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FDIC Proposes State Bank Preemption Parity Rule Regarding Host State Laws

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The FDIC has published for comment proposed amendments to Part 331 of its regulations. If adopted in the form proposed, the amendments would provide for federal preemption parity between out-of-state State banks and out-of-state national banks offering interstate services.

The proposed rule, which interprets Section 24(j) of the Federal Deposit Insurance Act (FDI Act), is based on the FDIC's statutory authority to prescribe rules and regulations as it may deem necessary to carry out provisions of the FDI Act and to define terms as necessary to do so.[1]

Regulatory Background

As added by the Riegle-Neal Amendments Act of 1997,[2] Section 24(j)(1) of the FDI Act provides that "[t]he laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank *to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank*."[3]

A **"host State"** is currently defined for this purpose as "a State, other than the home State of a State bank, in which the State bank maintains a branch."[4] This means that, "if the host State law has been preempted and does not apply to a national bank, then host State law similarly does not apply to the branch of an out-of-State State bank; instead, the chartering State's law applies."[5] The FDIC notes, however, that Section 24(j) "does not . . . explicitly address the application of host State laws where out-of-State State banks provide services in a host State without establishing a branch in the host State."[6]

Stated Purpose of the Proposed Amendments

In the background discussion accompanying the proposed rule, the FDIC explains that, "[w]hile section 24(j) of the FDI Act expressly addresses the application of State laws to a 'branch' in a host State of an out-of-State State bank, [it] believes the provision must be read in the context of the statutory framework" and its underlying

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purpose.[7] The statutory framework to which the FDIC refers is the interstate banking and branching regime established by the Riegle-Neal Interstate Banking and Branching Act of 1994[8] and the Riegle-Neal Amendments Act of 1997 (collectively, "Riegle-Neal").

By way of background, the FDIC explained that "branches were the central mechanism against which State laws could discriminate against out-of-State banks" when Riegle-Neal was enacted and amended. In the nearly three decades since then, however, "it has become more common for banks to serve their customers through non-branch channels such as online banking and mobile banking" without establishing branches in host states.[9] Accordingly, as FDIC Chairman Travis Hill noted in his statement regarding the proposed rule, it "would recognize this shift and affirm that state-chartered banks receive the same treatment promised by Riegle-Neal regardless of whether they operate in host states through a branch or without a branch."[10]

Nature of the Proposed Amendments

The FDIC proposes to accomplish this objective by expanding:

- The definition of a "host State" in Section 331.2 of the FDIC Regulations to include a State, other than the home State of a State bank, in which the State bank "provides services;" and
- The scope of Section 331.3 of the FDIC Regulations in a manner that would make the Riegle-Neal preemption parity provision applicable to any services provided in a host State by an out-of-State State bank.

The proposed rule thus would not constitute a determination that a particular host State law is preempted. It would instead "clarify the application of State law under section 24(j) of the FDI Act in instances where an out-of-State State bank provides services in a host State" without a host State branch.[11] The proposal reflects the FDIC's view that "the only result consistent with the structure of section 24(j) of the FDI Act" is for host State law to not apply to an out-of-State State bank providing services in the host State without a branch "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)" with respect to a national bank.[12]

Notably, however, the proposed preemption parity amendments would not affect the federal loan interest rate authority of State banks, which is governed by Section 27 of the FDI Act and the associated interest rate authority regulations codified in the remainder of Part 331.[13]

Comment Deadline and Questions Posed by the FDIC

Comments with respect to the proposed rule are due by **November 23, 2026**. In addition to requesting comments on all aspects of the proposed rule, the FDIC specifically invited comment on the following questions:

1. Whether there are alternatives to the proposed rule, consistent with the policy goals of the FDIC, that it should consider;
2. Whether the proposed rule would affect settled applications of specific types of host state laws in ways that may have unintended consequences; and
3. Whether the proposed rule should be modified to better reflect that it would not affect Section 27 of the FDI Act and the implementing regulations in Part 331 that govern the interest rates that State banks are permitted to charge with respect to their loans.

On the date the FDIC released the proposal, the Conference of State Bank Supervisors issued a statement saying that it "strongly supports this rulemaking . . . on an issue that is increasingly important to maintain parity between state-chartered and national banks."[14] If finalized in the form proposed, however, the rule may be challenged by state attorneys general, consumer advocacy organizations and/or possibly by some states.

Why it Matters

While the FDIC noted that the proposed state bank parity rule was prompted by recent developments in litigation challenging the Illinois Interchange Fee Prohibition Act under various preemption theories, the impact of the proposed rule would be far-reaching if it were to be adopted and withstand challenge. The state bank parity rule would expressly enable insured state banks to derivatively assert National Bank Act non-interest[15] preemption arguments, precedents and determinations with respect to host state laws otherwise applicable to "services provided in . . . host State[s]."

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[1] FDIC, Notice of Proposed Rulemaking, State Bank Parity, 91 Fed. Reg. 60018, 60019-20 (Sept. 22, 2026) [hereinafter "Proposed State Bank Parity Rule"] (citing 12 U.S.C. §§ 1819(a)(Tenth), 1820(g)). While this rulemaking authority does not apply to the extent that the authority to issue such rules and regulations has been expressly and exclusively granted to another regulatory agency, no other agency has been expressly or exclusively granted authority to prescribe such rules and regulations or to define terms used in Section 24(j) of the FDI Act. 91 Fed. Reg. 60020.

[2] Riegle-Neal Amendments Act of 1997, Pub. L. No. 105-24, § 2(a), 11 Stat. 238, 238 (July 3, 1997) (codified at 12 U.S.C. § 1831a(j)(1)).

[3] 12 U.S.C. § 1831a(j)(1) (emphasis added); *accord*, 12 C.F.R. § 331.1(b). The statute further provides that, "[t]o the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch." *Id.*

[4] 12 C.F.R. § 331.2; *accord*, 12 U.S.C. § 1841(o)(5)(A). With respect to a State bank, the "home State" is "the State in which the bank is chartered." 12 C.F.R. §331.2; *accord*, 12 U.S.C. § 1841(o)(4)(B).

[5] Proposed State Bank Parity Rule, 91 Fed. Reg. at 60020.

[6] *Id.* The FDIC stated that recent litigation regarding the Illinois Interchange Fee Prohibition Act (the "IFPA") has revealed a disagreement regarding which State-chartered banks are subject to Section 24(j) of the FDI Act. *Id.* at 60019 & nn. 3-6 (citing *Ill. Bankers Ass'n v. Raoul*, 834 F. Supp. 3d 773, 792, 794 (N.D. Ill. 2026); *accord*, *Ill. Bankers Ass'n v. Raoul*, 2026 U.S. Dist. LEXIS 214964, at *21-22 (N.D. Ill. Sept. 22, 2026) (stating that IFPA interchange fee and data usage limitations are not enforceable against "banks chartered by states other than Illinois, *see* 12 U.S.C. § 1831a(j)(1)"), *appeal docketed*, No. 26-3082 (7th Cir. Oct. 13, 2026). Specifically, "while the plaintiffs asserted that section 24(j) of the FDI Act extends national bank preemption broadly to out-of-State State banks, the Illinois Attorney General argued that section 24(j) . . . extends such preemption only to out-of-State State banks' branches 'physically located' in Illinois . . .." Proposed State Parity Rule, 91 Fed. Reg. at 60019 & nn. 7-8. The proposal seeks to remove that uncertainty, which the FDIC noted "also creates a competitive imbalance between national and State banks." *Id.* at 60019.

[7] *Id.* at 60020. The FDIC identifies the "apparent intent of the 1997 amendments to Reigle-Neal" as "reestablish[ing] parity between interstate State banks and interstate national banks." Id. at 60020 & n.16 (citing 143 Cong. Rec. H3088-89 (May 21, 1997) ("The sponsor of the Riegle-Neal Amendments Act of 1997 stated that '[t]he essence of this legislation is to provide parity between State-chartered banks and national banks'") (statement of Rep. Marge Roukema)),

[8] *Id.* at 60020 & n.13 (citing the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (Sept. 29, 1994)).

[9] *Id.*at 60020 (noting that, "since 2007 when the first iPhone was released, mobile banking has become commonplace").

[10] Statement by Chairman Travis Hill on the Proposed Rule Regarding State Bank Parity (Sept. 17, 2026), https://www.fdic.gove/statement -proposed-rule-regarding-state-bank-parity.pdf.

[11]Proposed State Bank Parity Rule, 91 Fed. Reg. at 60021.

[12] *Id.* at 60020.

[13] *Id.* at 60020-21. This is the case because Section 111 of Riegle-Neal provides "no provision of this title and no amendment made by this title to any other provisions of law shall be construed as affecting in any way . . . the applicability of . . . section 27 of the Federal Deposit Insurance Act." 91 Fed. Reg. at 60021 & n.18 (citing 12 U.S.C. § 1811 note).

[14] Press Release, CSBS Strongly Supports the FDIC's Proposed State Bank Parity Rule (Sept. 17, 2026), https://www.sbs.org/newsroom/csbs-strongly-supports-fdics-proposed-state-bank-parity-rule. The American Bankers Association likewise stated that the Proposed State Bank Parity Rule "supports what we have long advocated – state-chartered banks should not face a structural disadvantage simply because they serve customers in a state where they do not maintain a physical branch." Press Release, ABA Welcomes FDIC Proposals

on State Bank Parity, Mergers (Sept. 17, 2026), https://www.aba.com/about-us/press-room/press-releases/aba-welcomes-fdic-proposals-on-state-bank-parity-mergers.

[15] As noted previously, *see* note 13 and accompanying text *supa*, the proposed state bank parity rule does not apply to the federal interest rate authority of insured state banks under Section 27 of the FDI Act and the associated FDIC regulations codified elsewhere in 12 C.F.R. Part 331.

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