National Bank Preemption

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Issue Update

The Supreme Court first articulated a strong national bank preemption standard more than 200 years ago in its landmark *McCulloch* (1819) decision. State law, the Supreme Court held, cannot stand as "an obstacle" to constitutional federal operations. Though the Second Bank of the United States was ultimately short-lived, national bank preemption took on renewed importance when, as part of the *National Bank Act of 1863*, Congress established the Office of the Comptroller of the Currency (OCC) and expressly charged it with chartering and regulating national banks.

The Supreme Court has since expansively interpreted national banks' express and implied powers. For example, in *Barnett* (1996), the Supreme Court found national banks' power to act as an insurance agent or broker to be "a broad, not a limited, permission" and held a state law limiting the types of insurance banks may sell was preempted as to national banks as it "prevent[ed] or significantly interfere[d] with [a] national bank's exercise of its powers." Congress codified the *Barnett* standard in *Dodd-Frank*.

Yet, state lawmakers on both sides of the aisle are increasingly attempting to leverage consumer financial laws that significantly interfere with core bank activities. Recently passed state laws variously attempt to dictate which risk characteristics banks may consider when opening and servicing accounts, how and with whom banks must share risk analyses and reports, and which transaction costs banks may recover.

Why It Matters

Access to Financial Services. Competition among national and state-chartered banks helps ensure consumers and businesses across the country and economic spectrum have access to the trusted financial services and products they need and deserve. Absent Congress, the courts, and federal regulators upholding a strong national bank preemption standard, national banks and many state-chartered banks operating across state lines would be subject to a burdensome patchwork of conflicting state laws and unable to efficiently serve customers across the country as they do today.

State Consumer Financial Laws are Needlessly Duplicative. Banks are already subject to and examined for compliance with robust federal consumer financial laws and regulations, and bank regulators already possess the enforcement tools necessary to resolve any compliance concerns.

Recommended Action Items

Urge the OCC to continue to defend dual banking system. In April 2026, OCC issued an interim final rule clarifying that national banks may charge a range of non-interest charges and fees, including interchange fees established by payment card networks, and an interim final order preempting the Illinois Interchange Fee Prohibition Act, which purports to prohibit collection of interchange fees on taxes and gratuities. ABA supported each of these rulemakings and has urged OCC to move with speed and force to address a similar Colorado law. In May 2026, OCC issued an order preempting interest-on-escrow laws in New York and 13 other states and territories.

Urge Congress to encourage the OCC to continue to defend dual banking system. Federal statutes and Supreme Court caselaw plainly support a strong national bank preemption standard. Lawmakers should not

hesitate to remind the OCC of its duty to forcefully and timely defend our dual banking system against impermissible state action.