May 29, 2026

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: National Bank Non-Interest Charges and Fees [Docket ID OCC-2026-0430]

The Conference of State Bank Supervisors ("CSBS")[1] provides the following comments on the interim final rule issued by the Office of the Comptroller of the Currency ("OCC"): *National Bank Non-Interest Charges and Fees*.[2] CSBS opposes the IFR because clarity regarding the authority of national banks to charge interchange fees is not needed and, even if additional clarity were warranted, the revisions in the IFR are overly broad and may create conflicts with state law in areas unrelated to interchange fees.

The IFR amends 12 CFR 7.4002 to clarify that national banks' power to charge non-interest fees and charges includes assessing or otherwise obtaining interchange fees, even when those fees are set or established by non-national bank third parties. Given that the IFR was issued simultaneously with a Preemption Order declaring that the National Bank Act ("NBA") preempts the Illinois Interchange Fee Prohibition Act ("IFPA"), the IFR is presumably intended to create a conflict with the IFPA and thereby bolster the argument that the NBA preempts the IFPA.

As explained in our comment letter on the Preemption Order, the IFPA raises serious policy questions and poses significant compliance challenges for the industry. Nevertheless, CSBS opposes the IFR because no additional clarity is needed regarding national banks' power to charge interchange fees. The only question is whether or not the IFPA significantly interferes with this power. The Preemption Order addresses this question and should stand or fall on its own merits.

Even if additional clarity were warranted, as detailed below, the revisions to 12 CFR 7.4002 are overly broad and could unintentionally create conflicts with state consumer financial laws unrelated to interchange fees. For this reason, we suggest narrower revisions to the OCC's regulation that would create clarity as to national banks' authority with respect to interchange fees without causing wide-ranging conflicts with state consumer financial law. Separately, we urge the OCC to revise the preemption provision in 12 CFR 7.4002 to bring it into compliance with the framework for NBA preemption under 12 USC 25b.

[1] CSBS is the nationwide organization of state banking and financial regulators from all 50 states, the District of Columbia, and the U.S. territories.
[2] OCC, Interim Final Rule, *National Bank Non-Interest Charges and Fees*, 91 Fed. Reg. 22989 (Apr. 29, 2026) ("IFR").

I. The IFR is neither necessary to clarify national banks' authority related to interchange fees nor essential to determine that the IFPA is preempted by the NBA.

CSBS opposes the IFR, in part, because it is simply unnecessary. There is no question that national banks have the power to collect interchange fees from credit and debit card transactions. The IFR is also not necessary to support a determination that the NBA preempts the IFPA.

The OCC states that it is issuing the IFR because the district court in *Ill. Bankers Ass'n v. Raoul* "created ambiguity about the scope of § 7.4002," specifically, whether Section 7.4002 covers a national bank's assessment and collection of interchange fees.[3] According to the OCC, the court's finding that Section 7.4002 does not cover interchange fees is "inapposite to the OCC and courts' longstanding interpretation of § 7.4002."[4]

Putting aside the fact that the OCC cites no authority in support of this supposedly longstanding interpretation, it is undoubtedly clear that, at least under the NBA itself, national banks are authorized to assess and collect interchange fees. Indeed, while the court in *Raoul* found that Section 7.4002 itself did not empower national banks to collect interchange fees, the court did not hold that national banks lacked the power to receive such fees under the NBA. Rather, the court simply held that the IFPA's interference with this power was not significant enough to support a finding that the NBA preempted the IFPA.[5]

Even if the court had found that Section 7.4002 itself empowered national banks to charge interchange fees, it is far from certain that the court would have ruled any differently on the question of significant interference. This is because, as the court recognized, the mere existence of a power with which a state law conflicts does not automatically entail that the state law is preempted. It must be shown that the state law significantly interferes with the power in question.

It is abundantly clear that national banks have the power under the NBA to assess and collect interchange fees. The only remaining question is whether the IFPA significantly interferes with the exercise of this power. This question is currently before the court, and it is also addressed in the Preemption Order released simultaneously with the IFR and should stand on its own merits.[6]

More broadly, CSBS takes issue with the OCC's recent efforts to define national bank powers via rulemaking in an increasingly broad and general manner to deliberately manufacture conflicts with state laws and attempt to short-circuit a court's preemption inquiry into those conflicts.[7] This method of declaring, by regulation, that national banks have unlimited discretion to exercise a power

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[3] IFR, at 22990. *See Ill. Bankers Ass'n v. Raoul*, 2026 U.S. Dist. LEXIS 27167 (Feb. 10, 2026) ("*Raoul*").
[4] IFR, at 22990.
[5] *See Raoul*, at *43.
[6] OCC, Interim Final Order, *Order Preempting the Illinois Interchange Fee Prohibition Act*, 91 Fed. Reg. 23150 (Apr. 29, 2026) ("Preemption Order").
[7] *See* OCC, Final Rule, *Preemption Determination: State Interest-on-Escrow Laws*, 91 Fed. Reg. 29350 (May 19, 2026). *See also* OCC, Final Rule, *Real Estate Lending Escrow Accounts*, 91 Fed. Reg. 29340 (May 19, 2026). *See also* CSBS and American Association of Residential Mortgage Regulators, Comment Letter Re: *Preemption Determination: State Interest-on-Escrow Laws; Real Estate Lending Escrow Accounts* (Jan. 29, 2026).

conceptualized in the broadest fashion possible is a thinly-veiled attempt to make state laws' inevitable interference with such a power appear more akin to preemption precedent where state law restricted the exercise of a power expressly granted in statute. However, as at least one judge recognized recently, this preemption approach exceeds the limits that Congress imposed through 12 USC 25b on the OCC's authority to preempt state law.[8]

II. Even if additional clarity were warranted, the IFR's amendments to 12 CFR 7.4002 are overly broad and could create wide-ranging conflicts with state consumer financial laws.

To the extent the OCC believes the authority of national banks with respect to interchange fees must be expressly declared, CSBS has serious concerns with the breadth of the IFR's amendments to 12 CFR 7.4002. The proposed amendments could create wide-ranging conflicts with state consumer financial laws unrelated to interchange fees.

Since the amended language is not textually limited to interchange fees, it could be interpreted to cover a wide array of third-party fee arrangements in which a bank receives a non-interest fee, the amount is determined, influenced, recommended, negotiated, or operationalized by a third party, and the fee relates to a banking product or service. One category of third-party fee arrangements that the revised rule could arguably encompass include fintech-bank partnerships, even though the fintech contractually determines certain account fees. The types of fees imposed under these arrangements that could be covered by the revised regulation include, among many others, monthly maintenance fees, instant-transfer fees, expedited ACH fees, and debit card replacement fees.

The proposed rule could also be construed to cover certain loan servicing and mortgage-related ancillary fees, such as property inspection fees, broker price opinion fees, convenience-payment fees, expedited payoff fees, document preparation fees, and servicing transfer fees. Although these types of fees are often operationally determined by mortgage servicers, a nonbank mortgage servicer could argue that the fees qualify as permissible "non-interest fees and charges" under revised Section 7.4002 due to a national bank's involvement in their assessment, no matter how remote that involvement may be.

Given the broad manner in which Section 7.4002, as amended, may be construed, CSBS is concerned that nonbank entities subject to state regulation may attempt to use the revised regulation to argue that state consumer financial laws related to fee assessment are preempted by the NBA. While the OCC may not intend to set the stage for preemption battles beyond interchange fees, the OCC's current intentions provide little assurance that the rule will not be interpreted in an aggressive manner in the future given the OCC's recurring practice of characterizing novel interpretive positions as merely reaffirming "longstanding" and "settled" law.[9]

Indeed, in adopting broad regulatory text untethered to interchange fees, the OCC could later invoke this same pattern of regulatory revisionism to assert that additional third-party fee arrangements have always fallen within the established scope of Section 7.4002 – notwithstanding the absence of any prior

[8] *See Cantero v. Bank of Am., N.A.*, 2026 U.S. App. LEXIS 13066, *63 (May 5, 2026) (Pérez, J., dissenting).
[9] *See*, *e.g.*, IFR, at 22990.

guidance, adjudication, or historical understanding to that effect. Thus, CSBS opposes the IFR because the overly broad amendments to Section 7.4002 may be seized upon to interfere with state consumer financial efforts in areas entirely unrelated to interchange fees.

III. Narrower revisions to 12 CFR 7.4002 would sufficiently clarify national banks' authority related to interchange fees without interfering with state consumer financial efforts.

To the extent that the OCC believes that the authority of national banks with respect to interchange fees must be clarified, narrower amendments would achieve this goal. First, the OCC could, rather than adopting such a broad definition of "charge," simply clarify in former Section 7.4002(a) that national banks may "charge and receive non-interest fees and charges" and to specifically reference interchange fees as a type of fee covered by the regulation.

The amendments made by the IFR to former Section 7.4002(b) are unnecessary to clarify that the regulation covers national banks' authority related to interchange fees. For instance, national banks unquestionably have the authority to make decisions regarding whether non-interest fees or charges are set by or in consultation with third parties. The court's decision in *Raoul* cannot be said to have created any ambiguity on this point and, thus, these revisions are not necessary.

Moreover, the justifications for former Section 7.4002(b) conflict with the IFR language in revised subsection 7.4002(c). Specifically, the regulation states that the decisions regarding the amount and method of calculating non-interest charges and fees are business decisions made by a national bank, in its discretion. The OCC's justification for former Section 7.4002(b) in 2001 was "to clarify that the authorization it contains to establish fees and charges necessarily includes the authorization to decide the amount and method by which they are computed."[10] However, this rationale would no longer seem justified under revised Section 7.4002 given that decisions regarding fee amounts and calculation methods may be made by third parties, rather than a national bank, and thus, the authorization to establish fees under the regulation does not necessarily include the authorization to determine the amount or calculation method for a fee.

Accordingly, since the revisions to former Section 7.4002(b) are not necessary and create a conflict with the basis for the inclusion of the existing language in Section 7.4002(b), we urge the OCC not to adopt these revisions. Instead, if the OCC is to amend Section 7.4002 in light of the decision in *Raoul*, the OCC should simply narrowly revise Section 7.4002(a) in the manner suggested above. These narrow revisions would avoid interfering with state consumer financial laws that are unrelated to interchange fees and creating inconsistencies with Section 7.4002(b).

IV. The preemption provision of 12 CFR 7.4002 should be revised to bring it into conformity with the existing framework for preemption of state law under 12 USC 25b.

CSBS urges the OCC to amend the existing preemption provision in Section 7.4002 to render it consistent with 12 USC 25b. Notably, the OCC has never revised former Section 7.4002(d) (now Section

[10] 66 Fed. Reg. 34784, 34787 (July 2, 2001).

7.4002(e)) after the enactment of Section 25b through the Dodd-Frank Act. Through Section 25b, Congress imposed preemption standards and established procedural requirements that apply when the OCC concludes that state laws are preempted. The preemption provision of Section 7.4002 is inconsistent with Section 25b in two respects.

First, the Section 7.4002 preemption provision does not reflect the Section 25b case-by-case preemption determination requirement. Section 25b requires that the OCC determine whether a state's law is preempted by the NBA on a "case-by-case" basis.[11] Notably, the Section 7.4002 preemption provision previously incorporated a case-by-case determination requirement, but this requirement was removed in a previous rulemaking.[12] Given that, after this prior rulemaking, Congress enacted Section 25b to impose a case-by-case determination requirement on OCC preemption determinations, we believe that the Section 7.4002 preemption provision must be amended to incorporate a case-by-case requirement so that it is consistent with Section 25b.

Second, the Section 7.4002 preemption provision does not reflect the fact that, under Section 25b, state consumer financial laws apply to national banks *unless and until* the OCC issues a preemption determination finding that a particular state law is preempted.[13] Put differently, Section 25b authorizes the OCC to determine when state consumer financial laws are preempted, not whether they apply in the first instance. By contrast, the Section 7.4002 preemption provision states that the OCC determines "whether State laws apply that purport to limit or prohibit charges and fees described in this section."[14] In this way, the Section 7.4002 preemption provision turns the Section 25b standard on its head and implies that, by default, such state laws only apply to national banks if the OCC deems them to be applicable.

CSBS urges the OCC to revise the Section 7.4002 preemption provision to render it consistent with Section 25b by incorporating a case-by-case determination requirement and by reflecting the fact that such laws are applicable unless and until the OCC expressly finds them to be preempted in accordance with the standards in Section 25b.

Conclusion

CSBS urges the OCC to withdraw the IFR. The IFR is not necessary because national banks' authority with respect to interchange fees is abundantly clear and the preemption analysis does not require that this authority be codified in regulation. Moreover, the broad amendments to Section 7.4002 enacted through the IFR may set the stage for the preemption of state consumer financial laws that are wholly unrelated to interchange fees and, at best, tangentially related to banking. Accordingly, if the OCC insists

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[11] *See* 12 USC 25b(b)(1)(B). *See also* 12 USC 25b(b)(3) (defining "case-by-case basis").
[12] *See* 66 Fed. Reg. 34784, 34787 (July 2, 2001).
[13] *See* 12 USC 25b(b)(1)(B) ("State consumer financial laws are preempted, *only if*— . . . in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers . . ."). (emphasis added). *See also* 12 USC 25b(b)(4) ("Title 62 of the Revised Statutes does not occupy the field in any area of State law.").
[14] *See* 12 CFR 7.4002(d).

on enacting an unnecessary rule, we urge it to adopt narrow, targeted amendments related solely to interchange fees. Lastly, although the IFR as a whole is unnecessary, it is critical that the OCC amend the Section 7.4002 preemption provision to render it consistent with the preemption framework established by Congress through 12 USC 25b.

Sincerely,

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