

Memo on the Office of the Comptroller of the Currency's April 24, 2026 Interim Final Rule and Order on National Bank Fees and Preemption

On April 24, the Office of the Comptroller of the Currency (OCC) announced an [interim final rule](#) that would fundamentally transform a longstanding federal regulation, 12 C.F.R. § 7.4002, that governs the charging of fees by national banks in order to authorize banks to collectively set fee rates through third parties.

The OCC also issued an [interim final order](#) asserting that federal law (including this revised regulation) preempts an Illinois state law, the [Interchange Fee Prohibition Act](#), from applying to national banks and federal savings associations.

The OCC announced that their interim final rule and order will take effect on June 30 and said they will accept comments submitted by May 29. This memo provides background on the OCC's actions.

Background on interchange fees

The prices of everything American consumers pay for are inflated by excessive transaction fees and anticompetitive rules that are established by the dominant payment card network companies Visa and Mastercard. Visa and Mastercard, which control around 85 percent of the [credit](#) and [debit](#) card network markets, have created several fees that are deducted from the transaction amount whenever a card bearing one of their logos is swiped or used. These fees include network fees, which Visa and Mastercard keep for themselves, and interchange fees, which Visa and Mastercard set but which are collected by the banks that issue cards. As a result of these fees, merchants end up receiving about 96 or 97 cents out of every dollar paid to them by card.

Whereas every other type of fee charged by banks is currently set in a competitive market environment where each bank sets its own rate for the fee it receives, interchange fees within the Visa and Mastercard systems are centrally fixed by the card network companies on behalf of the thousands of financial institutions that issue Visa- and Mastercard-branded cards.

Visa and Mastercard have established interchange [fee schedules](#) with dozens of rate categories that vary depending on the type of card used and the type of transaction. The fees rates are typically established with a percentage-based fee component plus a flat fee component (e.g., 2.6% + \$0.10 per transaction). Every card-issuing bank in the Visa and Mastercard networks charges interchange fees based upon the fee schedules that Visa and Mastercard put forward. In other words, the banks that get interchange fees do not set their own fees and do not compete on fee rates.

This centralized fee-fixing insulates interchange fee rates from normal marketplace competition and causes serious market distortions. It reduces the incentive for card-issuing banks to manage their operational and fraud costs efficiently, because each bank is guaranteed to

receive the same amount of network-fixed interchange fees as every other bank in the network, no matter how efficient or inefficient they are or how much fraud occurs on their cards. Also, Visa and Mastercard each impose so-called network rules that require merchants to accept all cards bearing their network logos, even though the interchange fee rates for some cards (such as rewards cards) are significantly higher than others. The combination of centrally-fixed rates and “honor all cards” rules give Visa and Mastercard incentive to set high interchange fee rates in order to encourage banks to issue more cards, and since Visa and Mastercard collect network fees for themselves on every transaction, they profit as more cards are issued and used.

Given Visa’s and Mastercard’s market dominance, there is little merchants can do to restrain these high fees, and it is difficult for merchants to operate without accepting Visa and Mastercard. As a result, U.S. merchants have been forced to pay ever-rising interchange fees that are not tethered to any card-issuing bank’s actual costs and that subsidize bank inefficiencies. Visa and Mastercard swipe fees often add up to 3 percent or more of the transaction amount. Merchants, who generally have low single-digit profit margins, often have little choice but to raise retail prices or impose surcharges to cover the cost of these fees, meaning the fees inflate the prices ultimately paid by consumers. Visa and Mastercard even impose swipe fees on the sales tax portion of transaction amounts, meaning that merchants must pay swipe fees on money that they collect on behalf of the state and do not themselves retain.

A total of over [\\$198 billion](#) in swipe fees was charged to U.S. merchants on credit and debit card transactions in 2025, and these fees increased retail prices by an average of [\\$1,200](#) per American family. Visa and Mastercard credit card swipe fees [increased](#) from an average rate of 2.02% in 2010 to 2.26% in 2023 to 2.36% in 2025. The credit card interchange fee rates paid by U.S. merchants are the [highest in the world](#), as many other countries have [taken action](#) to rein in these excessive fees – for example, in the European Union, credit card interchange fees are capped at 0.3%. While modest federal debit card interchange fee reform was enacted in the U.S. in 2010, U.S. credit card interchange fees remain entirely unregulated.

The Illinois Interchange Fee Prohibition Act and related litigation

In 2024, Illinois lawmakers passed the Interchange Fee Prohibition Act (IFPA), a state law that prohibits any of the participants in credit and debit card transactions (card-issuing banks, acquiring banks, processors, payment card networks) from charging or receiving interchange fees on tax and tip portions of card transactions. Financial trade associations filed a lawsuit in Illinois federal district court arguing that the IFPA is preempted by the federal National Bank Act and seeking an injunction to stop the law from taking effect. The OCC filed an amicus brief in support of the financial trade associations’ position.

In February 2026, the district court in Illinois [ruled](#) that the National Bank Act does not preempt the IFPA’s interchange fee provisions. The court noted that interchange fees are not set by each bank in a competitive market environment but rather are centrally fixed by card network

companies like Visa and Mastercard and used uniformly by all banks that issue Visa- or Mastercard-branded cards. The court concluded that the IFPA's interchange limit does not significantly interfere with national bank powers under the governing preemption standard^[1] because interchange fees centrally set on banks' behalf by third-party companies are not the kind of fees subject to preemption under the National Bank Act. The financial trade associations appealed the February decision to the 7th Circuit Court of Appeals and the OCC filed another amicus brief on appeal. The IFPA is currently scheduled to take effect on July 1, 2026, and the 7th Circuit agreed to consider the appeal on an expedited basis.

The OCC's interim final rule and order

On April 24, 2026, while the 7th Circuit appeal was pending and after briefs had been filed, the OCC issued its interim final rule and order. The OCC did not provide stakeholders with notice or the opportunity to comment on the interim rule or order before issuing them, and the OCC declared upon their issuance that they would become effective on June 30, 2026. Observers [noted](#) that "[t]he OCC is attempting to reframe the Seventh Circuit appeal in real time."

The OCC's interim final rule would revise 12 C.F.R. § 7.4002, a regulation governing national bank fees and charges. Currently, 12 C.F.R. § 7.4002 [provides](#) that national banks are authorized by the National Bank Act to charge customers fees, but those fees must be set in a competitive market environment with fees "arrived at by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding, or discussion with other banks or their officers." 12 C.F.R. § 7.4002(b)(1). The regulation also states that banks' methods of calculating fees "are business decisions to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles." 12 C.F.R. § 7.4002(b)(2). The regulation provides for federal preemption of state laws that attempt to limit national bank fees that have been set pursuant to the regulation. 12 C.F.R. § 7.4002(d)

The OCC's interim rule would transform 12 C.F.R. § 7.4002 into a regulation that explicitly allows national banks to charge, receive, or collect fees "set by or in consultation with third parties," including but not limited to interchange fees. As the OCC explained in its accompanying order, this revised rule "unambiguously reaffirms a national bank's power to charge interchange and other fees 'set' by third parties."

Thus the interim rule seeks to confer regulatory approval and preemption upon all fee arrangements in which banks collusively arrange for third party companies like Visa and Mastercard to fix fee rates uniformly on behalf of the banks that receive fees, whether those fees are interchange fees imposed on merchants or cardholder fees such as annual fees, ATF fees, or late fees. If finalized, this interim rule would abandon 12 C.F.R. § 7.4002's longstanding guiding principle that bank fees should be set by each bank in a competitive market environment.

The OCC's accompanying order declares that national banks and federal savings associations need not comply with the interchange fee limitations of the IFPA because of the OCC's view that

the IFPA is preempted by the National Bank Act (notwithstanding the district court's ruling to the contrary). Notably, while the OCC order asserts that the IFPA is preempted from applying with respect to national banks or federal savings associations, the OCC order does not assert that the IFPA is preempted with respect to other payment system participants such as payment card network companies (e.g., Visa and Mastercard), which are non-bank entities that play the role of setting interchange fee rates. The fact that the OCC did not assert that the IFPA is also preempted with respect to card network companies indicates OCC's recognition that they do not have the authority to preempt state laws that regulate those non-bank entities.

The OCC issued its rule and order shortly before oral arguments were scheduled to take place in the 7th Circuit. The Illinois Attorney General, who has been defending the IFPA in litigation, argued that the rule and order were procedurally invalid and substantively defective; the OCC argued that the 7th Circuit was unable to consider the merits of the rule/order on appeal and that the IFPA must be enjoined because the rule and order are scheduled to take effect on June 30. The 7th Circuit has remanded the case back to the district court to consider the OCC's actions.

Broader implications of the OCC's revised rule

The OCC's revised rule wouldn't just apply 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.”

The OCC has long required competition in setting all bank fees but is essentially abandoning that position in order to bless big bank price-fixing on swipe fees and other types of fees as well. Now, the OCC has effectively rubber-stamped big banks arranging for a third party to set fees on all their behalf, so that they don't have to compete with each other over the fee rates they receive.

[1] Pursuant to Supreme Court caselaw and statutory provisions, a state law is preempted by federal banking law if the state law prevents or significantly interferes with a national bank's exercise of its federal powers. After the 2007-08 financial crisis, which arose in part because the OCC asserted broad preemption authority that permitted national banks to ignore state laws designed to constrain subprime lending, Congress in the Dodd-Frank Act significantly curtailed the situations in which the National Bank Act preempts state consumers financial laws' application to national banks, including making clear that the National Bank Act does not preempt state consumer financial laws' application to nonbanks who facilitate national banks' provision of services. 12 U.S.C. § 25b(h)(2).