International Center for Law & Economics

ICLE REGULATORY COMMENTS

FINANCIAL REGULATION & CORPORATE GOVERNANCE

State Bank Parity

Comments to the Federal Deposit Insurance Corporation Re: State Bank Parity, 91 Fed. Reg. 60018

International Center for Law & Economics

November 20, 2026

Kristian Stout



State Bank Parity

Comments to the Federal Deposit Insurance Corporation Re: State Bank Parity, 91 Fed. Reg. 60018

Kristian Stout*

I. OVERVIEW

The International Center for Law & Economics (ICLE) supports the Federal Deposit Insurance Corporation's (FDIC) proposed rule clarifying which state laws apply when state-chartered banks serve customers across state lines. The Illinois Interchange Fee Prohibition Act (IFPA) illustrates why that clarification matters.

The Illinois law takes effect July 1, 2027. It bars interchange fees on the tax and gratuity portions of card transactions, restricts the use of transaction data, and imposes a $1,000 civil penalty per transaction for violations of the fee prohibition.[1] After the Office of the Comptroller of the Currency (OCC) clarified that national banks have authority to collect interchange fees,[2] a federal district court in *Illinois Bankers Association v. Raoul* issued a permanent injunction barring Illinois from enforcing the fee prohibition against national banks and banks chartered by other states that qualify for protection under Section 24(j) of the Federal Deposit Insurance Act (FDI Act).[3]

Illinois Attorney General Kwame Raoul argues that Section 24(j) protects out-of-state state banks only with respect to their branches physically located in Illinois. When Congress amended Section 24(j) in 1997, banks generally served customers through branches, so doing business in another state typically meant opening a branch there.[4] Today, banks can serve customers across state lines without a local branch. Raoul's reading leaves those banks uncertain whether the injunction protects their operations in Illinois.

---

* Kristian Stout is director of innovation policy at the International Center for Law & Economics (ICLE). ICLE is a nonprofit, nonpartisan research center based in Portland, Oregon, dedicated to building the intellectual foundations for sensible, economically grounded policy. ICLE promotes law & economics methods to inform public policy and has filed comments and analyses with competition and regulatory authorities across numerous jurisdictions.

[1] Interchange Fee Prohibition Act, 815 Ill. Comp. Stat. 151/150-1 et seq. (effective July 1, 2027) (civil penalty in section 150-15(a)); *see* State Bank Parity, 91 FED. REG. 60,018, 60,019 nn.2 & 9 (Sept. 22, 2026) (proposed rule to be codified at 12 C.F.R. pt. 331).

[2] News Release No. 2026-32, Off. of the Comptroller of the Currency, *OCC Issues Two Interim Final Actions Clarifying Bank Powers Under Federal Law and the Preemption of a Related State Law* (Apr. 24, 2026), https://www.occ.gov/news-issuances/news-releases/2026/nr-occ-2026-32.html; *see* National Bank Non-Interest Charges and Fees, 91 FED. REG. 22,989 (Apr. 29, 2026) (interim final rule); Order Preempting the Illinois Interchange Fee Prohibition Act, 91 FED. REG. 23,150 (Apr. 29, 2026) (interim final order).

[3] *Ill. Bankers Ass'n v. Raoul*, No. 1:24-cv-07307, 2026 WL 1534350, at *12 (N.D. Ill. June 1, 2026); *see also* Memorandum Opinion & Order at 12, *Ill. Bankers Ass'n v. Raoul*, No. 1:24-cv-07307 (N.D. Ill. Sept. 22, 2026), ECF No. 240 (extending the permanent injunction against enforcement of the interchange-fee limit to federal credit unions).

[4] State Bank Parity, 91 FED. REG. at 60,019 & n.8; *see also id.* at 60,020 (noting that banks generally operated through branches when Congress enacted the Riegle-Neal Act).

The FDIC's proposal resolves that uncertainty. Under the proposed rule, a state-chartered bank serving customers in another state would follow that host state's laws to the same extent as an out-of-state national bank. If a host-state law would not apply to the national bank, the state-chartered bank would instead follow the law of the state that chartered it.[5]

A. Regulatory Uncertainty Raises Costs for Banks and Customers

Regulatory uncertainty can raise costs for banks and their customers.[6] The FDIC estimates that if the Illinois Interchange Fee Prohibition Act (IFPA) applies to state-chartered banks, those banks would spend about $308 million to upgrade their systems and another $6.7 million each year to process documentation. The proposed rule would spare them both costs.[7] Spread over five years at a 7% discount rate, those avoided costs amount to $77 million a year. The FDIC separately estimates that the IFPA would shift about $2.28 million a year in interchange revenue from banks to merchants.[8]

Smaller banks have fewer transactions over which to spread fixed compliance costs. The FDIC estimates that a small bank that issues both credit and debit cards and outsources its processing would spend about $45,000 on system upgrades alone.[9] Across the 3,185 banks the proposal would affect, the FDIC estimates that the interchange revenue at stake averages about $713 per bank per year.[10]

While the injunction is on appeal, banks chartered outside Illinois that serve customers there must decide whether to upgrade their systems and begin processing documentation before they know whether Illinois can enforce the fee prohibition against them. If the injunction stands, banks it protects could have spent that money in vain. If the court lifts the injunction, similar laws in other states could multiply compliance costs. As of the district court's June 2026 ruling, 11 other states were pursuing similar measures.[11] Each could impose different obligations and bring its own litigation costs.

Even if courts conclude that states can enact laws like the IFPA, a consistent approach across states would help contain those costs. Different compliance requirements or rulings on whether federal law preempts state law could force banks and payment processors to repeat legal and technical work in each jurisdiction.

---

[5] *Id.* at 60,018, 60,025.

[6] *See* George Bittlingmayer, *Regulatory Uncertainty and Investment: Evidence from Antitrust Enforcement*, 20 Cato J. 295, 295–96 (2001) (explaining that even the prospect of a major regulatory change can lead firms to delay investment); *see also* Alden Abbott, *New Financial Regulatory Reforms Could Spur the Economy*, Truth on the Mkt. (Oct. 10, 2025), https://truthonthemarket.com/2025/10/10/new-financial-regulatory-reforms-could-spur-the-economy (identifying direct compliance costs, including staff, technology, and advisory services, and indirect costs, including higher capital costs and slower economic growth); State Bank Parity, 91 Fed. Reg. at 60,021 (noting that without the rule, uncertainty "may impose costs on State-chartered banks").

[7] State Bank Parity, 91 Fed. Reg. at 60,022.

[8] *Id.* at 60,022–23.

[9] *Id.* at 60,022, 60,024.

[10] *Id.* at 60,025 n.63.

[11] *Ill. Bankers Ass'n v. Raoul*, No. 1:24-cv-07307, 2026 WL 1534350, at *1 (N.D. Ill. June 1, 2026), *cited in* State Bank Parity, 91 Fed. Reg. at 60,019 n.11.

The FDIC treats the change in interchange fees as a transfer because merchants' savings equal the revenue banks lose. Lower interchange revenue and higher compliance costs across several states could, however, lead banks to scale back services, exit affected markets, or switch to a national charter. Consumers could face fewer choices as a result.

B. Small Banks Bear the Heaviest Burden

The FDIC estimates that 2,236 of the 3,185 out-of-state banks the Illinois law could reach are small banks.[12] A small bank could spend as much as $45,000 just to update its payment system. Across all affected banks, the FDIC estimates that the interchange fees the law would eliminate average about $713 per bank per year.[13] Thus, a rule that affects a modest stream of fee revenue can still require a substantial upfront investment from a small bank.

Unlike ongoing documentation costs, the cost of reconfiguring a payment system for a state's rules depends little on how many transactions a bank handles there. A bank that processes 1,000 affected transactions in Illinois could pay roughly as much for the upgrade as one that processes 1 million. The primary difference is that a bank with fewer transactions has far less business over which to spread that cost. And the revenue at stake in each state is limited to the interchange fees on the tax and gratuity portions of the affected transactions.

Banks may be able to reuse some of the technology they build for Illinois, but how much they can reuse will depend on what other states require. Each new set of rules could impose additional costs. Small community banks, which handle fewer transactions and have fewer resources to track and implement different rules across states, face the greatest burden.

For some small banks, that burden could make switching charters or leaving a market more attractive than staying. The FDIC warns that the current uncertainty "may incentivize State-chartered banks to convert to Federal charters."[14] Requiring a local branch for a state-chartered bank to receive the same treatment as a national bank makes state charters less attractive and undermines the dual banking system Congress sought to preserve. Some banks may instead decline card transactions in Illinois altogether, which the FDIC says "would cause substantial disruption and confusion for both merchants and consumers."[15]

Customers and merchants would feel the effects through higher prices, fewer financial products, and reduced access to banking services. A customer should not lose access to a card or pay more to use it simply because the bank that issued it holds a state charter.

C. The Proposal Clarifies Which State's Law Applies

The proposed State Bank Parity rule clarifies how Section 24(j)(1) of the FDI Act applies when banks serve customers across state lines. An out-of-state state bank would follow the host state's law to the same extent as a national bank based outside that state. If a host-state law does not apply to an out-of-state national bank, a state-chartered bank providing the same service would

[12] State Bank Parity, 91 Fed. Reg. at 60,024.

[13] *Id.*; *see also id.* at 60,025 n.63 (estimating annual transfers of $2.27 million across 3,185 affected banks, or about $713 per bank).

[14] *Id.* at 60,024.

[15] *Id.* at 60,019.

follow the law of the state that chartered it. Whether federal law overrides a particular host-state law remains a separate question. The proposal adds no new compliance obligations.

The proposal complements the OCC's determinations for national banks by clarifying how state-chartered banks should identify the law that governs the same services. That clarity would reduce uncertainty about the IFPA and could spare banks and regulators the costs of litigating the same question in other states.

When Congress amended Section 24(j)(1) in 1997, banks generally served customers through branches. It therefore made sense to frame the statute around branches and to use out-of-state national banks as the point of comparison. Today, many banks serve customers online with few or no branches in the states where those customers live. The better reading of Section 24(j)(1) carries the statutory comparison over to the same services when banks deliver them remotely.

Tying equal treatment to a local branch would make a state charter more costly even when a national bank can provide the same service without a branch. In explaining the 1997 amendments to the Riegle-Neal Act, Rep. Marge Roukema (R-N.J.) warned that unequal treatment could drive state banks to seek national charters and weaken state-level consumer protections.[16] The proposal would give banks less reason to open branches they do not need or to change charters simply to secure equal treatment.

Raoul's branch-only reading could also face challenges in federal court. In *Loper Bright Enterprises v. Raimondo*, the Supreme Court held that courts must exercise their own judgment when interpreting a statute, even if the statute is ambiguous.[17] A reviewing court would ask whether Section 24(j)(1) requires equal treatment when banks serve customers across state lines without a local branch. The FDIC's reading follows Congress's approach of looking to the laws that apply to a national bank providing the same services.

We urge the FDIC to finalize the State Bank Parity rule as proposed well before the Illinois law takes effect on July 1, 2027. Banks need time to determine whether they must reconfigure their payment systems before that deadline.

[16] 143 Cong. Rec. H3089 (daily ed. May 21, 1997) (statement of Rep. Roukema) ("The essence of this legislation is to provide parity between State-chartered banks and national banks."), *quoted in* State Bank Parity, 91 FED. REG. at 60,020 n.16; *see also* 143 Cong. Rec. at H3089 (warning that without the legislation, state banks would likely switch to national charters, potentially eliminating state-level consumer protection).

[17] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (holding that courts must "exercise their independent judgment in deciding whether an agency has acted within its statutory authority").