CSBS Statement on the OCC's Proposed Rule to Preempt the Illinois Interchange Fee Prohibition Act

PRESS RELEASES

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Washington, D.C. – The Illinois Interchange Fee Prohibition Act (IFPA) raises difficult policy questions and creates operational complexities and compliance risks for banks. Whether the law rises to the standard of "preventing or significantly interfering" with a national bank's powers to process payments and extend credit will have a critical precedential impact on future efforts to preempt state laws. Laws similar to the IFPA have been passed, or are under consideration, in several other states.

Unlike the OCC's recently proposed interest-on-escrow determination – which is clearly inconsistent with the National Bank Act and numerous federal circuit court decisions – the application of the IFPA to national bank activities warrants a careful assessment.

Preemption determinations by the OCC must adhere to the requirements of the National Bank Act. An OCC decision to override the application of a state law must always be grounded in a nuanced analysis of the underlying law, supported by substantial evidence on the record, and demonstrate that the law "prevents or significantly interferes" with national bank powers. Critically, the existence of direct interference with OCC regulations is not dispositive of whether a state law should be set aside. Rather, the OCC and the courts must examine the practical implications stemming from the application of state law to national bank activities to determine whether the state law is preempted.

Litigation regarding the IFPA is still pending in the United States Court of Appeals for the Seventh Circuit, and we encourage the court to follow the preemption standard re-affirmed in *Cantero v. Bank of America* to determine whether the burdens imposed by the statute significantly interfere with the payment activities of national banks.

If preemption is warranted for national banks, it also extends by law to out-of-state state-chartered banks. If preempted, the possibility of application of the IFPA only to Illinois state-chartered banks could have consequential implications for Illinois consumers and businesses seeking to access payment networks.

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The Conference of State Bank Supervisors (CSBS) is the national organization of financial regulators from all 50 states, American Samoa, District of Columbia, Guam, Puerto Rico, and U.S. Virgin Islands. State regulators supervise 79% of all U.S. banks and a variety of non-depository financial services. CSBS, on behalf of state regulators, also operates the Nationwide Multistate Licensing System to license and register non-depository financial service providers in the mortgage, money services businesses, consumer finance, and debt industries.

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