Merchants Launch Separate Lawsuits Challenging OCC and NCUA Actions Preempting Illinois Interchange Fee Law

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Two new lawsuits filed in the U.S. District Court for the District of Columbia directly challenge the authority of the Office of the Comptroller of the Currency (OCC) and the National Credit Union Administration (NCUA) to issue regulations and other actions declaring that federal law preempts the Illinois Interchange Fee Prohibition Act (IFPA). The lawsuits, filed on November 12, 2026, represent a significant new front in the continuing litigation over the IFPA. Rather than challenging the Illinois statute itself, the plaintiffs seek to invalidate the federal agencies' actions that have been relied upon to prevent Illinois from enforcing the statute against national banks and federal credit unions.

The two complaints were filed by substantially the same group of merchant and retail-industry organizations, including the National Association of Convenience Stores, National Retail Federation, Retail Litigation Center, Food Marketplace (FMI – The Food Industry Association), Restaurant Law Center, National Grocers Association, Illinois Retail Merchants Association, Illinois Fuel & Retail Association, and Illinois Restaurant Association. The defendants are the OCC and its officials in one action and the NCUA and its Chairman in the other.

The lawsuits raise important questions about the statutory authority of the two agencies, the procedures they followed in issuing their interim final actions, and the substantive basis for their conclusions that federal law preempts the IFPA. The complaints also challenge the agencies' reliance on the National Bank Act and Federal Credit Union Act to protect interchange fees established by payment card networks, rather than independently established by the issuing banks or credit unions.

The background: How the OCC and NCUA intervened in the IFPA litigation

The IFPA, enacted by Illinois in 2024, prohibits the charging or receipt of interchange fees on the tax and gratuity portions of electronic payment transactions when the fees are established, charged, or received by a payment card network. It also restricts the use and distribution of certain transaction data. The law's effective date has been postponed to July 1, 2027.

The central dispute concerning the interchange-fee prohibition is whether federal law prevents Illinois from regulating interchange fees established by payment card networks, such as Visa and Mastercard, and received by the financial institutions issuing the cards.

In February 2026, the U.S. District Court for the Northern District of Illinois rejected the principal federal preemption arguments advanced by financial-institution plaintiffs concerning the IFPA's Interchange Fee Limitation. The court concluded that the National Bank Act did not preempt the provision as applied to national banks and that the Federal Credit Union Act did not preempt it as applied to federal credit unions.

The OCC subsequently intervened in the controversy through two separate actions issued on April 29, 2026.

First, the OCC issued an interim final rule, *National Bank Non-Interest Charges and Fees*, 91 Fed. Reg. 22989, amending 12 C.F.R. § 7.4002. Among other things, the rule expressly recognized a national bank's authority to charge non-interest fees, including interchange fees, directly or indirectly through intermediaries, partners, payment networks, interchanges, or other third parties.

Second, the OCC issued an interim final order, *Order Preempting the Illinois Interchange Fee Prohibition Act*, 91 Fed. Reg. 23150. That separate order concluded that the National Bank Act preempts the IFPA as applied to national banks and federal savings associations.

The Seventh Circuit remanded the underlying litigation to the district court to consider the effect of these OCC actions. On June 1, 2026, the district court entered a permanent injunction barring enforcement of the IFPA's Interchange Fee Limitation against national banks, federal savings associations, out-of-State state banks protected by Section 24(j) of the Federal Deposit Insurance Act, and payment card networks. The court concluded that the OCC's amended regulation materially changed the National Bank Act preemption analysis. It did not, however, simply defer to the OCC's separate preemption order, expressing substantial reservations about aspects of that order's authority and procedures.

The NCUA followed the OCC's lead. On June 9, 2026, it issued an interim final rule, *Preemption—Federal Credit Union Non-Interest Charges and Fees*, 91 Fed. Reg. 34725. The rule amended NCUA regulations to recognize federal credit unions' authority to charge non-interest fees, including interchange fees, and stated that the Federal Credit Union Act preempts state laws affecting those fees, including the IFPA.

The credit-union plaintiffs promptly brought the NCUA action to the district court's attention. On September 22, 2026, the district court entered a further permanent injunction barring enforcement of the IFPA as applied to federal credit unions. The court concluded that, if valid, the NCUA rule preempted the IFPA, but expressly declined to adjudicate the rule's validity under the APA because no such claim was before it. The Illinois Attorney General appealed that injunction on October 9.

The two new lawsuits now seek to place the validity of the OCC and NCUA actions directly before a federal district court in the District of Columbia.

The lawsuit challenging the OCC's interim final rule and order

The first action, *National Association of Convenience Stores et al. v. Gould et al.*, No. 1:26-cv-03990 (D.D.C.), challenges both the OCC's April 29 interim final rule and its separate interim final order.

The plaintiffs contend that the OCC exceeded its statutory authority and violated the Administrative Procedure Act (APA) in adopting both actions. They seek declarations that the rule and order are unlawful, their vacatur, and injunctions preventing the OCC from enforcing them.

The complaint advances several distinct theories.

1. The OCC exceeded its authority under the National Bank Act

The plaintiffs' central substantive argument is that the National Bank Act does not authorize national banks to receive interchange fees established by third-party payment card networks in circumstances where the banks themselves do not set the fees through competitive decision-making.

The complaint emphasizes that the IFPA does not prohibit a national bank from setting its own interchange fees. Rather, it regulates interchange fees established by payment card networks. According to the plaintiffs, the IFPA therefore regulates the business practices of the networks, not the business of national banking.

The plaintiffs also argue that the National Bank Act protects banks in exercising their own banking powers, not every activity of a third party that may have an economic effect on a bank. In their view, the OCC improperly expanded the concept of national-bank powers to encompass interchange fees centrally established by Visa and Mastercard and accepted by issuing banks.

The complaint relies heavily on the National Bank Act preemption provision added by Dodd-Frank, 12 U.S.C. § 25b. That provision permits preemption of a state consumer financial law only if the law discriminates against national banks or prevents or significantly interferes with the exercise of national-bank powers under the *Barnett Bank* standard.

The plaintiffs contend that the IFPA does neither. They argue that it applies without discrimination and does not prevent banks from establishing their own interchange fees. They further maintain that a reduction in bank revenue resulting from regulation of fees established by third parties is not equivalent to a significant interference with the exercise of national-bank powers.

The complaint also invokes the Supreme Court's decision in *Cantero v. Bank of America*, arguing that the OCC's broad approach is inconsistent with the required case-specific analysis and the Supreme Court's rejection of categorical National Bank Act preemption.

2. The OCC's actions are arbitrary and capricious

The plaintiffs separately contend that the OCC failed to consider important facts and arguments before issuing its rule and order.

Among other things, they assert that the OCC relied heavily on declarations and arguments submitted by financial institutions in the underlying IFPA litigation while disregarding contrary evidence submitted by Illinois and merchant organizations.

The complaint identifies several matters that the plaintiffs contend the OCC failed to consider adequately:

- The IFPA's requirements can be implemented through routine changes to payment-network technical standards.
- The principal compliance burden falls on payment networks, processors, and merchants, rather than on national banks.
- Payment networks already calculate different interchange rates in numerous jurisdictions.

- Banks remain free to establish their own interchange fees rather than accept fees established by payment networks.
- Financial institutions operate profitably in jurisdictions with substantially lower interchange fees.
- The OCC did not adequately examine whether existing interchange fees are necessary to compensate banks for their card-related activities, given the other fees and interest they receive from card customers.

The plaintiffs also challenge the OCC's assumption that bilateral negotiations between banks and merchants would be impractical or unworkable. They point out that banks have acknowledged in the underlying litigation that they sometimes negotiate different interchange rates with individual merchants or acquirers.

A particularly interesting argument concerns the OCC's own amended regulation. The regulation provides that business decisions concerning fees should be arrived at by each national bank on a competitive basis and not through agreements or understandings with other financial institutions. The plaintiffs contend that the interchange fees at issue under the IFPA are centrally established by payment networks and accepted by issuing banks, rather than independently established by banks through competitive decision-making. They therefore argue that the OCC's preemption determination is inconsistent with the very regulation on which it relies.

3. The OCC lacked good cause to dispense with notice and comment

The OCC issued both actions without first following the APA's ordinary notice-and-comment procedures. It invoked the APA's good-cause exception, asserting that prior notice and public comment were impracticable because of the regulatory uncertainty created by the district court's February 2026 decision and the approaching effective date of the IFPA.

The plaintiffs argue that this justification does not satisfy the narrow good-cause exception in 5 U.S.C. § 553(b)(B).

They emphasize that Illinois enacted the IFPA in 2024 and that the OCC had nearly two years to undertake a conventional rulemaking. The agency knew about the statute and had participated in the litigation through amicus briefs. The plaintiffs argue that the OCC cannot rely on an approaching statutory effective date to excuse its failure to follow procedures that could have been completed well before that date.

They also contend that regulatory uncertainty or potential financial costs to banks do not constitute the kind of emergency necessary to dispense with notice and comment.

The complaint challenges the OCC's decision to issue the preemption order without notice and comment as well as its decision to issue the amended regulation without those procedures. The plaintiffs argue that the OCC cannot avoid the APA's rulemaking requirements simply by labeling a generally applicable action an "order."

4. The OCC allegedly violated additional procedural requirements in the National Bank Act

The OCC complaint goes beyond the APA and invokes specific procedural protections in the National Bank Act.

First, the plaintiffs contend that the IFPA is a "State consumer financial law" within the meaning of 12 U.S.C. § 25b. If so, the OCC was required to make its preemption determination on a case-by-case basis and support its specific finding with substantial evidence on the record of the proceeding. The plaintiffs contend that the OCC did not satisfy those requirements.

They also argue that Section 25b(b)(6) requires a preemption determination to be made by the Comptroller of the Currency personally and prohibits delegation of that responsibility to another OCC officer or employee. The OCC's interim final rule and order were signed by the First Deputy Comptroller. The plaintiffs contend that the signature and delegation issue independently invalidates the preemption order.

Finally, the complaint invokes Section 43 of the National Bank Act, 12 U.S.C. § 43. It argues that, if the OCC's action is an opinion letter or interpretive rule concluding that federal law preempts a state law concerning consumer protection, the OCC was required to provide notice and an opportunity for public comment. The plaintiffs contend that the OCC did not establish the statutory exception for a serious and imminent threat to the safety and soundness of a national bank.

These arguments are significant because they challenge not merely the OCC's substantive interpretation of the National Bank Act, but also whether Congress permitted the agency to make the preemption determination in the manner it did.

The lawsuit challenging the NCUA's interim final rule

The second action, *National Association of Convenience Stores et al. v. National Credit Union Administration et al.*, No. 1:26-cv-03991-TSC (D.D.C.), challenges the NCUA's June 9 interim final rule, 91 Fed. Reg. 34725.

The NCUA rule amended 12 C.F.R. § 701.5 by adding a provision recognizing that federal credit unions may charge non-interest fees, including interchange fees from credit and debit card operations. The NCUA stated that the rule was intended to preempt state laws affecting non-interest charges and fees related to payment card services, including the IFPA.

The complaint asserts that the NCUA exceeded its authority under the Federal Credit Union Act and violated the APA. Although the NCUA relied on reasoning similar to that used by the OCC, the plaintiffs emphasize that the two agencies operate under different statutes and that the Federal Credit Union Act does not contain the same express preemption framework found in the National Bank Act.

1. The NCUA lacks authority to create the claimed preemption

The plaintiffs argue that the Federal Credit Union Act does not grant the NCUA general authority to preempt state laws regulating interchange fees.

The NCUA relied principally on 12 U.S.C. § 1766(a), which authorizes it to prescribe rules and regulations for administration of the Federal Credit Union Act. The plaintiffs contend that this is a rulemaking grant, not a delegation of authority to displace state law.

They also argue that the Federal Credit Union Act's specific provisions authorizing federal credit unions to make loans, extend lines of credit, and exercise incidental powers do not authorize the receipt of network-established interchange fees imposed on merchants who are not credit union members.

A central point in the complaint is that the Federal Credit Union Act differs materially from the National Bank Act. In particular, the plaintiffs argue that Congress did not give the NCUA the same statutory preemption authority that Congress addressed in Section 25b of the National Bank Act. The NCUA therefore cannot simply borrow the OCC's preemption analysis and apply it to federal credit unions.

2. The NCUA's regulation does not actually preempt the IFPA

The NCUA complaint advances a separate argument based on the text of the agency's own regulation.

The amended 12 C.F.R. § 701.5 contains preemption language in subsections (a) and (b), but those provisions concern share accounts, interest, finance charges, repayment terms, and specified conditions of loans.

Subsection (c), which addresses non-interest fees and interchange fees, does not contain a corresponding preemption provision.

The plaintiffs argue that the NCUA nevertheless characterized the regulation as expressly preempting state laws limiting those charges. In their view, the agency's interpretation cannot be reconciled with the actual regulatory text. The complaint also points to the NCUA's acknowledgment that the non-interest charges regulated by the IFPA are merely "closely related" to subjects covered by the existing preemption provisions.

The plaintiffs thus argue that the NCUA's own regulation does not preempt state laws regulating interchange fees imposed on merchants, including the IFPA.

This is an important distinction from the OCC case. The NCUA complaint challenges not only the agency's statutory authority to adopt the rule, but also whether the rule, properly interpreted, accomplishes the preemption result the NCUA says it accomplishes.

3. The NCUA's rule is arbitrary and capricious

The plaintiffs also contend that the NCUA relied on an inadequate factual record and failed to address important contrary evidence.

They assert that the NCUA relied primarily on arguments and declarations submitted by credit unions and other financial institutions in the underlying IFPA litigation. It allegedly failed to consider evidence submitted by Illinois and merchant organizations concerning the feasibility of complying with the IFPA and the limited effect of the statute on credit union operations.

The complaint also challenges the NCUA's assumption that financial institutions have no practical alternative to receiving interchange fees established by payment networks. As in the OCC case, the plaintiffs contend that financial institutions can establish their own fees or negotiate directly with merchants.

The plaintiffs further argue that the NCUA failed to consider whether the existing level of interchange fees is necessary to compensate credit unions for their card-related activities, particularly in light of the other fees and interest financial institutions receive from card customers.

Finally, the complaint argues that the NCUA failed to explain why the reasoning underlying the National Bank Act rule applies equally to federal credit unions. The plaintiffs emphasize that the two statutes differ in important respects, including the absence of an equivalent express preemption provision in the Federal Credit Union Act.

4. The NCUA improperly bypassed notice and comment

As with the OCC, the NCUA issued its interim final rule without prior notice and comment.

The NCUA asserted that notice and comment were impracticable because of the abbreviated period between the district court's February 2026 decision and the IFPA's then-scheduled July 1, 2026 effective date, which created uncertainty about whether federal credit unions would have to comply.

The plaintiffs argue that this justification is insufficient. The IFPA had been enacted in 2024, and its effective date had already been extended once. Moreover, the Illinois legislature had voted to extend the effective date again to July 1, 2027 shortly before the NCUA issued its rule.

According to the complaint, the NCUA therefore had ample time to conduct a full notice-and-comment rulemaking. The plaintiffs contend that the agency cannot manufacture good cause by waiting until shortly before a statute's effective date and then asserting that there is insufficient time to follow ordinary procedures.

The plaintiffs seek a declaration that the NCUA rule is unlawful, an order vacating it, and an injunction preventing the agency from enforcing it.

What the lawsuits could mean for the underlying IFPA litigation

The two lawsuits are important because they create a procedural vehicle for directly testing the validity of the OCC's and NCUA's actions. In the underlying IFPA litigation, the district court declined to adjudicate the agencies' compliance with the APA because no APA claims challenging the agencies' actions had been pleaded in that case.

The new complaints seek to fill that gap.

If the plaintiffs prevail, the consequences could be substantial. In the OCC case, invalidation of the interim final rule or order could undermine the regulatory basis for the June 1 injunction protecting national banks and federal savings associations. In the NCUA case, invalidation of the NCUA rule could undermine the basis for the September 28 injunction protecting federal credit unions.

That does not mean that vacatur of either agency action would automatically resolve every preemption issue in the underlying litigation. The district court and the Seventh Circuit would still have to address the independent statutory preemption arguments advanced by the financial-institution plaintiffs. The June 1 and September 28 injunctions also remain operative unless and until they are modified or reversed.

The lawsuits also could affect the broader debate over the limits of federal banking agencies' authority to preempt state consumer-protection laws. The OCC complaint raises particularly significant questions concerning the requirements of Dodd-Frank Section 25b and the National Bank Act's nondelegation provision for OCC preemption determinations. The NCUA complaint raises the more fundamental question whether Congress authorized the NCUA to use its general rulemaking power to displace state law in this area at all.

There is also a broader administrative-law issue common to both cases: whether the agencies had adequate grounds to invoke the APA's good-cause exception and bypass notice and comment. The fact that the IFPA had been enacted years before the agencies acted, and that its effective date had been extended, will be central to that dispute.

The FDIC's Separate Action Raises Another Question

There is a third federal banking agency in this dispute: the FDIC. On September 22, 2026, the FDIC published a proposed rule addressing the application of host-state laws to out-of-state state banks under Section 24(j) of the Federal Deposit Insurance Act. The proposal would provide that host-state laws apply to services provided in the host state by an out-of-state state bank to the same extent that those laws apply to services provided by an out-of-state national bank. Importantly, the proposal would extend that treatment to services provided without a physical branch in the host state.

The FDIC expressly discussed the IFPA and the litigation surrounding it in explaining the need for its proposal. The agency observed that the OCC had determined that the IFPA was preempted with respect to national banks and that a federal district court had entered an injunction preventing enforcement of the IFPA against national banks, federal savings associations, payment card networks and certain out-of-state state banks. The FDIC identified uncertainty about the treatment of out-of-state state banks without Illinois branches and proposed to eliminate that uncertainty by extending the same host-state-law treatment to their services.

The FDIC proposal is significant because it could provide an additional basis for out-of-state state banks to argue that the IFPA is inapplicable to their activities in Illinois. It also raises a question that the new complaints do not appear to address: Why did the merchant plaintiffs sue the OCC and NCUA but not the FDIC?

There is a clear procedural explanation. Unlike the OCC and NCUA actions challenged in the new complaints, the FDIC's September 22 action is a proposed rule, not a final rule. The FDIC has invited public comment, and the proposal has not yet become a final operative regulation. That distinction would make a direct APA challenge premature because the FDIC has not completed its rulemaking or taken final agency action.

But the issue should not be overlooked. The FDIC proposal rests on an interpretation of Section 24(j) that could have substantial consequences for the reach of the IFPA as to state-chartered

banks located outside Illinois. The proposal also relies on the OCC's preemption determination and the district court's injunction as part of its explanation for why a uniform rule is needed. If finalized, it could materially expand the number of state banks able to invoke federal law as a defense to enforcement of the IFPA.

The FDIC's action also presents issues that are not identical to those raised in the OCC and NCUA cases. The FDIC relies on Section 24(j) of the Federal Deposit Insurance Act and the parity between out-of-state state banks and out-of-state national banks. The central question is whether that provision authorizes the FDIC to extend protection from host-state laws to services provided by an out-of-state state bank even when the bank has no branch in the host state. The proposal's application to the IFPA depends on the scope of the preemption protection afforded to national banks.

The plaintiffs likely have chosen to wait until the FDIC completes its rulemaking before deciding whether to challenge the agency's interpretation. Nevertheless, the FDIC proceeding is an important part of the larger dispute over the IFPA and should be followed closely.

What happens next?

Both cases are at the beginning of the litigation process. The complaints seek declaratory and injunctive relief, including vacatur of the challenged agency actions. The agencies will have an opportunity to respond, and the courts will have to address threshold issues such as standing, the scope of judicial review, and the appropriate remedy.

The cases are likely to be closely watched by banks, credit unions, payment card networks, merchants, and state regulators. They could determine whether the OCC and NCUA have authority to establish the federal preemption framework on which the financial institutions now rely in defending against the IFPA.

Ultimately, the dispute is about more than interchange fees on taxes and gratuities. It raises fundamental questions about the extent to which federal banking agencies may use their regulatory authority to displace state laws, the limits Congress placed on that authority, and the procedural safeguards agencies must observe when making decisions with significant consequences for state regulation.

The outcome could have implications well beyond Illinois and could influence future efforts by federal banking agencies to preempt state consumer-protection laws affecting financial institutions and payment systems.