Travis Hill, Chair
Federal Deposit Insurance Corporation (FDIC)
550 17th Street NW
Washington, DC 20429
Submitted via email to comments@FDIC.gov

November 23, 2026

Re: Comment in Opposition to FDIC Notice of Proposed Rulemaking on State Parity [FDIC RIN 3064-AG34]

Dear Chairman Hill,

The Center for Responsible Lending (CRL), the National Consumer Law Center, on behalf of its low-income clients, and the additional community and advocacy groups listed below appreciate the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) Notice of Proposed Rulemaking (NPRM) on State Bank Parity.[1] CRL is a nonprofit, non-partisan research and policy organization dedicated to protecting and expanding homeownership and family wealth and working to eliminate abusive financial practices. Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

In 1994, Congress passed the Riegle-Neal Interstate Banking and Branching Efficiency Act.[2] The purpose of this law was to facilitate banks in opening or acquiring branches outside of the state in which the bank was chartered.[3] As originally enacted, the law amended section 24 of the Federal Deposit Insurance Act to add a new subsection (j) which provided that the laws of a host state would apply to branches of an out-of-state bank to the same extent that the host state laws applied to branches of banks chartered by the state. However, in 1997, Congress passed amendments to Riegle-Neal including one that revised section (j) to allow host state laws to apply to branches of an out-of-state bank only to the extent those laws applied to a branch in the state of an out-of-state national bank. This means that to the extent a host state is precluded by the National Bank Act from applying its laws

[1] State Bank Parity, 91 Fed. Reg. 60,018 (proposed Sept. 22, 2026) (to be codified at 12 C.F.R. pt. 331).
[2] Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338.
[3] Bd. of Governors of the Fed. Reserve Sys., Consumer Compliance Handbook: Regulation H, Section 109 of the Riegle–Neal Interstate Banking and Branching Efficiency Act 1 (Jan. 2006), https://www.federalreserve.gov/boarddocs/supmanual/cch/sec109.pdf.

to a branch of an out-of-state national bank, the host state is likewise preempted from applying its laws to a branch of an out-of-state state bank,[4]

The NPRM would expand Riegle-Neal preemption beyond the preemption that Congress enacted to extend to "services" provided in a state by an out-of-state state bank. This would allow banks without branches in a state to avoid host-state law and be subject only to the laws of the state in which they are chartered (along with federal law). This change could harm consumers, especially in fair lending and consumer protection. We strongly oppose this NPRM and urge the FDIC to withdraw it, as it overreaches FDIC authority.

Non-branch delivery of banking services is not a post-1994 development, and Congress legislated with this in mind.

The premise for the FDIC's proposal to effectively rewrite section 24(j) to cover "services" is that when Riegle-Neal was amended in 1997, "banks generally conducted banking activities, such as receiving deposits and making loans, through branches," whereas today "many State banks serve customers in other States without branches in those States." From that premise the FDIC concludes that it is necessary for it to rewrite section 24(j) to allow states to conduct activities in other states, yet to preclude those states from applying their laws to out-of-state banks that provide services in the state, without establishing any roots (i.e. opening branches) in the state. According to the FDIC, it is necessary to do so to avoid "an irrational result. Both the premise and the conclusion are flawed.[5]

To begin with, it is simply not true that, at the time Riegle-Neal was enacted, banks only served customers through branches or in the states in which branches were located. Indeed, nearly 20 years before, in 1978, the Supreme Court issued a decision in *Marquette*[6] involving a Nebraska bank that "systematically sought to enroll in its BankAmericard [now VISA] program the residents, merchants, and banks of the nearby State of Minnesota" even though the bank had no branches in Minnesota. The Supreme Court held that the National Bank Act permitted the bank to charge the interest rates allowed by its home state instead of the lower host state's rates. In so doing the Court acknowledged that its ruling would "significantly impair the ability of States to enact effective usury laws" because of "*the ease with which interstate credit is available by mail through the use of modern credit cards*." (emphasis added). The Court nonetheless held that this result was compelled by the National Bank Act.

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[4] Riegle-Neal Amendments Act of 1997, Pub. L. No. 105-24, 111 Stat. 238.
[5] State Bank Parity, 91 Fed. Reg. at 60,020.
[6] Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp., 439 U.S. 299 (1978).

This ruling led to an explosion of credit card companies chartered in states with weaker consumer protection laws, such as Delaware and South Dakota, marketing and servicing customers across the nation without regard to where these banks had branches or, indeed, whether they had branches. Some of the largest credit card issuers at the time had no branches; this was true, for example, of Discover Bank, American Express National Bank, as well as some Visa or MasterCard issuers. In fact, by the time Riegel-Neal was enacted, credit card banks were mailing over two billion solicitations per year to consumers across the United States[7] and four banks—servicing customers throughout the United Sates—held over half of all credit card receivables.[8]

Nor was the credit card market the only one in which, by the time Riegle-Neal was enacted, banks were serving consumers across state lines without regard to the presence of branches. There was also a flourishing loan-by-mail business as well as indirect auto lending in which loans were made without regard to branch location.

Congress is presumed to legislate with knowledge of the current landscape, including *Marquette* and the prevalence of non-branch banking. Thus, when Congress amended the Riegle-Neal Act 20 years later in 1997, it knew that banks were delivering services through non-branch channels, and in fact interstate banking outside of branches undoubtedly had grown. Yet Congress specifically drafted section 24(j) to limit it to bank branches and chose not to expand it to include services. The NPRM's rationale for proposing to effectively rewrite section 24(j) thus fails at its premise.

Even if a change has made it more difficult to achieve what the FDIC believes is the purpose of Riegle-Neal, the FDIC lacks the authority to rewrite the statute to apply to services provided by a bank in a state where it has no branches.

The NPRM bases its proposed rule on the FDIC 's authority to "carry out the provisions of the FDI Act." But that authority does not entitle the FDIC to rewrite the statute even where it believes that the Act as written would "create an irrational result." This is especially true when the FDIC is seeking to preempt state laws that apply to state-chartered entities.

Currently, the title and text of section 24(j) of the FDI Act speak only to branches by stating:

> (j) Activities of Branches of Out-of-State Banks.--

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[7] Mark Furletti, Credit Card Pricing Developments and Their Disclosure (Fed. Rsrv. Bank of Phila. Payment Cards Ctr., Discussion Paper, Jan. 2003), https://www.philadelphiafed.org/-/media/frbp/assets/consumer-finance/discussion-papers/creditcardpricing_012003.pdf.

[8] Paul S. Calem, The Strange Behavior of the Credit Card Market, Bus. Rev. (Fed. Rsrv. Bank of Phila.), Jan.–Feb. 1992, at 3, https://www.philadelphiafed.org/-/media/frbp/assets/economy/articles/business-review/1992/brjf92pc.pdf.

> APPLICATION OF HOST STATE LAW.--The 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. To 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. [9]

Section g(5) defines host state, as which is also defined by reference to a branch:

> (5) HOST STATE.--The term "host State" means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.[10]

The statute's text is unambiguous and branch-specific throughout the title, the operative language in the section, and the definition of host state. Furthermore, the NPRM itself concedes that the statute "does not…explicitly address"[11] services without a branch location. The FDIC's action in this NPRM implies that it has the authority to add the word "services." However, when Congress enacted section 24(j) in 1994, it limited the provision to address the activities of branches, clearly and explicitly, and when it amended the section in 1997, Congress did not make any changes in section 24(j)'s scope. Congress did not include the word "services" when it drafted and amended this section, even though it could have, as we discussed above.

Furthermore, the proposed rule directly contradicts the statutory definition of host state, which is a state in which there is a branch. It would redefine the definition by expanding it to services, which the agency cannot do. This would allow the rule to override an express statutory provision, which an agency under the Administrative Procedures Act does not have the authority to do.

If the FDIC believes that as a matter of policy that state-chartered banks operating in states where they have no branches should be on parity with national banks with respect to the application of state law, the FDIC must ask Congress to make this change, as the FDIC does not have the authority to do so on its own.

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[9] Federal Deposit Insurance Act § 24, 12 U.S.C. § 1831a.
[10] Federal Deposit Insurance Act § 44(f), 12 U.S.C. § 1831u(g)5.
[11] 91 Fed. Reg. at 60,020.

The FDIC's authority over state-chartered banks is primarily to ensure their safety and soundness to protect the deposit insurance fund. Preemption is about the supremacy of and conflicts with federal law, and the FDIC does not have the broad power to exempt state-chartered banks from state laws when there is no safety and soundness necessity to do so.

The NPRM would displace host-state consumer protections and weaken incentives for local reinvestment.

Even if, *arguendo,* it was within the FDIC's authority to promulgate the proposed rule, the FDIC has not sufficiently supported its proposal and it should not adopt the proposed ruleas a matter of sound policy.

To begin with, the NPRM does not define or tie services to specific activities, creating confusion for consumers, financial institutions, and regulators. In its current form, there is no way to know whether the term services cover activities such as loan origination, underwriting, servicing, collection, debt sales, marketing, or the conduct of third-party and nonbank partners acting on the bank's behalf. As a result, if the rule were to be finalized as proposed no one would know when a host-state's law would apply.

In addition, the NPRM analyzes the effect of the proposed change only through the lens of the Illinois Interchange Law, though it mentions consumer protection and fair lending laws. Even then, the NPRM identifies only scant costs to justify the proposal. Congress has been actively involved in passing and considering legislation on interchange fees, and if it has concerns about state laws in that area, it is up to Congress to preempt them.

The NPRM does not analyze the impact of preemption on other host states and in other areas, such as the laws of California and New York, which have strong consumer protection laws, from applying their laws to state banks providing services in their states, leaving consumers in those states with only the protection of weaker charter-state laws. This important consequence needs further analysis. The loss of host-state consumer protections places consumers in a precarious situation that the FDIC has not addressed in the NPRM. The FDIC has not fulfilled its duty under the APA to engage in reasoned decision making such as by providing data as to the number of consumers that will lose consumer protection if this proposed rule is implemented.

Another troubling effect of this NPRM is weakened incentives to maintain a local presence. Under the Community Reinvestment Act (CRA), the presence of bank branches creates an affirmative obligation for banks to meet the lending needs of the communities where they are located. This lending includes both consumer lending, such as mortgages, and community development lending. The NPRM would encourage banks to conduct business

without branches resulting in the avoidance of CRA obligations thus reducing bank presence in the communities these laws are meant to serve.

A local presence is also important from a consumer protection perspective. If a consumer has a question, concern or problem with a product offered by an out-of-state bank, if that bank has a branch in the consumer's state, the consumer can go into that branch and talk to a human being. That is not possible if the bank offers services without having branches in the state. Moreover, the banks that operate outside of branches increasingly are offering customer service through chatbots and other automated channels, which can make it extremely difficult for consumers to get help when they need it. Thus, state-chartered banks that are unwilling to make the investment to have branches in the host state should not be allowed to benefit from preemption that Congress granted only to those with branches.

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Again, thank you for the opportunity to comment on this proposed rule. We urge the FDIC to withdraw this NPRM. If the FDIC requires this change to the law, it should ask Congress to make it.

Sincerely,

Center for Responsible Lending
National Consumer Law Center (on behalf of its low-income clients)
Americans for Financial Reform
Consumer Federation of America