LEGISLATIVE

TESTIMONY

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Mackinac Center for Public Policy Public Comment on the Office of the Comptroller of the Currency's Interim Final Rule on National Bank Non-Interest Charges and Fees and Interim Final Order Preempting the Illinois Interchange Fee Prohibition Act

Office of the Comptroller of the Currency

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Dear Acting Comptroller and OCC Staff,

The Mackinac Center for Public Policy is a nonprofit research and educational institute that advances the principles of free markets and limited government. Through our research and educational programs, we challenge government overreach and advocate for free-market approaches to public policy that allow people to realize their potential and dreams.

The Mackinac Center submits the following comments in response to the request for comments by the Office of the Comptroller of the Currency (OCC) regarding its Interim Final Rule regarding National Bank Non-Interest Charges and Fees and the Interim Final Order addressing preemption of the Illinois Interchange Fee Prohibition Act (IFPA).

The IFPA appears to be a simple price cap on certain components of credit and debit card transactions, along with new restrictions on how sensitive consumer data generated from transactions is used. As such, it is easy to see how it can have a certain popular appeal. But careful examination reveals that the IFPA will create numerous problems that far outweigh any benefits that might be derived from the Illinois statute.

Enforcing the IFPA will create severe entanglements with the existing federal framework for credit card regulation and oversight. Thus, the IFPA is largely or entirely preempted by conflicts with existing federal statutes, which have long held that that federal grants of authority for national banks cannot be undermined by state law.

Credit and debit card transactions involve multiple parties. They include the cardholder making the purchase, the merchant accepting the card for payment, the bank or other institutions that issued the card to the cardholder, the merchant's bank, and the payment network (i.e., Visa, Mastercard, and others). These payment networks are not parties to the transaction in the sense that they do not lend money or issue cards directly, but rather they provide the infrastructure that routes the fund transfers, settles the accounts, and provides security for the transactions. Thus, credit card purchases are more complicated, and involve more parties than most purchasers probably realize when they use their cards.[1]

Consumers often choose their credit cards based on the rewards they are offered, which may include rebates of a percentage of their monthly purchases, hotel chain points, or airline miles. These reward benefits are funded by the fees charged for transactions, so that card users benefit both from the convenience of using their cards and from these reward benefits tied to their purchases. They also receive other benefits funded by transaction fees, including purchase-protection insurance, protection from fraud, and dispute resolution services.

The regulation of credit cards in the United States operates under a dual federal-state system. Credit card transactions are regulated by several different federal agencies, including the OCC, the National Credit Union Administration, and the Consumer Financial Protection Bureau (CFPB). At the state level, certain aspects of business practices by credit card companies are regulated by various government agencies, such as the Illinois Department of Financial and Professional Regulation or the Michigan Department of Insurance and Financial Services.[2]

The CFPB gives several examples of state regulations on its website that are not preempted by federal regulations, including requirements that credit card issuers warn cardholders of risks or disclose information that is not required by federal regulations.[3] The same guidance document from the CFPB

also gives numerous examples of the types of state-level requirements that are inconsistent with federal regulations and are, therefore, not allowed.

The IFPA was enacted in June of 2024.[4] It has two main provisions. The first allows credit and debit card companies to charge fees on the goods and services portion of purchases, but it prohibits charging those fees on the portion of transactions that go for Illinois state or local taxes or for gratuities. The second provision makes it unlawful for any financial institution involved in the transaction to "distribute, exchange, transfer, disseminate, or use" the data obtained from these transactions for any purpose other than to process the payment.

The prohibition against charging fees on the portion of transactions that go for Illinois state or local taxes or for gratuities operates in two different ways. Section 150-10(a) provides for an immediate exemption by having the merchants identify the portion of the transaction that is consists of taxes and gratuities. The network authorizing the transaction must only charge fees on the cost of the purchase, minus the value of any tips and the amount of taxes paid. Section 150-10(b) provides a rebate process by which the merchant is charged fees on the entire transaction and then submits a request for a rebate for the fees applied to tips and Illinois sales tax.

Regarding the use of data collected from credit card transactions, section 150-15(b) prohibits the financial institutions involved in the transaction from using or disseminating the transaction data "except to facilitate or process the electronic payment transaction or as required by law." Such a broad prohibition appears to preclude banks from using this data for administering its reward programs, for detecting fraud, for risk management, and for other purposes related to banking operations. Such a heavy-handed prohibition will undermine cardholders' expectations regarding the benefits they receive from their cards.

The compliance costs for implementing this system will be substantial, and the burden will fall disproportionately on smaller merchants. Compliance will require investment in software and point-of-sale processing equipment, additional accounting staff hours to verify transactions and handle rebates, and training for employees. Errors are inevitable, which will require more administrative time and a dispute resolution process.

Behind the scenes, massive investment will be required to create a new Illinois-specific process for calculating fees. If, as is likely, other states follow with their own special rules for calculating fees, these costs will be multiplied, and the likelihood of processing errors will grow with it.

These added costs and revenue reductions from exempting parts of transactions will inevitably be passed on to card users and merchants. Credit card companies have many options for making up for these higher costs and lost transaction revenues. They could raise annual fees on cards, raise interest rates, reduce the benefits offered in their reward programs, or some combination of these options. No matter what they choose, the result will reduce benefits for cardholders.

In cases like Barnett Bank and Cantero, the Supreme Court has held that federal grants of authority for national banks ordinarily preempt contrary state law.[5] The National Bank Act states that federal banks possess "all such incidental powers as shall be necessary to carry on the business of banking."[6] The OCC has previously held that processing card transactions is included among the core banking functions of banks under the National Banking Act.[7]

As more states pass similar laws, creating a patchwork of differing regulations on credit card fees and data uses, the current national standards for payment systems will be undermined. This will lead to higher compliance costs, less incentives for innovation, and reduced efficiency in the financial system. This outcome is contrary to the intent of existing federal statutes, as well as contrary to established precedent against state law burdens on credit card processing operations.

Therefore, it is proper for the OCC to conclude that state laws like the IFPA are preempted because of the compliance burden they place on credit card transactions, the loss of benefits to credit card users, and the need for reworking much of the current processing infrastructure to operate within the IFPA.

1. This paragraph describes the four-corner model used with most credit card transactions, including using the Visa and Mastercard networks. A slightly simpler three-corner model is used for American Express transactions. See, e.g., Kaibalya Pravo Dey, "Visa vs. AmEx: Who Can Better Weather a Spending Squeeze?" Yahoo Finance, August 26, 2025, https://finance.yahoo.com/news/visa-vs-amex-better-weather-155800057.html.

2. Illinois Department of Financial and Professional Regulation, "Welcome to the Division of Financial Institutions," visited May 20, 2026, https://idfpr.illinois.gov/dfi.html; Michigan Department of Insurance and Financial Services, "Credit Card," visited May 20, 2026, https://www.michigan.gov/difs/industry/licensing-cf/credit-card.

3. Consumer Financial Protection Bureau, "Comment for 1026.28 - Effect on State Laws," visited May 20, 2026, https://www.consumerfinance.gov/rules-policy/regulations/1026/interp-28/.

4. Illinois Interchange Fee Prohibition Act, 815 Ill. Comp. Stat. § 151/150-5 et seq., https://www.ilga.gov/Legislation/ILCS/Articles?ActID=4515&ChapterID=67&Chapter=BUSINESS%20TRANSACTIONS&MajorTopic=BUSINESS%20AND%20EMPLOYMENT&Print=True.

5. Barnett Bank of Marion Cnty., N.A. v. Nelson, 517 U.S. 25 (1996); Cantero v. Bank of America, 602 U.S. 205 (2024).

6. 12 U.S.C §24 (Seventh), https://www.govinfo.gov/content/pkg/USCODE-2024-title12/pdf/USCODE-2024-title12-chap2-subchapI-sec24.pdf.

7. See, e.g., OCC Interpretive Letter No. 856 (March 1999), https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-decisions/1999/int856.pdf; OCC Corporate Decision No. 99-50 (January 2000), https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2000/cd99-50.pdf.

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