[4] (collectively, the Associations) appreciate the opportunity to comment on the interim final order published by the Office of the Comptroller of the Currency (OCC). This order deems the Illinois Interchange Fee Prohibition Act (IFPA) preempted, as to both its interchange fee prohibition and data-use provision. *See* 91 Fed. Reg. 23151 (Apr. 29, 2026). The Associations strongly support this preemption order, which, both on its own terms and in conjunction with the OCC's interim final rule underscoring national banks' fee-collection powers, eliminates any possible doubt that the IFPA is an unlawful encroachment on the uniform national banking and payments system.[5]

This comment letter proceeds in three parts. *First*, we provide a brief overview of why—even before the OCC's recent actions—federal law already preempted the IFPA with respect to national

[1] The American Bankers Association is the voice of the nation's $26.1 trillion banking industry, which is composed of small, regional, and large banks that together employ over 2 million people, safeguard $20.5 trillion in deposits, and extend $13.7 trillion in loans.

[2] The Illinois Bankers Association is a full-service trade association dedicated to creating a positive business climate for the entire banking industry and the communities we serve. Founded in 1891, the IBA brings together state and national banks and savings banks of all sizes in Illinois. Over 52% of IBA members are community banks with less than $250 million in assets, and over 75% of IBA members are community banks with less than $750 million in assets. Collectively, the IBA represents nearly 90% of the assets of the Illinois banking industry, which employs more than 105,000 men and women in over 5,000 offices across the state.

[3] America's Credit Unions is the unified voice for not-for-profit credit unions, representing more than 95% of the industry's assets and their more than 146 million members nationwide. America's Credit Unions provides strong advocacy, resources and services to protect, empower, and advance credit unions and the people and communities they serve. For more information about America's Credit Unions, visit AmericasCreditUnions.org.

[4] The Illinois Credit Union League is the trade association for nearly 200 state and federal credit unions in Illinois. It focuses on providing legislative and regulatory advocacy, compliance assistance and information, and a wide range of educational and training services to those credit unions, who in turn serve approximately 4.1 million members. More information can be found at www.icul.com.

[5] The Associations are simultaneously submitting a comment letter supporting the OCC's interim final rule on national banks' fee-collection powers. This letter incorporates the discussion in that letter to the extent relevant.

banks and federal savings associations. *Second*, we explain why the OCC's preemption order is nonetheless a valuable clarification, given the uncertainty created by *Illinois Bankers Ass'n v. Raoul,* 819 F. Supp. 3d 882 (N.D. Ill. 2026), No. 26-1354, 2026 WL 1291987 (7th Cir. May 8, 2026), a recent decision erroneously upholding the IFPA's interchange fee prohibition. *Third*, we emphasize the practical importance of the OCC's clarification: This preemption order will help neutralize the economic threat posed by the IFPA and similar legislation under consideration in more than 25 other states. Such legislation would impose massive implementation costs by forcing financial institutions to try to replace the current, nationally uniform banking and payments system with a fragmented and infeasible patchwork reflecting a web of jurisdiction-specific regulations. The Associations commend the OCC for taking expeditious action to stop this intrusion—to the benefit of industry, consumers, and the broader American economy.

I. Federal Law Already Preempts the IFPA.

The U.S. Constitution's Supremacy Clause makes federal law "the supreme Law of the Land" and thus preempts conflicting state laws. U.S. Const. art. VI, cl. 2. This principle of federal preemption is "fundamental to the design of the dual banking system," under which "parallel federal and state banking systems … co-exist and compete." 90 Fed. Reg. 61093 (Dec. 30, 2025) (citation omitted). Banks that opt into the federal system enter into a bargain: Such national banks agree to be "subject primarily to federal oversight and regulation," and are imbued with the "various enumerated and incidental powers" conferred by the National Bank Act (NBA). *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 210 (2024). In exchange, contrary state and local laws are preempted, including—pursuant to the standard of *Barnett Bank, N.A. v. Nelson*—any law that would "prevent or significantly interfere with the national bank's exercise of its powers." 517 U.S. 25, 33 (1996). That robust preemption standard follows from national banks' status as "instrumentalities of the Federal government, created for a public purpose." *Easton v. Iowa*, 188 U.S. 220, 238 (1903) (quotation marks omitted); *see also Barnett Bank*, 517 U.S. at 32 (citing *Easton* for the proposition that national bank powers are "not normally limited by, but rather ordinarily pre-empt[], contrary state law"). The same preemption standard applies to federal savings associations, which are imbued with similar powers, under the Home Owners' Loan Act (HOLA). 12 U.S.C. §§ 1464, 1465(a).

Even before considering the OCC's recent actions, the NBA and HOLA preempt the IFPA with respect to national banks and federal savings associations, because both the interchange fee prohibition and data-use provision "prevent or significantly interfere with" such entities' exercise of their powers. *Barnett Bank*, 517 U.S. at 33. Both IFPA provisions flunk this preemption standard, as comparison with prior Supreme Court preemption caselaw makes clear.

A. The NBA and HOLA Preempt the IFPA's Interchange fee Prohibition.

To begin, the NBA and HOLA preempt the IFPA's interchange fee prohibition with respect to national banks and federal savings associations. Interchange fees are the fees that issuers, *i.e.*, national banks, federal savings associations, and other financial institutions that issue credit and debit cards to consumers, collect as part of every credit and debit card transaction. 91 Fed. Reg. 23151 n.2. These fees compensate issuers for their role in providing credit and debit accounts, authorizing transactions, monitoring for fraud, and other services that support the smooth operation

of the national payments system. But the IFPA bars issuers (as well as other entities involved in the payments process) from collecting the portion of such fees charged on any tax or gratuity included in a transaction. 815 ILCS 151/150-10(a).

The IFPA's interchange fee prohibition plainly "prevent[s] or significantly interfere[s] with" national banks' and federal savings associations' exercise of their powers. *Barnett Bank*, 517 U.S. at 33. As the Associations explain further in our comment letter supporting the OCC's interim final rule, national banks' power to collect interchange fees is beyond dispute. The collection of interchange and other fees is an inherent component of national banks' authority under the NBA to "receiv[e] deposits," "loan[] money on personal security," and otherwise "carry on the *business* of banking." 12 U.S.C. § 24 (Seventh) (emphasis added). Indeed, the OCC's interim final rule makes this point explicit, by amending 12 C.F.R. § 7.4002—the OCC's non-exhaustive regulation on national banks' power to collect "non-interest charges and fees"—to expressly enumerate interchange fees as one such fee that banks may charge. 91 Fed. Reg. 22995. And the same is also true for federal savings associations, which have similar statutory authorities and regulatory support. *See* 12 U.S.C. § 1464; 12 C.F.R. § 145.17.

The interchange fee prohibition is accordingly preempted because it imposes costs and burdens that "significantly interfere[] with" national banks' and federal savings associations' ability to conduct banking services efficiently and effectively. *Franklin National Bank v. New York*, 347 U.S. 373, 377 (1954)—which the Supreme Court has described as "[t]he paradigmatic example of significant interference," *Cantero*, 602 U.S. at 216—shows why. In *Franklin*, the Court held that a New York law barring national banks from using the word "savings" in their advertisements created a "clear conflict" with banks' "incidental power[]" to "advertis[e]" their savings accounts. 347 U.S. at 374, 377-78. This was so even though the "law did not bar national banks from receiving savings deposits, 'or even' from 'advertising that fact'" using different words. *Cantero*, 602 U.S. at 216 (quoting *Franklin*, 347 U.S. at 378). As the Supreme Court later explained, the upshot of *Franklin* is that, where federal law grants national banks powers, "state law [may] not interfere with the national bank's ability to [exercise those powers] efficiently." *Id.*

The IFPA's interchange fee prohibition works a far more significant interference than the limited restriction in *Franklin*. Given the technological and operational realities inherent in the current payment system, complying with the IFPA would require national banks and federal savings associations to divert enormous resources. This is so because neither of the IFPA's two methods for compliance—automatically breaking out the taxes and gratuities of a transaction to avoid charging the merchant, or having the issuer reimburse the merchant *post hoc*—is possible under current infrastructure. Nor is there a clear path for issuers to create and implement these processes, in coordination with other entities such as payment networks, by the IFPA's highly compressed July 1, 2026 effective date. Forcing national banks and federal savings associations to create an entirely new payments system of questionable workability to address a single state's law plainly burdens their ability to efficiently provide banking services. And this burden is only exacerbated by the fact that upholding the IFPA's prohibition would open the door for other jurisdictions to create their own requirements, which could necessitate yet more overhauls to accommodate a "patchwork" of jurisdiction-specific requirements. 91 Fed. Reg. 23154.

The sheer magnitude of the IFPA's financial costs and threatened liability makes this significant burden even more plain. As the OCC estimates, the IFPA will impose compliance costs on national banks and federal savings associations running into the hundreds of millions of dollars. *See* 91 Fed. Reg. 23156-57. Moreover, such entities face outsized liability for any compliance errors, as the IFPA imposes "a civil penalty of $1,000 per [non-conforming] payment transaction," 815 ILCS 151/150-15(a)—a stark threat, given the billions of credit and debit card transactions that take place each year in Illinois. These onerous burdens are forcing some issuers—particularly smaller and mid-sized banks—to consider declining all transactions in Illinois or even ending their credit or debit card programs. And even for issuers that will remain in the market, the IFPA's burdens will at minimum force national banks and federal savings associations to divert resources that would otherwise go towards improving banking services or offering new benefits. All this will lessen the efficiency of banking services and ultimately harm consumers.

In addition, the IFPA is further preempted because it directly "prevents" and "interferes with" national banks' and federal savings associations' power to collect interchange fees by barring them from collecting a portion of the fees that the NBA and HOLA authorize. *Fidelity Federal Savings & Loan v. de la Cuesta*, 458 U.S. 141 (1982), is instructive on this point. In that case, federal law allowed but did not require national banks "to include due-on-sale clauses in their [mortgage] contracts." *Id.* at 155. The Supreme Court held preempted a California law purporting to "limit[]" that right by allowing enforcement of such clauses only when "reasonably necessary" to protect a security interest. *Id.* at 149, 154-55. As the Court explained, by restricting savings and loans, the predecessor of modern federal savings associations, in the exercise of their federally authorized powers, the California law improperly "deprived [financial institutions] of the 'flexibility'" that federal law allowed. *Id.* at 155. So too here: The IFPA "deprive[s] [national banks and federal savings associations] of the 'flexibility'" guaranteed by the NBA and HOLA in facilitating the "*business* of banking," by restricting national banks' and federal savings associations' ability to collect compensation for their services. As a circuit-court consensus finding state fee regulations preempted confirms, this kind of restriction is a classic form of preempted interference. *See, e.g.*, *Baptista v. JPMorgan Chase Bank, N.A.*, 640 F.3d 1194, 1198 n.2 (11th Cir. 2011); *Wells Fargo Bank of Tx. NA v. James*, 321 F.3d 488, 495 (5th Cir. 2003); *Bank of Am. v. City & County of S.F.*, 309 F.3d 551, 562-64 (9th Cir. 2002).

B. The NBA and HOLA Preempt the IFPA's Data-Use Provision.

The NBA and HOLA also preempt the IFPA's data-use provision. That provision makes it unlawful for banks and other entities "involved in facilitating or processing" credit and debit card transactions—except for merchants—to "distribute, exchange, transfer, disseminate, or use the … transaction data, except to facilitate or process the … transaction or as required by law." 815 ILCS 151/150-15(b). But as the district court in the ongoing litigation against the IFPA recognized, federal law confers on national banks and federal savings associations an "express" "federal power to use data" in their discretion, which the data-use provision would upend. *Ill. Bankers Ass'n*, 2026 WL 371196, at *13-14 (citing 12 C.F.R. §§ 5.59(f)(2)(vi), 7.5006(a), 7.1000(d)(1)). And, more generally, such entities routinely use "data from credit card transactions … for many purposes" besides payment processing, such as "aggregating transaction data to monitor credit card fraud, address payment disputes, and facilitate cardholder loyalty programs." *Id.* at *13. By deeming all these banking functions unlawful, the data-use provision "prevents" and "significantly

interferes with" national banks' and federal savings associations' efficient exercise of their banking powers, in ways well beyond the bar for preemption in prior Supreme Court cases holding state laws preempted. *Cantero*, 602 U.S. at 220. The district court thus properly enjoined the enforcement of this provision against national banks and federal savings associations.

II. The OCC's Preemption Order Confirms the IFPA's Preemption and Dispels Recent Confusion.

Notwithstanding this straightforward preemption analysis, the district court's order in the *Illinois Bankers Association* litigation has created a cloud of uncertainty. The court upheld the IFPA's interchange fee prohibition, erroneously finding it not preempted based on a misunderstanding of both national banks' and federal savings associations' powers and preemption case law. And while the Associations are confident that the IFPA would have eventually been enjoined on appeal, the district court's conclusion created substantial uncertainty in light of the IFPA's fast-approaching July 1 effective date. So, too, for the data-use provision. Although the district court correctly enjoined that provision as preempted, the State of Illinois's cross-appeal challenging plaintiffs' standing to obtain that injunction has created similar uncertainty. *See* No. 26-1371, Dkt. 52, at 57-64 (7th Cir. Apr. 3, 2026).

In these circumstances, the OCC's order on preemption offers appropriate clarification and regulatory certainty. To be sure, because federal law already preempts the IFPA of its own authority, neither the OCC's order nor the accompanying rule is necessary to establish preemption. For this reason, the OCC correctly recognized—even before issuing this order and rule—that the IFPA is preempted. *See, e.g.*, No. 26-1371, Dkt. 33 (7th Cir. Mar. 13, 2026) (OCC amicus brief). Nonetheless, the OCC's regulatory actions here provide needed clarity. As the order explains, the IFPA's interchange fee prohibition improperly "interferes with critical flexibility granted to a national bank under Federal law"; "interferes with a national bank's efficiency or effectiveness in exercising its Federal power"; and "qualifies a Federal power in an unusual way." 91 Fed. Reg. 23152. Likewise, the data-use provision improperly "imposes a near-complete ban" on banks' power to "use … transaction data," thus "depriv[ing] a national bank of its flexibility to use transaction data for innumerable important purposes." *Id.* at 23154. And, as the order also confirms, both these points apply similarly to federal savings associations, which have "comparable powers" and are governed by the same preemption standard. *Id.* at 23151 n.10.

The OCC's order thus underscores that federal law "preempt[s] the IFPA's interchange fee prohibition, and separately, the IFPA's data use limitation with respect to national banks." *Id.* at 23154. The order further instructs that "[n]ational banks and Federal savings associations are neither subject to nor required to comply with these provisions of State law." *Id.*

This order should settle any question as to the IFPA's status. "'[A] federal agency acting within the scope of its congressionally delegated authority may pre-empt state regulation' and hence render unenforceable state or local laws that are otherwise not inconsistent with federal law." *City of New York v. FCC*, 486 U.S. 57, 63-64 (1988). The OCC has just such authority. That includes "primary responsibility for surveillance of 'the business of banking' authorized by § 24 Seventh," *NationsBank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 256 (1995), as well as parallel responsibility under HOLA, *see* 12 U.S.C. § 1463, and the power to issue preemption

orders in particular, *see, e.g.*, *Wachovia Bank, N.A. v. Burke*, 414 F.3d 305, 314 (2d Cir. 2005); *see also* 12 U.S.C. § 93a; 5 U.S.C. § 554(e). Pursuant to this authority, the OCC's orders are binding so long as the agency's preemption conclusions are reasonable and not plainly inconsistent with congressional intent—a standard this order readily meets, given the already strong case for preemption. *See City of New York*, 486 U.S. at 63-64.

Moreover, the OCC's preemption order, at minimum, constitutes persuasive authority entitled to "great weight." *Inv. Co. Inst. v. Camp*, 401 U.S. 617, 626-27 (1971). This is so given the OCC's long-recognized expertise on the scope of national banks' and federal savings associations' powers. *Id.* (citing *First Nat'l Bank in St. Louis v. Missouri*, 263 U.S. 640, 658 (1924)); *see also Loper Bright Enters. v. Raimondo*, 603 U.S. 369, (2024) (continuing to afford agency interpretations "due respect," particularly when they "rest[] on factual premises within the agency's expertise" (cleaned up)). Thus, to the extent the preemption analysis left any room for doubt, the OCC's expert judgment as to the likely effects of the IFPA should tip the balance. For example, this order underscores how the interchange fee prohibition significantly interferes with national banks' and federal savings associations' exercise of their powers by "likely … introduc[ing] significant complexity" and "incredible operational challenges" into the payments process – to say nothing of the impossibility of having to comply with the "fractured patchwork" of regulation that could result from other states and localities enacting their own versions of interchange regulation. 91 Fed. Reg. 23152, 23154. That assessment confirms the need for preemption – even on the mistaken view that the interchange fee issue would otherwise be a "close case." *Ill. Bankers Ass'n*, 2026 WL 371196, at *5.

III. The OCC's Preemption Order Is a Critically Important Safeguard.

The OCC's order will benefit not just national banks and federal savings associations but consumers and the American economy as a whole. By making clear beyond doubt that the IFPA should not be permitted to go into effect as scheduled on July 1, 2026, the OCC's preemption order will help set aside the IFPA's massive compliance burdens. Likewise, the OCC's order will help deter other jurisdictions that may attempt to adopt—or adapt—Illinois's example. The OCC's actions thus provide immediate and essential regulatory clarity for both the American payments system and the broader American economy that it powers.

As explained, the OCC's intervention is much needed given the IFPA's effective date of July 1. National banks and federal savings associations have already and will continue to incur non-recoverable compliance costs that the *Illinois Bankers Association* district court acknowledged are "staggering"—indeed, "potentially business-ending." 2026 WL 371196, at *6, *13. By making the IFPA's inapplicability clear, the OCC's preemption order frees national banks and federal savings associations from the remainder of this burden. As to the interchange fee prohibition, the OCC's order ensures that these entities need not race to meet the IFPA's technologically and operationally burdensome, and quite likely impossible, demands, or take on the risk of the IFPA's $1,000 per transaction penalties. Likewise, as to the data-use provision, the order ensures that national banks and federal savings associations need not rework all manner of processes to discontinue their use of card transaction data.

All these advantages ultimately redound to the benefit of consumers. Freed of the IFPA's burdens, national banks and federal savings associations will not need to consider how to pay for or avoid its costs, such as by raising prices, reducing benefits, or exiting the credit or debit card markets in Illinois or entirely. Nor will consumers risk being affected by wide-ranging system disruptions that implementing the IFPA could cause. The OCC's preemption order ensures that financial institutions can stay in the market and remain focused on providing consumers banking services.

Finally, the preemption order offers an important signal to other states and localities that may be considering measures like the IFPA. Legislatures in more than 25 states are considering laws that would regulate payment processing and pricing, some of which are "substantially similar to the IFPA," while others "could differ vastly." 91 Fed. Reg. 23154. If these laws were to go into effect, they would dramatically magnify all parties' costs by forcing financial institutions to replace the current nationally uniform payments system—which has been carefully calibrated to allow for seamless and secure consumer transactions—with multiple novel, jurisdiction-specific processes. The OCC's order makes clear that any such state or local laws would similarly be preempted. *Id.* It thus offers an important safeguard even beyond the facts of the IFPA context.

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In short, the NBA and HOLA plainly preempt the IFPA. The OCC's preemption order settles this point beyond any possible doubt—remedying confusion generated by the *Illinois Bankers Association* decision and helping shield national banks, federal savings associations, consumers, and the broader American economy from the costs of intrusive state legislation. The Associations appreciate this prompt action to preserve regulatory clarity, protect the integrity of the national banking and payments system, and prevent harmful fragmentation of the payments ecosystem.

If you have any questions, please reach out to Hugh Carney at HCarney@aba.com.

Sincerely,

American Bankers Association
Illinois Bankers Association
America's Credit Unions
Illinois Credit Union League