

GIBSON DUNN

Financial Institutions | Fintech & Digital Assets Update

June 11, 2026

The Preemption Conversation Gets Louder: What OCC IL 1192 Means for Payments

The OCC Interpretive Letter reinforces the OCC's continued defense of federal preemption and further consolidates its authority over digital asset activities in the banking space in advance of the GENIUS Act's effectiveness.

1. A Familiar Principle, Restated

On June 9, 2026, the Office of the Comptroller of the Currency (OCC) published OCC Interpretive Letter 1192 (May 12, 2026) (IL 1192).^[1] IL 1192 confirms again that national banks, including national trust banks engaged in digital asset activities, are not bound by state money transmitter licensing laws, nor subject to state visitorial authority over those activities. The OCC framed its conclusion as “clear and unambiguous under applicable law and longstanding precedent,” resting on the long-settled *Barnett* standard, as recently reaffirmed in *Cantero*. More importantly, the letter reinforces the OCC's continued defense of federal preemption and further consolidates its authority over digital asset activities in the banking space in advance of the GENIUS Act's effectiveness.

2. Background

Fidelity Digital Assets Service, LLC, was a New York-chartered trust company that held money transmitter licenses in parallel, which subsequently converted to an OCC-chartered national trust bank, **Fidelity Digital Assets, National Association**. Fidelity Digital Assets provides digital asset custody, trade execution, settlement, and related services, and plans to engage in additional activities such as stablecoin issuance and staking services.

The Iowa Division of Banking later took the position that notwithstanding Fidelity's conversion to a national trust bank, Fidelity Digital Assets remained subject to the Iowa Uniform Money Transmission Modernization Act, as its statutory exemption applied only to federally insured depository institutions. Because Fidelity Digital Assets is a national trust bank and is not FDIC-insured, Iowa deemed its money transmission licensing requirements applicable.

Fidelity Digital Assets requested the OCC confirm that the National Bank Act preempts state law that would otherwise require the bank to hold an Iowa money transmitter license.

3. OCC Interpretive Letter No. 1167 and Federally Authorized Fiduciary Powers

This is a familiar story. In the wake of New York DFS' and other states' objections to ADP Trust Company's national trust bank charter operating without money transmitter licenses, the OCC issued Interpretive Letter 1167 (May 20, 2020) (IL 1167), which confirmed that states could not require money transmitter licenses for activities conducted pursuant to the bank's federally authorized fiduciary powers.^[2] There the OCC opined that subject to the limits established by 12 U.S.C. § 92a and 12 C.F.R. Part 9, a national bank "may exercise *fiduciary powers* in any state without obtaining a state money transmitter license" (emphasis added). The OCC distinguished activities that may "in some contexts be regulated as money transmission" when conducted by a national trust bank "within the scope of [the trust bank's] federally authorized fiduciary powers."

Because IL 1167 arose on a narrow set of facts in the fiduciary context, the letter framed its preemption analysis in terms of the bank's federally authorized fiduciary powers. As a result, the letter gave rise to an apparent misperception among new nonbank and digital assets-based entrants regarding the extent to which national trust banks could rely on federal preemption for payments activities that were not fiduciary in nature. This was particularly significant for those national trust banks engaged in payments-related activities, which generally are not considered fiduciary activities and therefore did not clearly fall within the traditional scope of national trust bank powers and related preemption arguments. IL 1192 resolves this apparent misperception and confusion in the market.^[3]

4. Confirming Preemption Beyond Fiduciary Activities

In issuing IL 1192, the OCC made clear again that national banks, including national trust banks engaged in digital asset activities, may conduct *federally authorized activities* (both fiduciary and non-fiduciary alike) nationwide without obtaining state money transmitter licenses.

In confirming, the OCC reiterated that the National Bank Act expressly contemplates national trust banks, whose operations are "limited to those of a trust company and activities related thereto."^[4] Once chartered by the OCC, national trust banks may engage in a broad range of fiduciary and non-fiduciary activities authorized by federal law.^[5]

According to the OCC, the authority to conduct those activities on a nationwide basis does not depend on obtaining additional authorization from any state, whether through a licensing regime or otherwise. Requiring a national trust bank to obtain a state license before exercising federally

authorized powers would effectively make state approval a “condition precedent” to the exercise of those powers.

5. Where Does that Leave Us?

IL 1192 confirms that a national trust bank’s preemption of state money transmitter licensing requirements is “clear and unambiguous under applicable law and longstanding precedent” and follows from its exercise of federally authorized powers as a national bank, not from the fiduciary character of any particular activity. To the extent IL 1167 was read to limit that preemption to fiduciary activities, IL 1192 makes clear that reading was too narrow.

Nevertheless, the implications of IL 1192, read alongside the OCC’s recent defense of federal preemption^[6] are clear: the OCC will continue to defend federal preemption of state laws that prevent or significantly interfere with a national bank’s exercise of its federally authorized powers. The principles in IL 1192 are not cabined to money transmission laws and extend to any state licensure regime that conditions a national bank’s exercise of its federally authorized powers on obtaining a state license, including the New York Bitlicense and the California Digital Financial Assets Law license.

IL 1192 is best understood as one piece of a broader consolidation. The GENIUS Act expressly preempts state licensing for “federal qualified payment stablecoin issuers”, which includes national trust banks and nonbank entities. IL 1192 confirms the same federal primacy over the custody, settlement, and payments activities a national trust bank conducts under its charter. Read together, they stake out the OCC’s supervisory ground over digital-asset national trust banks before the GENIUS Act rules are final.

^[1] OCC Interpretive Letter No. 1192 (May 12, 2026).

^[2] OCC Interpretive Letter No. 1167 (May 20, 2020).

^[3] The principle of federal preemption itself is long-settled: as federal instrumentalities, national banks, including national trust banks, are not subject to state licensing requirements that prevent or significantly interfere with their exercise of federally authorized powers, and the OCC and the courts have applied that principle to consumer lending, mortgage lending, and payments activities, among others. See 12 U.S.C. § 25b; 12 C.F.R. §§ 7.4008(d)(1), 7.5002(c), 34.4(a)(1); see also *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25 (1996); *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1 (2007). Congress recognized the same framework in the Dodd-Frank Act when it declined to extend these preemption benefits to national bank subsidiaries. See 12 U.S.C. § 25b(e), (h). What IL 1192 clarifies is not the preemption principle, but its application to national trust banks beyond federally authorized fiduciary activity, dispelling the narrower reading that IL 1167 had invited. As national banks thought, national trust banks have always benefitted from the same preemption principles.

^[4] See 12 U.S.C. § 27(a).

^[5] See, e.g., 12 U.S.C. §§ 24(Seventh), 92a.

[6] See, e.g., Order Preempting the Illinois Interchange Fee Prohibition Act, 91 Fed. Reg. 23150 (Apr. 29, 2026); National Bank Non-Interest Charges and Fees, 91 Fed. Reg. 22989 (Apr. 29, 2026) (interim final rule).

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