

Before the
OFFICE OF THE COMPTROLLER OF THE CURRENCY
400 7th St. SW
Washington, D.C. 20219

In the Matter of

Order Preempting the Illinois
Interchange Fee Prohibition Act

OCC-2026-0431

Comments of Frederick C. Ashton, Jr.¹

I. Introduction and Summary

The Illinois Interchange Fee Prohibition Act (IFPA), enacted by the state in June 2024, will become effective on July 1, 2026. The IFPA prohibits payment-card issuers, networks, acquiring banks, and processors from charging or collecting interchange fees – typically 1.5–3.5 percent of the transaction charged by banks to merchants for card transactions at the point of sale – on the gratuity or tax portion of a transaction.²

The U.S. Office of the Comptroller of the Currency (OCC) has issued an interim final order concluding that the IFPA is preempted by the National Bank Act with respect to national banks, and the Home Owners' Loan Act of 1933 with respect to federal savings associations.³

The IFPA is expected to reduce bank interchange fee revenues while forcing both banks and merchants to absorb higher compliance costs. Interchange fees currently fund services such as fraud protection and insurance, as well as customer rewards programs, which consumers value and which boost competition among card issuers. Cutting these fees would likely lead card issuers to pursue alternative means of collecting lost revenue or to cut rewards programs. Moreover, the IFPA could increase compliance costs for both banks and merchants, reducing the efficiency of the current national payment network.

II. Illinois Interchange Fee Prohibition Act

¹ Frederick C. Ashton, Jr. is the Director of Competition Policy at the American Action Forum. These comments represent the views of Frederick C. Ashton, Jr. and not the views of the American Action Forum, which takes no formal positions as an organization.

² <https://ilga.gov/Legislation/ILCS/Articles?ActID=4515&ChapterID=67>

³ <https://www.occ.gov/news-issuances/federal-register/2026/91fr23150.pdf>

The IFPA prohibits payment-card issuers, networks, acquiring banks, and processors from charging or collecting interchange fees on gratuities or tax portions of a transaction. Merchants collecting the gratuities and taxes would be able to deduct or recoup the interchange fee.

Merchants can inform the acquirer bank of the tax and gratuity amount “as part of the authorization or settlement process for the electronic payment transaction.” This would require a merchant’s point-of-sale system to separate the value of the goods and services, the tax, and the gratuity portion of each transaction and relay that information during the authorization or settlement process. In turn, the issuer and payment network would exclude the gratuity and tax portions when calculating the interchange fee in real time.

Alternately, if the merchant does not transmit the specific gratuity and tax amount as part of the transaction, it has the option of submitting tax documentation to the acquiring bank within 180 days. Within 30 days of submission, the issuer must credit the interchange fee charged on the gratuity and tax portion of the transaction back to the merchant.

Moreover, the law prohibits issuers, a payment card network, an acquirer bank, or a processor from “alter[ing] or manipul[at]ing the computation and imposition of interchange fees by increasing the rate or amount of the fees applicable to or imposed upon the portion of a credit or debt card transaction not attributable to the taxes or other fees charged to the retailer to circumvent the effect....” In other words, these entities cannot artificially increase the interchange fee on the non-gratuity and non-tax portion of the transaction to generate the same interchange fee they would have received prior to the IFPA.

III. The Rise of Payment-Card Adoption

The IFPA poses significant risk to the payment card system. According to the Federal Reserve’s *2025 Findings from the Diary of Consumer Payment Choice*, credit and debit cards accounted for 65 percent.⁴

The survey also found that the “number of credit card payments grew more rapidly than payments overall and made up 35% of all payments in 2024, a 17 percentage-point increase from 2016.” Moreover, “more than three-quarters of respondents preferred using a credit or debit card” for in-person payments.

These payments reflect changing consumer preferences, moving away from cumbersome in-person cash transactions toward the convenience and security of using a payment card from anywhere. Firms have recognized that accepting credit cards can boost sales and improve customer satisfaction.⁵

IV. Consequences of IFPA

National banks and federal savings associations are members of efficient, nation-wide card networks that are compensated by merchants with fees, including interchange fees, for their

⁴ <https://www.frbervices.org/binaries/content/assets/crsocms/news/research/2025-diary-of-consumer-payment-choice.pdf>

⁵ <https://www.jpmorgan.com/insights/payments/merchant-services/credit-card-and-payment-processing-guide-for-businesses>

payment card services. The IFPA will likely have two effects on the payment card systems: reducing the total amount of interchange fees collected by banks and increasing compliance costs for both banks and merchants.

Interchange fees are more than just a cost for processing a transaction; they fund fraud prevention, insurance, and consumer rewards programs. Excluding the tax and gratuity portion from the calculated interchange fee would reduce overall interchange fee revenue.

History shows the likely consequences of reducing this revenue source. After Congress passed the Durbin Amendment to the Dodd-Frank Act – which capped interchange fees on debit card transactions – rewards programs for debit card usage disappeared. Analysis from the Kellogg School of Management at Northwestern University found that the “loss of debit-card rewards led to a 30-percent decline in debit-card payment volumes and a corresponding increase in credit-card payment volumes.”⁶

Unlike the Durbin Amendment, however, the IFPA applies to both debit and credit card transactions. Because consumers overwhelmingly prefer cards as a form of payment, and are unlikely to switch back to cash, consumers and businesses will ultimately be left to replace banks’ lost revenue through higher costs and significantly reduced consumer rewards.

Moreover, merchants and banks will face increased compliance costs. Merchants will likely have to upgrade point-of-sale equipment and software to isolate the base cost of the goods and services sold from the tax and gratuity portions of the transaction before transmitting the data to the issuing bank. This could also require point-of-sale equipment and software manufacturers to develop systems with the capabilities to support this function.

Without a point-of-sale system capable of separating these amounts, merchants – who directly pay the interchange fees – will have to maintain accurate records and submit them to the bank to recoup the portion of the transaction exempt from interchange fees. It is possible that smaller merchants will forgo this effort as the cost of tracking these records outweighs the benefits of recouping these fees. The IFPA would therefore leave banks with higher revenue than that to which they are entitled.

Similarly, banks will need to upgrade systems to properly receive the transmitted data and calculate interchange fees based on the delineated transaction information from merchants. Banks will not only need to set up a system for merchants seeking to recoup interchange fees charged on taxes and gratuities but attempt to estimate, and then set aside, funds necessary to cover the reimbursements. For instance, a transaction totaling \$100 would – at a 2-percent interchange fee – typically have an interchange fee of \$2. Transactions that do not separate the base amount from taxes and gratuities leave banks guessing how much of the interchange fee is subject to merchant reimbursement. In this example, assuming a transaction with a base cost of \$50, \$5 of tax and \$45 of a gratuity, the bank would need to set aside 50 percent of the total interchange fee and refund the merchant \$1. Alternatively, that same transaction could have a base cost of \$90, \$10 of tax, and no gratuity, amounting to a refund of 20 cents, leaving banks guessing at what the ultimate reimbursement liability will be.

⁶ <https://insight.kellogg.northwestern.edu/article/who-pays-generous-credit-card-rewards>

It is possible that some participants – including merchants, banks, and card networks – could choose to decline transactions subject to the IFPA, leaving consumers with fewer payment options.

The costs of compliance will be recovered through higher prices for users of the payment networks, diminishing their efficiency and attractiveness. Declining transactions affected by the IFPA unnecessarily balkanizes the seamless nationwide nature of the current networks. The possibility that other states will imitate the Illinois law raises the risk of large-scale damage to the payments networks and large consequences for some participants.

V. Federal Preemption

According to the OCC, the IFPA conflicts with federal law and is preempted under the Supremacy Clause of the U.S. Constitution. To support its claim, the OCC cites clarifying legal precedents of the Supremacy Clause – most notably *Barnett Bank of Marion County, N.A. v. Nelson*. In *Barnett Bank*, the Supreme Court held that state law is preempted when “it prevent[s] or significantly interfere[s] with a ‘national bank’s exercise of its federal authorized powers.” The Court further noted that “federal grants of authority in the national banking context are ‘not normally limited by, but rather ordinarily pre-empt[], contrary state law.” Consequently, the OCC contends that the IFPA conflicts with both the National Bank Act and the Home Owners’ Loan Act of 1993.

VI. Conclusion

The OCC’s preemption of the IFPA is essential to protect the national banking system, remove uncertainty, and avoid driving up operational costs at the expense of consumers.