Via Electronic Submission

May 29, 2026

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 1E-216
Washington, DC 20219

Re: National Bank Non-Interest Charges and Fees (Docket ID OCC-2026-0430)

To Whom it May Concern:

We appreciate the opportunity to comment on the interim final rule Office of the Comptroller of the Currency, "National Bank Non-Interest Charges and Fees."

That said, we urge you to drop this misguided attempt at using federal powers to preempt state legislation that attempts modest reforms to the payment system. The (false) premise of the OCC's action is that "a Federal district court in the Northern District of Illinois created ambiguity about the scope" of 12 CFR 7.4002, which implements the National Banking Act.

That court did nothing of the sort. It merely observed the plain fact about our payment system today, namely that Visa and Mastercard set the fees that are subtracted from every sale made by a merchant in which payment occurs via these two dominant payment networks. The allegation by the banks that brought the lawsuit against the Interchange Fee Prevention Act in Illinois is, the court wrote, "hard to square with a system where Visa and Mastercard do the actual work of fee-setting all for the banks to collect a check. It is even harder to say that type of fee-setting is such a cornerstone of national banking power as to preempt all state intervention."

Furthermore, the OCC is opening a Pandora's Box of potentially anticompetitive behavior across a wide range of bank fees. The proposal would not apply only to fees charged to businesses, such as swipe fees. It also applies to all non-interest charges and fees charged to consumers as well – such as late fees, over limit fees, annual fees, ATM fees, and more. The OCC rule defines "charge" very broadly: "directly or indirectly, through intermediaries, partners, payment networks, interchanges, or other third parties, assess, collect, impose, levy, receive, reserve, take, or otherwise obtain, including through a fee sharing or similar economic relationship."

It is hard to overstate the hard pivot the OCC is undertaking in the name of protecting the profitability of banks and payment networks. Longstanding OCC regulations implementing federal statutes dictate that fees be "arrived at by each bank on a competitive basis." Now, fee-fixing is explicitly allowed, so long as it is done via third parties. The OCC's admonitions about competition are no longer even lip service.

In truth, the OCC's interim final rule – and the accompanying order aimed at the Illinois law – represent yet another phase in the long-running efforts by this agency to protect the bottom lines of national banks and to suppress every possible effort by states to exercise their power to regulate finance as they see fit. Comptrollers have sometimes referred to these regulated entities as their "customers," a proclivity on full display with the OCC's current proposal.

The OCC is doing its level best to allow these banks, which include the largest in the nation – JPMorgan Chase, Bank of America, Citigroup, Wells Fargo, Capital One and others – to have their cake and eat it too. Right now, the swipe fee system functions as might a price-fixing cartel, in which Visa and Mastercard, replacing the smoke-filled rooms of antitrust lore, establish and apply charges for payment card use and then share the proceeds with card-issuing banks.

This process is highly lucrative for national banks, as centralized fee-fixing by Visa and Mastercard helps those banks avoid the inconvenience of competing with one another over the fee rates they receive. But it is not healthy for consumers, for merchants, or for the competition that is supposed to form the backbone of economic life. And it is astonishing that the OCC now wants to abandon its previous commitment to market competition in the setting of bank fees in an effort to stop reasonable state regulation of fees set by Visa and Mastercard, which are not even banks within the scope of OCC jurisdiction.

In time, the swipe fee case in question, *Illinois Bankers Association et al v. Raoul*, is likely to go down in history as yet another fight between the OCC and state authorities – legislators and attorneys general alike – determined to hold the line against this agency's overreach, and its de facto role as a big-bank lobby within the federal government. In 1996 there was *Barnett* from Florida. New York did it in the *Cuomo* case. Now Illinois faces a similar challenge to protect competition, small businesses, and consumers.

We hope the OCC will relent and recognize the error of its ways. But we are under no illusions: states will have to fight OCC overreach yet again.

Sincerely,
Demand Progress Education Fund
Open Markets Institute
American Association for Justice
National Association of Consumer Advocates
National Community Reinvestment Coalition
Americans for Financial Reform Education Fund
American Economic Liberties Project
US Public Interest Research Group
Maryland Economic Action
DC Consumer Rights Coalition
New Jersey Appleseed
Virginia Citizens Consumer Council
Kathleen Engel, Research Professor, Suffolk University Law School