Advancing Convenience & Fuel Retailing |
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November 23, 2026

VIA ELECTRONIC FILING
Ms. Jennifer M. Jones
Deputy Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429
https://www.fdic.gov/federal-register-publications

Re: RIN 3064-AG34 – Federal Deposit Insurance Corporation Notice of Proposed Rulemaking on "State Bank Parity"

Dear Deputy Executive Secretary Jones:

I am submitting these comments on behalf of the National Association of Convenience Stores ("NACS") opposing the Federal Deposit Insurance Corporation's ("FDIC's" or "agency's") Notice of Proposed Rulemaking on "State Bank Parity" (the "Proposed Rule" "or "Rule").[1] While NACS supports a competitive and vibrant dual banking system, the Proposed Rule represents a flawed attempt to transform its parity principle between state-chartered and national banks into a sweeping rule of federal preemption for state-chartered banks. NACS urges the FDIC to rescind its Proposed Rule because it exceeds the agency's statutory authority under section 24(j) of the Federal Deposit Insurance Act ("FDI Act"), relies on contested rules established by the Office of the Comptroller of the Currency (OCC) and the National Credit Union Administration (NCUA) that are being litigated in federal courts, and ultimately misconstrues how the credit and debit card markets work in the United States today and, as a result, does not and cannot preempt host-state laws like the Illinois Interchange Fee Prohibition Act ("IFPA").

I. Background on the Convenience and Fuel Retailing Industry and on NACS

NACS is an international trade association representing the convenience store industry which includes nearly 152,000 stores across the United States.[2]

The convenience and fuel retailing industry has become a fixture in American society and a critical component of the nation's economy. In 2025, the industry employed approximately

[1] Federal Deposit Insurance Corporation Proposed Rule, 12 CFR Part 331, RIN 3064-AG34 "State Bank Parity," Federal Register, Vol. 91, No. 182 (Sept. 22, 2026) (available at https://www.fdic.gov/board/notice-proposed-rulemaking-state-bank-parity.pdf) (hereinafter "NPRM")
[2] Background data on NACS comes from the NACS, State of the Industry Annual Report of 2025 Data (available at NACS State of the Industry Enterprise | NACS).

2.74 million employees and generated $817.5 billion in total sales, representing approximately 2.66% of U.S. Gross Domestic Product.

The industry, however, is truly an industry of small business. More than 60% of convenience stores are single-store operators. Less than 0.2% of convenience stores that sell gas are owned by a major oil company and about 4% are owned by a refining company. More than 95% of the industry, then, are independent businesses.

Members of the industry process more than 160 million transactions every single day, the equivalent of serving about half of the U.S. population. In fact, 93% of Americans live within 10 minutes of one of our industry's locations. These businesses are particularly important in urban and rural areas of the country that might not have as many large businesses. In these locations, the convenience store not only serves as the place to get fuel but is often the grocery store and center of a community.

II. Benefits of State Regulation of Anticompetitive Card Fees

State laws like the IFPA that prohibit centrally fixed interchange fees from being charged on the tax and/or tip portions of electronic transactions are reasonable exercises of state authority and sound public policy. It should be unacceptable for any centrally fixed fees to be charged on credit and debit card transactions. Those fees should be the result of free market competition. But, that injustice is particularly egregious when interchange fees are applied to parts of the transaction that retailers themselves do not keep. In fact, the tax and tip portions of transactions are funds that businesses collect as a service for either a government entity or their employees.

Consumers and businesses in Illinois paid more than $550 million in interchange fees on the sales tax portion of transactions alone in 2025.[3] Those funds amount to a punishing blow for merchant businesses that are merely fulfilling their legal obligation to the state to collect and remit sales taxes. And, because merchants must take from their own funds to make up the resulting shortfall in tax receipts and make the state whole, that $550 million undoubtedly pushes up the prices that consumers in Illinois pay for goods and services every day.

That upward price pressure cannot be justified. Both federally chartered and state chartered financial institutions argue that they must recover a percentage of the full transaction amount through interchange fees to cover the cost of fraud for the entire transaction amount. However, merchants today absorb more of the risk (and ultimately the cost) of fraud on payment card transactions than financial institutions. The Federal Reserve (the "Fed") confirms this assertion through the data it collects with respect to debit card transactions. The most recent data the Fed makes available is from 2023, which shows that merchants paid for 49.9% of debit card fraud losses, while financial institutions only covered 28.3% of those losses.[4] In fact, consumers covered 21.8% of the fraud losses—nearly as much as financial institutions.[5] The situation is

[3] CMSPI, "How much interchange was paid on sales tax in the U.S.?" (Feb. 2, 2026) (available at How much interchange was paid on sales tax in the U.S.?) (hereinafter "CMSPI").
[4] Board of Governors of the Federal Reserve System, "2023 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions" (Dec. 2025) (available at Federal Reserve Board Publication).
[5] Id.

similar for credit card transactions, though the Fed does not track that data for credit cards.

Even worse, this fraud liability shift occurs even though merchants pay more than 100% of the average financial institution's fraud losses up front in the form of interchange fees. Under the Fed's regulations, merchants must pay 0.05% of each debit transaction in fees to cover fraud losses that are pegged to 100% of the average regulated financial institution's fraud losses on debit. Financial institutions that are not subject to the Fed's Regulation II, the majority of which are state-chartered banks, charge even higher debit card interchange fees than regulated institutions. The bottom line is that financial institutions' justification for charging a percentage of the entire transaction amount is completely farcical. If anything, the distribution of the cost of fraud losses would justify those financial institutions paying merchants for the amounts of fraud that merchants cover over and above what the financial institutions cover. The IFPA and similar state-level interchange reform measures simply move the payment system closer to a fair equilibrium given that merchants cover more fraud loss than financial institutions.

III. The Proposed Rule Exceeds the FDIC's Statutory Authority Under Section 24(j)

Section 24(j) of the FDI Act was amended by Congress through the Riegle-Neal Amendments Act of 1997, building upon the interstate banking and branching framework established by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal"). Section 24(j) expressly addresses the application of host-State laws to branches of out-of-State State banks and provides that those laws apply to such branches to the same extent they apply to branches of out-of-State national banks.[6] However, the Proposed Rule would materially expand that framework by providing that host-State law should apply not only to branches physically located in a host State, but also to "any services provided in the host State," regardless of whether a bank maintains a physical presence in the host State.[7]

Indeed, the Proposed Rule represents a significant departure from the statutory framework established by Congress. While NACS recognizes Congressional intent to promote competitive parity between state-chartered and national banks, section 24(j) specifically pertains to interstate branches. It does not apply to every service a state-chartered bank may provide remotely across state lines. By extending the statute to any banking services provided beyond state lines, the FDIC would significantly expand the circumstances in which out-of-State State banks could avoid otherwise applicable host-State laws. Nothing in section 24(j) authorizes the FDIC to extend these protections to banks that conduct business in a State without establishing a branch there. If Congress intended section 24(j) to apply to all interstate banking services, it could have written the law accordingly.

The Proposed Rule also raises serious questions about the limits of federal agency authority. In *Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 392, 397-98 (2024)*, the Supreme Court made clear that federal agencies cannot rely on statutory ambiguity to expand their own authority.[8] Instead, courts must decide for themselves whether Congress authorized an

[6] NPRM, p. 3
[7] NPRM, p. 3
[8] NACS comments, "Docket ID NCUA-2026-1189 - NCUA Interim Final Rule on "Preemption—Federal Credit

agency's action. That principle is particularly important when an agency adopts a rule that limits the application of state laws like the Proposed Rule attempts here. In this case, section 24(j) does not authorize the FDIC to extend national-bank parity protections to services provided by state-chartered banks without branches in the host State.

Furthermore, the Proposed Rule threatens the longstanding authority of States to regulate commercial activities within their own borders. States have the right to adopt and enforce laws protecting their residents and businesses in the ways they see fit, including through laws addressing consumer protection, competition, and unfair business practices. Yet the Proposed Rule would interfere with this right by allowing out-of-State State banks to claim preemption from those laws, even when there is no branch or other physical presence in the host State. Allowing federal agencies to broaden the application of statutory protections beyond what Congress authorized would weaken the balance between federal and state powers and create uncertainty about the continued application of state laws. While the FDIC may have regulatory jurisdiction over state-chartered banks, it does not have unlimited authority to decide which state laws apply to them.

Ironically, the Proposed Rule could also create a backwards incentive for state-chartered banks to conduct business and discourage the very branching activity section 24(j) was written to address. Under the Proposed Rule, a bank would receive protections from host-State laws without establishing a physical branch in that State. As a result, banks could have less incentive to establish branches if they can obtain those protections simply by providing services remotely and across state borders. This outcome makes little sense given that section 24(j) specifically pertains to interstate branching. Rather than preserving the distinction Congress established, the Proposed Rule would effectively make the existence of a branch irrelevant to the application of the statute's protections.

NACS recognizes that banking has changed significantly since Congress enacted Riegle-Neal. Online banking, electronic payments, and other developments have made it easier for banks to provide services across state lines without establishing physical branches. However, these changes themselves do not give the FDIC authority to expand the application of federal statutory protections beyond what Congress has authorized. Nor should it allow the agency to decide that the goal of nationwide banking uniformity outweighs the ability of individual States to regulate commercial activities within their borders.

Ultimately, the question is not whether modern banking practices justify reconsidering the interstate banking framework, but whether Congress authorized the FDIC to make that change on its own. It did not. If Congress feels it should expand section 24(j) to apply more broadly to modern banking activities, it can amend the law to do so. Until then, the FDIC must follow the statute as written, respect the authority of States to regulate businesses operating within their borders, and withdraw the Proposed Rule.

IV. The Proposed Rule Improperly Relies on Flawed National-Bank Preemption Determinations

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Union Non-Interest Charges and Fees" at p. 114 (July 8, 2026) (available at https://www.regulations.gov/document/NCUA-2026-1189-0001/comment?filter=nacs)

While the FDIC notes that its Proposed Rule "would not constitute a determination by the FDIC that any particular host State law is preempted by Federal law,"[9] it nonetheless appears to seek the same goal as the interim final rules issued by the Office of the Comptroller of the Currency (OCC) and the National Credit Union Administration (NCUA) by exempting the financial institutions it regulates from being covered by the Illinois Interchange Fee Prohibition Act (IFPA) or other similar interchange fee reform laws. Not only is the Proposed Rule simply bad policy, but it is also deeply reliant on flawed national-bank preemption determinations that are currently being challenged in court.[10]

In mid-November, NACS, along with a number of other merchant trade associations, filed a pair of lawsuits challenging actions taken by the OCC[11] and the NCUA[12] earlier this year that try to block Illinois' first-in-the-nation law banning credit and debit card swipe fees on sales tax and tips from taking effect. Specifically, the complaints allege that both agencies exceeded their statutory authority, failed to follow various required rulemaking procedures, and did not adequately address arguments and information bearing on the IFPA, including that the fees at issue are set centrally by payment networks rather than competitively by individual banks or credit unions.

The complaints alleged in both lawsuits can be applied to the FDIC's Proposed Rule as well. First, NACS is concerned that the Proposed Rule further codifies a broken U.S. payments system. Today, Visa and Mastercard price-fix interchange fees on behalf of the thousands of financial institutions that issue cards over their respective networks, including state-chartered banks. As NACS explained in its comments to the OCC and NCUA, rather than requiring issuing institutions to compete by establishing lower interchange rates, this structure insulates issuers from competition.[13] The "honor all cards" rules further entrenches small business retailers into a take-it-or-leave-it position with no ability to negotiate the cost of these exorbitant fees that averaged 2.36% per transaction in 2025.[14] Allowing a third party like Visa or Mastercard to centrally establish prices on behalf of thousands of federally- and state-chartered institutions all but eliminates any type of competition in the marketplace, and NACS has repeatedly warned the OCC and NCUA against using banking regulation to insulate those arrangements from state law. The FDIC should not compound that mistake by making those disputed determinations applicable to thousands of state banks through an expansive interpretation of section 24(j).

Furthermore, the Proposed Rule relies upon the idea that the same law applying to

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[9] NPRM, p. 4

[10] "NACS Joins Merchant Groups' Suit Challenging 'Collusive' Card Fees" press release, available at https://www.convenience.org/stay-current/news/2026/november/13/nacs-joins-merchant-groups%E2%80%99-suit-challenging-%E2%80%98collusive%E2%80%99-card-fees

[11] "NACS et al. v. OCC Court Complaint" (available at https://www.merchantspaymentscoalition.com/sites/default/files/2026-11/OCC-Complaint-Filed-2026-11-12.pdf)

[12] NACS et al. v. NCUA Court Complaint" (available at https://www.merchantspaymentscoalition.com/sites/default/files/2026-11/NCUA-Complaint-Filed-2026-11-12.pdf)

[13] NACS comments, "Docket ID OCC-2026-0430 - OCC Interim Final Rule on "National Bank Non-Interest Charges and Fees" and Docket ID OCC-2026-0431 - OCC Interim Final Order on "Order Preempting the Illinois Interchange Fee Prohibition Act"" (May 29, 2026) (available at https://www.regulations.gov/comment/OCC-2026-0430-0131)

[14] Nilson Report, Issue 1303, March 2026, p. 10

national banks would determine whether a state law is applicable to an out-of-state state bank. This means that national-bank preemption decisions made by the OCC would have a direct downstream impact on a much larger universe of state-chartered banks that it does not regulate. If the Proposed Rule were to take effect, any OCC determination that renders a host-state law inapplicable to national banks would therefore automatically extend to all state-chartered banks by default, including institutions with no branch in the State whatsoever. This ultimately could eliminate the need for the FDIC to decide for itself whether a host-state law applies to a state-chartered bank ever again, which seems contrary to the very purpose of section 24(j) and would have a drastic and unintended impact upon FDIC's regulatory jurisdiction.

V. The Proposed Rule's Regulatory Flexibility Act Analysis is Insufficient

In addition to the problematic substance of the Proposed Rule, it also fails to meet several regulatory requirements. The Regulatory Flexibility Act ("RFA"), as amended by the SBREFA, requires agencies like the FDIC to determine, to the extent feasible, a rule's economic impact on small business entities, explore regulatory options for reducing any significant economic impacts on a substantial number of such entities, and explain its ultimate choice of regulatory approach. But the Proposed Rule falls short of meeting these RFA obligations.

While the FDIC at the very least provided a notice and comment period and appears to have conducted an initial RFA analysis in its Proposed Rule, that analysis focuses overwhelmingly on the impact on small financial institutions rather than the downstream consequences of eliminating protections for small business merchants. We'd also note that the analysis focuses heavily on the IFPA despite the agency's claim that its Proposed Rule was not issued in response to one particular state law. Nonetheless, the Proposed Rule does not sufficiently analyze the economic impact on small businesses even though the potential economic harm to those businesses is substantial. In the case of the IFPA, this harm amounts to more than $550 million annually on sales taxes alone.[15] Additionally, there is no formal or informal analysis of the adverse economic impacts to small businesses, no SBREFA screening analysis, and no recommendation from a Small Business Advocacy Review Panel. The impacts on businesses in our industry and throughout the retail sector, the vast majority of which are small businesses, are far from inconsequential. Prior to implementing any rule on this subject, the FDIC must engage a more thorough review of adverse effects to small businesses like our members consistent with its charge under the SBREFA.

VI. The Proposed Rule Does Not Apply to State Laws Governing Non-Bank Entities Like Payment Card Networks

The goal of preserving state-national bank parity that the FDIC purports to achieve within the Proposed Rule is also irrelevant within the context of host-state laws like the IFPA because the IFPA only applies to interchange fees centrally set by credit card networks like Visa and Mastercard. Those two companies are not state-chartered banks, and section 24(j) clearly does not apply to non-bank entities like Visa and Mastercard. Because of the price-setting role that those two companies play in credit and debit card transactions, those transactions (at least as long as fees are centrally set) are subject to state regulation. The FDIC's parity principle does not

[15] CMSPI

apply to affiliates or agents of state-chartered banks, and it certainly does not apply to third parties that contract with state-chartered banks like Visa and Mastercard.

With that in mind, the Proposed Rule does not and cannot preempt host-state laws that apply to credit card networks like Visa and Mastercard. The IFPA remains valid with respect to those two companies even if the Proposed Rule were to become final, meaning that the IFPA will be effective with respect to all card transactions conducted with those brands as long as the law applies to Visa and Mastercard – which it does even by the terms of the Proposed Rule. Indeed, this same principle applies to all card transactions that have interchange fees centrally set by Visa and Mastercard under the Interim Final Rules issued by the OCC and NCUA as well.

VII. Conclusion

Federal banking law should not and does not automatically preempt every state law that affects a bank. Congress has established specific circumstances where federal law takes precedence—including the National Bank Act, Federal Credit Union Act, and the Federal Deposit Insurance Act—but it has not given federal banking regulators unlimited authority to override all state laws. This is particularly true with respect to host-state laws like the IFPA that govern the activities of non-banking entities like Visa and Mastercard. The FDIC should not expand the reach of contested national-bank preemption decisions without clear Congressional authorization, nor should it follow in the footsteps of the OCC and NCUA in acting as an advocate for the very entities it is supposed to regulate rather than fulfilling its responsibilities to faithfully execute and administer the law.

In sum, section 24(j) does not authorize the FDIC to extend national-bank parity to services state banks provide remotely, to apply contested OCC and NCUA preemption determinations to thousands of state-chartered banks, or to reach laws like the IFPA that govern fees set by non-bank networks such as Visa and Mastercard. For these reasons, NACS respectfully urges the FDIC to withdraw the Proposed Rule and leave any change to this framework to Congress.

Sincerely,



Brennan Duckett
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NACS