



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: Order Preempting the Illinois Interchange Fee Prohibition Act [Docket ID OCC-2026-0431]

The Conference of State Bank Supervisors (“CSBS”)¹ provides the following comments on the interim final order (“Order”) issued by the Office of the Comptroller of the Currency (“OCC”): *Order Preempting the Illinois Interchange Fee Prohibition Act*.² The Illinois Interchange Fee Prohibition Act (“IFPA”) raises difficult policy questions and creates significant operational complexities and compliance risks for banks; however, the preemption analysis contained in the Order is flawed because it applies a standard that is inconsistent with the Supreme Court decision in *Cantero v. Bank of Am., N.A.* (“*Cantero*”).³ As explained below, the Order treats any conflict, regardless of its significance, as sufficient to warrant preemption under the National Bank Act (“NBA”). It also wrongly assumes, contrary to *Cantero*, that only state laws of general applicability escape preemption under the NBA.

CSBS has significant concerns with the serious operational and compliance challenges that the IFPA will create for banks. For this reason, it is of the utmost importance that the OCC rest any determination that the IFPA is preempted on a solid legal foundation. Unfortunately, the Order misses the mark in this respect. As with the prior interest-on-escrow preemption determination,⁴ this Order would further enshrine a manufactured, watered-down preemption standard that is inconsistent with Supreme Court precedent and the NBA. CSBS urges the OCC to revise its preemption analysis to address the critical flaws outlined in this letter in order to rest any conclusion that the IFPA is preempted on a solid legal basis.

I. The IFPA creates significant operational costs, complexities, and compliance challenges for the banking industry and raises serious policy questions.

The IFPA raises difficult policy questions and significant compliance concerns for the banking industry and payments ecosystem. Compliance with the IFPA is expected to require substantial modifications to

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 Order, [Order Preempting the Illinois Interchange Fee Prohibition Act](#), 91 Fed. Reg. 23150 (Apr. 29, 2026) (hereinafter the “Order”).

³ See *Cantero v. Bank of Am., N.A.*, 602 U.S. 205 (2024).

⁴ See OCC, Final Rule, [Preemption Determination: State Interest-on-Escrow Laws](#), 91 Fed. Reg. 29350 (May 19, 2026).



point-of-sale systems, issuer processing systems, and network settlement architecture, almost certainly increasing transaction errors, slowing payment processing, and/or increasing costs across product lines. Existing payment rails are not designed to identify, transmit, and receive tax and tip data uniformly across all participants in the transaction chain, particularly because merchants, point-of-sale systems, processors, and card networks use different data standards and messaging formats. Consequently, as a result of the IFPA, institutions could face substantial costs associated with software redevelopment, processor reconfiguration, testing, auditing, contract renegotiation, dispute management, and compliance monitoring. These operational challenges are compounded by the IFPA's liability structure under which even minor mismatches in how transaction data are coded or transmitted could expose institutions to severe penalties and litigation risk.⁵

Beyond the immediate operational costs, complexities, and compliance risks associated with the IFPA, the law will create secondary costs and consequences for consumers and community banks. Interchange revenue helps fund fraud prevention systems, cybersecurity investments, rewards programs, and low-cost or free checking accounts. Reducing banks' interchange revenue could ultimately result in higher account fees, reduced card benefits, higher interest rates, or tighter credit availability for consumers.⁶ Moreover, it is far from certain that a reduction in interchange fees will produce meaningful consumer savings in terms of retail price declines.⁷

Lastly, community banks generally lack the economies of scale, in-house payments infrastructure, and vendor leverage available to larger card issuers. Thus, the IFPA may have negative competitive impact on community banks with relatively small card portfolios as they will face the same implementation costs without a revenue scale comparable to larger institutions.

II. The Order fails to apply the appropriate NBA preemption analysis and, as a result, may result in protracted litigation and uncertainty.

Given the serious ramifications that the IFPA could have for the banking industry, if the OCC is to declare that the IFPA is preempted, it is incumbent upon the OCC to place the Order on a solid legal footing. Unfortunately, the analysis in the Order has failed to do so. In particular, the OCC continues to apply a concocted preemption standard that fails to actually assess whether state law prevents or significantly interferes with national bank powers. In failing to apply the correct standard, as recently reaffirmed by

⁵ Each violation of the IFPA is "subject to a civil penalty of \$1,000 per electronic payment transaction." See 815 ILCS 151/150-15(a).

⁶ See Mark D. Manuszak & Krzysztof Wozniak, [The Impact of Price Controls in Two-sided Markets: Evidence from US Debit Card Interchange Fee Regulation](#), Federal Reserve Board, Finance & Economics Discussions Series (Jul. 2017) (finding that banks subject to the Durbin Amendment's cap on debit-card interchange fees raised checking account prices by reducing free checking, increasing monthly fees, and raising minimum-balance requirements).

⁷ See Renee Haltom & Zhu Wang, [Did the Durbin Amendment Reduce Merchant Costs? Evidence from Survey Results](#), Federal Reserve Bank of Richmond, Economic Brief No. 15-12 (Dec. 2015) (finding that the Durbin Amendment's cap on debit-card interchange fees caused merchant's debit-card acceptance costs to decline, nevertheless only a very small percentage reported lowering prices).



the Supreme Court in *Cantero*, the Order has set the stage for further uncertainty regarding the future applicability of the IFPA, which could prove detrimental to the banking industry and consumers.

- a. *The Order employs a concocted preemption standard that does not involve an assessment of whether the IFPA prevents or significantly interferes with national bank powers.*

Under the NBA, a state law is preempted only if, in accordance with the decision in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996), it “prevent[s] or significantly interfere[s]” with a national bank’s exercise of its powers.⁸ While the OCC initially recognizes this basic tenet of conflict preemption in the Order, the OCC then, as it did in another recent preemption determination, strays from the *Barnett Bank* standard by contorting the relevant preemption precedent into a three-prong standard which clearly poses a lower bar for preempting state law.⁹

Specifically, in the Order, the OCC declares that a state law “prevents or significantly interferes” with national bank powers “when it (1) interferes with critical flexibility granted to a national bank under Federal law (*Fidelity*); (2) interferes with a national bank’s efficiency or effectiveness in exercising its Federal power (*Franklin*); or (3) qualifies a Federal power in an unusual way (*San Jose*).”¹⁰ The Order then finds that the IFPA is preempted under each of the three prongs of this standard.¹¹

Regardless of whether the IFPA meets any of the three prongs, this conclusion does not provide a solid legal basis for preempting the IFPA because this three-prong standard fails to accurately articulate what it means for a state law to “prevent or significantly interfere” with national bank powers in accordance with the *Barnett Bank* decision.

As detailed below, this “inflexible, inefficient, unusual” standard does not derive from a “nuanced comparative analysis” of NBA preemption precedent as required by *Cantero*.¹² Moreover, this three-part standard does not involve “a practical assessment of the nature and degree” of interference with national bank powers as required by *Cantero*.¹³ Instead, the three-prong standard replaces a nuanced assessment of materiality with an assumption that any interference at all, regardless of its significance, is sufficient to find that state law is preempted.

- i. The preemption standard employed in the Order does not derive from a “nuanced comparative analysis” of NBA preemption precedent.

The three-prong “inflexible, inefficient, unusual” standard employed in the Order does not derive from the kind of “nuanced comparative analysis” of NBA preemption precedent that *Cantero* required to find

⁸ See *Cantero* at 209.

⁹ See OCC, Notice of Proposed Rulemaking, [Preemption Determination: State Interest-on-Escrow Laws](#), 90 Fed. Reg. 61093, 61095 (Dec. 30, 2025).

¹⁰ Order, at 23152.

¹¹ *Id.*, at 23152-23153.

¹² *Cantero*, 608 U.S. at 219-220.

¹³ *Id.* at 218.

a state law preempted.¹⁴ Rather, the OCC has concocted this standard by cherry-picking certain terms and phrases from NBA preemption decisions and raising these terms to a level of abstraction devoid of the context that informed their meaning. In so doing, the OCC departs from and distorts the very precedent it claims to follow.

For instance, in its recent preemption determination on state interest-on-escrow laws, the OCC asserted that the three decisions in the *Cantero* framework in which state law was found not to be preempted involved state laws of “general applicability.” The OCC continues to maintain that, for this reason, “these cases are inapposite to [the] analysis” of whether the IFPA is preempted by the NBA.¹⁵ This conclusion reflects a fundamental misunderstanding not only of these preemption cases themselves, but also of the preemption analysis required by *Cantero*.

First, the “nuanced comparative analysis” required by *Cantero* specifically involves analyzing whether a state law’s interference is “more akin” to the interference in cases where state law was held to be preempted (*Franklin, Fidelity, San Jose*) or to the interference in cases where state law was held not to be preempted (*McClellan, Commonwealth, Anderson*).¹⁶ Accordingly, cases in which state law was found not to be preempted are directly relevant to — and indeed required for — the preemption analysis under *Cantero*, and thus cannot be dismissed as “inapposite,” as the OCC does in the Order. Moreover, summarily dismissing three cases as irrelevant in a one sentence footnote, as the Order does, can hardly be considered to be the “nuanced comparative analysis” required by *Cantero*.

Second, the OCC continues to incorrectly treat *Anderson* as having involved a state law of general applicability.¹⁷ The dormant account law at issue in *Anderson* was, as is clearly indicated by its name, banking-specific, not a law of general applicability. The state law was an escheatment law requiring banks to confer to the state any deposits from inactive bank accounts. As courts have recognized, the state law in *Anderson* was a banking-specific law and was deemed applicable to national banks because it did not significantly interfere with national bank powers, not because it was a law of general applicability.¹⁸ Moreover, the proposal’s assertion that the state law in *Anderson* was one of general applicability cannot be squared with the proposal’s conclusion that the state law in *First National Bank of San Jose*, which similarly dealt with escheatment of bank deposits, was banking-specific. The two laws were indistinguishable in any respect that is relevant to determining whether a law is “banking-specific.”

By misclassifying the state law in *Anderson* and mischaracterizing the preemption standard in *Cantero*, the OCC concludes that only state laws of general applicability are not preempted by the NBA. However, the Supreme Court specifically rejected the notion that the *Barnett Bank* “prevents or significantly interferes” standard can be distilled into “a categorical test that would preempt virtually all state laws

¹⁴ *See Id.*

¹⁵ Order, at 23154, n.52.

¹⁶ *Cantero*, 608 U.S. at 218.

¹⁷ *See Order*, at 23154, n.52.

¹⁸ *See Conti v. Citizens Bank, N.A.*, 157 F.4th 10, 22 (1st Cir. 2025) (finding that *Anderson* and *First National Bank of San Jose* “involved state laws that were banking-specific”).

that regulate national banks, at least other than generally applicable state laws.”¹⁹ Furthermore, the notion that only generally applicable state laws do not prevent or significantly interfere with national bank powers conflicts with Congress’ understanding of the scope of this standard given that, in 12 USC 25b, Congress defined “state consumer financial law” in a manner that would capture laws other than generally applicable state laws and clearly intended for some state consumer financial laws to apply to national banks.²⁰

In sum, the preemption standard applied in the Order incorrectly operates on the assumption that only generally applicable state laws apply to national banks. Adopting this erroneous assumption enables the OCC to summarily deem any cases finding state law not to be preempted as involving such generally applicable state laws, rather than assessing the significance of interference, as required by *Cantero*. Unfortunately, the OCC has adopted this approach in the Order and thereby has failed to place its conclusion that the IFPA is preempted on solid legal foundation, which will ultimately result in protracted litigation and continued uncertainty for the banking industry and consumers.

- ii. The preemption standard employed in the Order, when applied, does not involve “a practical assessment of the nature and degree” of interference with national bank powers.

In addition to not reflecting a nuanced comparative analysis, the “inflexible, inefficient, unusual” standard adopted in the Order does not involve “a practical assessment of the nature and degree” of interference with national bank powers as required by *Cantero*.²¹ Instead, the standard assumes that state law interfering with national bank powers to any extent whatsoever is sufficient to warrant preemption.

A state law is preempted only if it “prevents or *significantly* interferes” with national bank powers. “Significantly” is an adverb of degree or extent which modifies the verb “interferes” by limiting the kind or amount of state law interference that will result in preemption under the NBA.²² In other words, the term “significantly” narrows the grounds for preemption by limiting the state laws subject to preemption to those that impose a magnitude of interference or interfere beyond a certain extent.²³

¹⁹ *Cantero*, 602 U.S. at 220-21.

²⁰ See 12 USC 25b(a)(2) (defining “State consumer financial law” to mean a State law “that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in) . . . with respect to a consumer”). See also 12 USC 25b(b)(1)(B) (recognizing that States may enact “State consumer financial laws” so long as they do not “prevent or significantly interfere” with national bank powers).

²¹ *Cantero*, 608 U.S. at 218.

²² See *Significantly*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/significantly>.

²³ The NBA is not the only law tasked with assessing significance. The Supreme Court has repeatedly held that significance can be assessed by determining materiality and importance. See, e.g., *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (Under § 10(b) of the Securities Exchange Act of 1934 (1934 Act), (i) the “materiality” standard for securities fraud requires plaintiffs to show “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having *significantly* altered the ‘total mix’ of information

By contrast, none of the three prongs of the OCC’s concocted standard contain an adverbial modifier that would limit NBA preemption based on the magnitude or extent of state law conflict.²⁴ Rather, each of the three prongs deems certain categories of interference as sufficient to warrant preemption regardless of the extent of the conflict and thereby unlawfully broadens the grounds for NBA preemption.

There are undoubtedly a broad range of state laws that only insignificantly interfere with national bank powers that would almost certainly be preempted under the OCC’s standard because they fall within one of three proscribed categories of interference. Indeed, the dormant account law in *Anderson* would undoubtedly have been found to interfere with a national bank’s “flexibility” or the “efficiency” of its operations applying the OCC’s fabricated preemption standard, even though the Supreme Court clearly held that the law was not preempted because it did not impermissibly interfere with national bank powers.

In *Cantero*, the Supreme Court unequivocally rejected the notion that NBA preemption can be distilled into “a categorical test that would preempt virtually all state laws that regulate national banks, at least other than generally applicable state laws such as contract or property laws.”²⁵ It is difficult to imagine the Supreme Court reaching a different conclusion with respect to the “inflexible, inefficient, unusual” standard applied in the Order. For this reason, CSBS has serious concerns with the OCC concluding that the IFPA is preempted solely by applying this manufactured, watered-down preemption standard.

b. The legal deficiencies in the Order’s preemption analysis may result in protracted litigation and uncertainty for state banks, as well as national banks.

CSBS is concerned that the uncertainty stemming from the OCC failing to place the Order on solid legal footing will negatively impact state banks, not just national banks. As the district court in *Ill. Bankers Ass’n v. Raoul* recognized, to the extent that the IFPA is preempted as applied to national banks, it is likewise preempted for certain state-chartered banks by virtue of the parity provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act (“Riegle-Neal”).²⁶ Specifically, the court held that 12 USC 1831a(j) preempts the application of the IFPA to out-of-state state-chartered banks that maintain branches in Illinois to the same extent that the NBA preempts the application of the IFPA to national banks.²⁷ Given the number of state banks that have such a presence in Illinois, CSBS has an

made available,” and (ii) “[a]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it *important* in deciding how to vote”) (emphasis added) (quoting *TSC Indus., Inc. v. Northway*, 426 U.S. 438, 449 (1976) (establishing the same standard for “materiality” under § 14(a) of the 1934 Act)); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348-49 (1989) (Under NEPA, federal agencies must prepare environmental impact statements with respect to proposals “*significantly* affecting the quality of the human environment”; NEPA thereby “ensures that *important* [environmental] effects will not be overlooked or underestimated”) (emphasis added).

²⁴ See Order, at 23152.

²⁵ *Cantero*, 602 U.S. at 220-21.

²⁶ *Ill. Bankers Ass’n v. Raoul*, 2026 U.S. Dist. LEXIS 27167, *47-48 (*Raoul*).

²⁷ *Id.* NBA preemption also effectively extends to state banks chartered by Illinois as well as out-of-state state banks, regardless of whether they have a branch in Illinois. Specifically, Illinois parity statutes likely extend NBA



interest in ensuring that the OCC put forth a supportable legal basis in the Order to justify its preemption conclusion.

Some have argued that Riegle-Neal preemption would only extend to the activities conducted by branches of out-of-state state banks, but not to activities conducted by the banks themselves.²⁸ This argument is misplaced, as it is based on a misreading of Riegle-Neal and a misunderstanding of branching law. As an initial matter, such an interpretation would fly in the face of the intent of Riegle-Neal, which “is meant to ensure that out-of-state State banks can compete with nationally chartered banks.”²⁹ Accordingly, to interpret 12 USC 1831a(j) as extending NBA preemption only to branches of out-of-state state banks and not to the banks themselves would place these state banks at a competitive disadvantage to their national counterparts. This interpretation would also conflict with decades of judicial and administrative precedent that has consistently treated a branch as a mere office or division of a bank, not an independent legal entity.³⁰

Conclusion

The OCC should revise its preemption analysis to apply the appropriate preemption standard and address relevant precedent. The Order applies a fabricated preemption standard, which does not actually assess whether state law prevents or significantly interferes with national bank powers. Instead, the proffered standard assumes that even the slightest interference is sufficient to warrant NBA preemption and that only generally applicable state laws apply to national banks. In relying on this erroneous standard, the OCC has failed to place the Order on a solid legal foundation and thereby risks further protracting the uncertainty regarding the future application of the IFPA to the industry.

In light of the extension of NBA preemption to certain state-chartered banks by virtue of Riegle-Neal, the validity of the OCC’s legal reasoning will impact the institutions regulated by state bank regulators just as much as national banks. Therefore, we urge the OCC to revise the preemption analysis in the Order to actually assess whether the IFPA prevents or significantly interferes with national bank powers

preemption to Illinois-chartered banks and exempt them from the IFPA. See *Johnson v. First Banks, Inc.*, 889 N.E.2d 233, 238 (Ill. App. Ct. 2008) (citing 205 ILCS 5/5(11)). Since the IFPA would only apply to, and thereby facially discriminate against, out-of-state state banks in light of these parity statutes, this statutory scheme would violate the Dormant Commerce Clause. See *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023). Consequently, the Dormant Commerce Clause would prevent the IFPA from applying to out-of-state banks as well.

²⁸ See Combined Principal and Response Brief of Defendant-Appellee/Cross-Appellant at 51-52, *Ill. Bankers Ass’n v. Raoul*, No. 26-1354 (7th Cir. Apr. 3, 2026).

²⁹ *Raoul*, at *48.

³⁰ See *Kenilworth State Bank v. Howell*, 230 A.2d 377, 380 (N.J. 1967) (“A branch is not a separate corporation or legal entity but is an office or agency operated by the legal entity which operates the main bank.”). See also *Ramapo Bank v. Camp*, 425 F.2d 333, 341-342 (3d Cir.), cert. denied, 400 U.S. 828 (1970) (recognizing that a bank’s main office represents the legal existence of the bank). See also OCC Interpretive Letter No. 696, 1995 OCC Ltr. LEXIS 120, *7 (Sep. 11, 1995) (“It is beyond dispute that, from the standpoint of offering products and services to its customers, a national bank may use its main office and branch offices in ways that are indistinguishable. Any product or service that a national bank can provide at its main office, it can also provide at a branch office.”).



in a manner consistent with the *Cantero* decision, rather than relying on the concocted “inflexible, inefficient, unusual” standard that contravenes *Cantero*.

Sincerely,

Brandon Milhorn
President & CEO