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The OCC Weighs in on Contentious Seventh Circuit Appeal of Illinois' "Swipe-Fee" Law

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Summary

Just five weeks after the United States District Court for the Northern District of Illinois largely upheld the Illinois Interchange Fee Prohibition Act (IFPA), on March 16, 2026, the Office of the Comptroller of Currency (OCC) filed an *amicus* brief in support of the plaintiff trade associations' appeal in the Seventh Circuit to halt the IFPA, which is expected to take effect on **July 1, 2026.**

Together with other national bank advocates, such as the Bank Policy Institute and the Consumer Bankers Association, the OCC's *amicus* brief sharply criticizes the IFPA and calls it "an improper and undeniable state interference with federally authorized banking powers that drive the nation's economy": "[i]f IFPA is not permanently enjoined, it will erode the essential infrastructure of the payments system and require national banks, Federal savings associations, and others to expend 'staggering' sums … to accommodate a single state's regime."

Background: What Is the IFPA?

Enacted in 2024, the IFPA bans issuers, payment card networks (such as Visa and Mastercard), acquirers, and processors from charging or receiving interchange fees on the portions of card transactions attributable to state and local sales taxes and gratuities. Interchange fees, which are typically around two percent of the transaction amount, are assessed on the entire transaction amount, including taxes and tips.

Under the IFPA, merchants must identify and transmit information about the tax and tip portions of a transaction to avoid being charged interchange fees on those amounts. The statute includes an alternative procedure where a merchant can submit this information within a specified time period after the transaction.

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The IFPA also contains a data usage limitation provision that prohibits entities other than the merchant from distributing, exchanging, or using electronic payment transaction data except to facilitate the transaction or as required by law. The IFPA includes civil penalties of $1,000 per transaction for violations.

The Lower Court's Ruling

Judge Virginia Kendall's February 10, 2026, ruling upheld the core provision of the IFPA that restricted all interchange fees on the "tax and tip" portions of credit and debit card transactions and found that the National Bank Act (NBA) and other federal statutes did not preempt the IFPA's interchange fee limitation.

The court reasoned that the IFPA does not directly regulate a core banking power because national banks do not set interchange fees; rather, the payment networks do. Judge Kendall called this distinction the main "snag" in the plaintiffs' case: "The payment card networks built this ecosystem, and the payment card networks set these fees. To claim that the IFPA interchange fee provision impermissibly interferes with the power set out [under the NBA] . . . does not add up in the face of that reality." As such, Judge Kendall concluded that the NBA did not preempt the IFPA.

However, Judge Kendall found that the IFPA's data usage limitation "directly constrain[ed]" national banks' broad powers to monitor transactions for certain activities (such as fraud) and permanently enjoined this IFPA provision.

The Appeal and Subsequent Reactions

The plaintiff trade groups promptly appealed Judge Kendall's ruling. In their March 6, 2026, brief, the American Bankers Association (ABA) and other groups argued that Judge Kendall's decision regarding the interchange fee limitation relied on a "fundamental misunderstanding of the scope of NBA preemption and the national bank powers at issue." According to the ABA, "national banks are equally authorized to make money from their federally authorized deposit taking and credit-extending activities, whether they choose to charge and receive the [national banking] networks' default amounts or to bilaterally negotiate rates with merchants or acquirers."

The OCC's *amicus* brief further criticized Judge Kendall's ruling that upheld the interchange fee limitation, characterizing it as a "convoluted" analysis that ignored years of binding precedent. The OCC argues that Judge Kendall's preemption assessment was too narrow and "miss[ed] the proverbial forest for the trees," by focusing too much on the "setting" of the interchange fees and whether a prohibition on those fees "directly" regulates national banks instead of assessing the fees within the larger scope of "national banks' powers." With respect to the data usage limitation, the OCC *amicus* brief asserts that the district court correctly held that the NBA preempts the IFPA data usage limitation because it prevents or significantly interferes with national banks' ability to exercise their power under the NBA to use electronic payment data.

Next Steps and Broader Regulatory Implications

The Illinois Attorney General is scheduled to file the state's response in early April. It is expected that the Seventh Circuit will expedite its decision in the matter to allow for a decision before **July 1, 2026,** when the IPFA is scheduled to take effect.

In at least 20 other states, legislative bills similar to the IFPA have been introduced. Given the expected cost of compliance with the IFPA (which Judge Kendall noted in her decision), the Seventh Circuit's decision in the matter could have broader implications for states' ability to regulate payments.

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