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Memorandum

FDIC Proposes to Broadly Extend State-Bank Parity Protections

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On September 17, 2026, the FDIC proposed a rule under the Federal Deposit Insurance Act ("FDI Act") that would ensure state-chartered banks operating across state lines receive the same preferential legal treatment as national banks, even when they serve customers in states in which they do not maintain a physical branch. Under the proposal, when a host state law has been preempted for national banks, that law would similarly not apply to out-of-state state banks providing services in the host state. The proposal responds both to a wave of state interchange-fee legislation—beginning with Illinois's Interchange Fee Prohibition Act ("IFPA") in 2024—which created new compliance burdens and costs, and to the resulting litigation, which exposed uncertainty about whether Section 24(j) of the FDI Act covers state banks that operate in other states without branches. If finalized, the rule could reduce compliance costs for more than 3,100 state-chartered banks.

The proposed rule would mark a significant shift in how Section 24(j) of the FDI Act is applied, extending competitive parity protections to the full range of interstate banking activity—not just branch-based operations. It has drawn early support from FDIC leadership and state banking regulators, but also raises questions under the Supreme Court's *Loper Bright* and *Corner Post* decisions about whether an agency can read beyond a statute's plain text based on its view of the broader statutory scheme. Comments are due 60 days after publication of the proposal in the Federal Register.

Background on Dual-Banking and Out-of-State Bank Parity

A defining feature of the U.S. dual banking system—in which banks may be chartered by either a state or the federal government—is the principle of competitive parity (*i.e.*, that neither charter type should carry a built-in regulatory advantage over the other). Congress has periodically legislated to preserve this balance, most significantly through the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994 and its 1997 amendments, which added Section 24(j) to the FDI Act.

Section 24(j) provides that host state laws apply to branches of out-of-state state banks only to the extent those laws apply to branches of out-of-state national banks (*i.e.*, national banks with their main offices outside of the host state). If a host state law has been preempted for branches of out-of-state national banks, that host state law is inapplicable to branches of out-of-state state banks as well, with home state law applying instead. But the statute references only "*branches*"—it does not address the increasingly common scenario in which state banks serve customers in other states without maintaining a physical branch in the customer's state.

That statutory gap has become significant as banking has migrated to non-branch channels. Under a literal reading (and the FDIC's historical interpretation) of Section 24(j), many state banks that serve customers in other states entirely through branchless digital platforms could be subject to host state laws from which their national bank competitors are exempt. The implications of this physical-presence basis for the application of Section 24(j) became especially salient with the enactment of, and subsequent litigation of, the IFPA.

The Illinois IFPA Catalyst

In 2024, Illinois enacted the IFPA, which prohibits card issuers, payment card networks, and acquirer banks from charging interchange fees on the tax and gratuity portions of electronic payments. The law, which becomes effective July 1, 2027, also restricts distribution and use of transaction data associated with those payments, imposes civil penalties of $1,000 per transaction, and by its terms is not limited to Illinois-chartered institutions.

The IFPA has prompted both litigation and regulatory action. Trade associations challenged the law in *Illinois Bankers Ass'n v. Raoul*, while the OCC separately issued an interim final order concluding that federal law preempts the IFPA as applied to national banks, along with an interim final rule clarifying national banks' authority to collect interchange fees. Based on the OCC's interim final rule, the Northern District of Illinois permanently enjoined enforcement of the IFPA against national banks, federal savings associations, payment card networks, and state banks chartered outside Illinois "that are subject to Riegle-Neal" (*i.e.*, Section 24(j)).

The scope of the district court's injunction turns on a threshold disagreement between the parties as to which state banks are "subject to Riegle-Neal." The trade association plaintiffs asserted a broad view of which state banks are "subject to Riegle-Neal," arguing that Section 24(j) extends national bank preemption to all out-of-state state banks. By contrast, the Illinois Attorney General has argued that Section 24(j) covers only state banks with branches physically located in Illinois—meaning that a state bank serving Illinois customers through digital channels, without an Illinois branch, would be subject to the IFPA even though a similarly situated national bank would not. The FDIC's proposal seeks to address this disagreement by asserting a broad view of Section 24(j)'s preemption scope.

The Proposed Rule—Policy and Substance

The core of the proposed rule is an amendment to § 331.3 of the FDIC's regulations that would extend Section 24(j)'s parity protections from branches to services. Notably, Section 24(j) on its face refers only to "branches," and nowhere refers to interstate bank "services" as benefiting from the legislative parity protections. The proposal thus rests on the FDIC's structural reading of Section 24(j), which takes into account congressional intent, the broader statutory scheme, and the evolution of banking channels.

In particular, the FDIC argues that when Riegle–Neal was enacted, banks "generally conducted banking activities . . . through branches," such that branches were the "central mechanism against which state laws could discriminate" and were "naturally" referenced in the FDI Act expressly. Since the 1990s, non-branch banking has proliferated through online and mobile channels. If the Section 24(j) parity protections were not extended beyond a bank's physical presence, out-of-state state banks without a branch in a host state could "either lose parity with national banks . . . or be forced into the costly and counterintuitive exercise of establishing branches in host states in order to gain protection from host States' laws." According to the FDIC, this would create an "irrational result that cannot be squared with the structure of section 24(j) of the FDI Act or congressional intent."

On this view of the statutory scheme, the FDIC thus concluded that "when host State law would not apply to an out-of-State State bank's branch in the State (because State law has been preempted), host State law should similarly not apply to an out-of-State State bank providing services without a branch." To implement this conclusion, the proposal would provide that host state laws apply to "any branch in the host state of, *or any services provided in the host state* by, an out-of-state state bank to the same extent as such state laws apply to a branch in the host state of, *or any services provided in the host state* by, an out-of-state national bank" (emphasis added). Where a host state law does not apply to an out-of-state national bank, the out-of-state state bank's home state law would govern instead.[1]

Under the proposal, whether a state law would apply to an out-of-state state bank would thus depend on whether a particular host state law has been preempted as applied to national banks (typically through OCC action or a federal court ruling). If it has, the same law would not apply to an out-of-state state bank providing services in the host state, regardless of whether the state bank has a branch there. The effect is that whatever regulatory treatment out-of-state national banks receive in a host state, out-of-state state banks would receive the same.[2]

Key Boundaries of the Proposed Rule

The proposal would *not* change or extend several notable aspects of the current state-bank parity regime:

- *No Effect on Section 27 Interest Rate Authority*. Section 27 of the FDI Act permits state-chartered banks to "export" the interest rate allowed in the bank's home state, even when lending to borrowers in states with lower usury limits. The proposed rule would not alter Section 27 interest rate "exportation" authority.
- *No Independent Preemption Determination*. The FDIC would not determine whether a particular state law is preempted. The state-bank parity mechanism would apply only after the OCC or a federal court has determined that a particular host state law does not apply to national banks. The rule would extend the benefit of that determination to state banks; it would not expand federal preemption.
- *Symmetric Treatment Regardless of Branch Presence*. An out-of-state state bank would receive the same treatment regardless of whether it maintains a branch in the host state. The proposal does not create a separate advantage for branchless banks.

[1] The proposed rule also includes a conforming edit to the regulatory definition of "host state" to include any state in which a state bank provides services, not just one in which it maintains a branch.

[2] The proposal would apply to all "state banks" as defined in the FDI Act, which includes both state nonmember banks (supervised by the FDIC) and state member banks (supervised by the Federal Reserve). As of December 31, 2025, there were 3,449 state banks that could be affected.

Outlook and Implications

Beyond the IFPA, the proposed rule carries broader implications for the regulatory landscape and the competitive dynamics between state and national charters. Several developments will shape the proposal's prospects and its significance for the dual banking system.

- *State Legislative Momentum and Economic Impact*. Since the IFPA's enactment, 11 other states have begun pursuing similar interchange fee legislation. The FDIC estimates the proposed rule would save state banks approximately $308 million in one-time system upgrade costs and $6.7 million in ongoing annual compliance costs from the IFPA alone—figures that are conservative because they reflect only a single state law. As similar legislation spreads, the cumulative compliance burden the proposed rule could alleviate would be substantially greater, and the rule would provide a durable framework for addressing future host state laws that are preempted for national banks.
- *Dual Banking System Equilibrium*. The proposal bears directly on the competitive balance between state and national charters. If state banks consistently face regulatory burdens from which national banks are exempt, the economic logic of maintaining a state charter weakens. As the primary federal regulator of state non-member banks, the FDIC has an institutional interest in preserving the viability of the state charter.
- *Judicial Review Under* Loper Bright *and* Corner Post. The proposed rule will need to withstand scrutiny under recent Supreme Court precedent that has sharpened the constraints on agency statutory interpretation. In *Loper Bright Enterprises v. Raimondo* (2024), the Court overruled the *Chevron* doctrine, which afforded deference to agencies' interpretations of ambiguous statutes, and held that statutes have "a single, best meaning" that is "fixed at the time of enactment." In *Corner Post, Inc. v. Board of Governors of the Federal Reserve System* (2024), the Court reinforced the conservative majority's preference for a textualist philosophy of statutory construction, holding that "the text of a law controls over purported legislative intentions unmoored from any statutory text" and that courts may not "replace the actual text with speculation as to Congress' intent." While the FDIC's proposal broadly aligns with the Administration's deregulatory posture, its central argument—that limiting Section 24(j) to "branches" would produce an "irrational result" given the migration to digital banking—relies on a method of statutory interpretation that may be at odds with recent Supreme Court precedent.
- *Looking Ahead*. The comment period will likely generate significant industry support from banking trade groups and state banking regulators. Whether the rule faces opposition from state attorneys general or consumer groups remains to be seen. Finalization before the IFPA's July 2027 effective date would be important to give state banks regulatory certainty.

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