November 23, 2026

Jennifer M. Jones
Deputy Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Response to Notice of Proposed Rulemaking on State Bank Parity—RIN 3064-AG 34

Dear Ms. Jones,

On behalf of the American Fintech Council (AFC),[1] I submit this comment letter in response to the Federal Deposit Insurance Corporation's (FDIC) Notice of Proposed Rulemaking concerning State Bank Parity (Proposed Rule).[2] AFC appreciates the FDIC's efforts to address a consequential disparity in the treatment of interstate banking activities and to provide greater certainty for State-chartered institutions that serve customers beyond their chartering States without maintaining physical branches in every jurisdiction. An appropriately calibrated final rule would reinforce the dual banking system, preserve meaningful charter choice, and reduce impediments to responsible financial innovation.

AFC is a standards-based organization and the largest and most diverse trade association representing financial technology companies and innovative banks. On behalf of more than 150 member companies and partners, AFC promotes a transparent, inclusive, and customer-centric financial system by supporting responsible innovation in financial services and encouraging sound public policy. AFC's membership includes innovative banks, payments providers, lending platforms, and technology companies that facilitate access to financial services through nationwide digital channels and responsible bank-fintech partnerships. These institutions possess firsthand experience with the operational and regulatory consequences of applying geographically fragmented requirements to financial activities conducted through integrated, multistate infrastructure.

Congress's commitment to competitive parity between State-chartered and national banks should not be upended by the evolution of modern banking services and the increasing prevalence of digital delivery channels. Accordingly, the final rule should establish a clear and legally sound framework that recognizes the realities of branchless banking while providing institutions with greater certainty regarding the application of host State laws. AFC therefore encourages the FDIC to preserve meaningful parity protections for State-chartered banks operating across State

[1] American Fintech Council's (AFC) membership spans banks, non-bank lenders, payments providers, EWA providers, loan servicers, credit bureaus, and personal financial management companies.
[2] Federal Deposit Insurance Corporation, "State Bank Parity," *Federal Register* 91, no. 182 (September 22, 2026): 60018–60026.

lines, clarify the geographic and operational scope of those protections, and establish a consistent regulatory framework that promotes responsible financial innovation without imposing unnecessary competitive disadvantages on State-chartered institutions.

I. AFC Supports Extending Interstate Parity to Branchless Banking Activities to Preserve Charter Choice and Nationwide Access to Financial Services

The legal treatment of a banking function should not turn on whether a customer completes it at a branch counter or through a secure digital interface. An insured State bank may receive deposits electronically, make credit decisions, originate loans, facilitate card payments, and provide account access across State lines while maintaining its operations, personnel, and supervisory relationships principally in its chartering State. Conditioning parity on a physical presence in each jurisdiction where a customer or merchant happens to be located would privilege one delivery channel over another, without necessarily advancing safety and soundness or meaningful consumer protection.

That distinction has substantial competitive implications. A branchless State bank may serve the same customer, offer the same product, and perform the same underlying banking function as a national bank, yet confront a materially different set of host-State restrictions simply because of its charter. Requiring the State bank to establish nominal branches to obtain comparable treatment would entail additional licensing, facilities, staffing, and supervisory costs that bear little relationship to the risk of the underlying activity. In some cases, the resulting uncertainty could discourage a bank from serving a particular market altogether. The final rule should make clear that the availability of interstate parity does not depend on the construction of a physical branch where the relevant function is lawfully conducted through remote channels.

The point is especially consequential for payment services. In a single card transaction, the cardholder, merchant, issuing bank, acquiring bank, processor, and payment network may have connections to different States. The bank's authorization, account-debiting, acquiring, merchant acceptance, settlement, and fee-related functions do not become exclusively local activities merely because the merchant is situated in one jurisdiction. A regime that treats each merchant location as sufficient to impose distinct operational mandates on a State bank could compel changes to nationally integrated payment systems and create inconsistent outcomes for equivalent transactions. The Illinois Interchange Fee Prohibition Act litigation illustrates why uncertainty concerning branchless State banks is not merely theoretical, even though the scope of relief available to those banks remains contested.[3]

The same principle should extend to deposits and lending delivered through digital channels. For example, a "State bank" that maintains deposit accounts and controls the associated banking functions should not lose parity because a customer accesses the account through a mobile application supplied by a contracted technology provider. Likewise, the presence of an online application interface or a third-party program manager in another State should not, standing alone, determine the law governing banking activities undertaken by an insured State bank. The operative inquiry should concern the function performed by the bank and the legal basis for

[3] See Federal Deposit Insurance Corporation, "State Bank Parity," 91 Fed. Reg. at 60019–60020 (discussing *Illinois Bankers Ass'n v. Raoul* and the unresolved scope of branchless State-bank coverage).

attributing that function to the bank, rather than the location of a website, device, or intermediary.

Consistent with this approach, AFC requests express confirmation that the final rule applies to insured State industrial banks and industrial loan companies within the applicable statutory definition of a "State bank." The final rule's treatment of digital lending should encompass bank-originated closed-end installment credit offered through merchant checkouts, mobile applications, and other technology platforms. Eligibility for parity should not depend on whether the customer accesses the bank's product directly or through an appropriately overseen partner.

The bank parity issues identified above have explicit application to New York's recently enacted Buy Now, Pay Later (BNPL) statutory framework. New York's BNPL statutory framework illustrates that charter-based disparities extend beyond payment services. New York Banking Law Section 736(5) expressly includes national banks within the definition of an "exempt organization," while omitting State-chartered banks. Section 737 consequently provides a licensing exemption for national banks while subjecting other covered institutions to licensing or authorization requirements.[4] Thus, under the law, an out-of-State State bank offering the same installment credit through digital channels should not face an additional host State permission requirement solely because it holds a State rather than a national charter. Due to this outcome, out of State State banks experience an explicit disparity to their nationally chartered counterparts, as well as a commensurate competitive disadvantage within the market.

AFC therefore requests confirmation that Section 24(j) parity encompasses circumstances in which the host State's own law expressly exempts national banks, as well as circumstances in which federal law preempts a requirement's application to national banks. In particular, the final rule should clarify that a host State may not condition an out-of-State State bank's provision of covered lending services on a license, authorization, or product-specific approval from which a comparable out-of-State national bank is exempt, regardless of whether the State bank maintains a branch in that State. The agency should address New York's BNPL licensing and authorization framework as an illustrative application.

AFC recognizes that the statutory text presents a question the final rule must address forthrightly. Section 24(j) expressly refers to branches, while the incorporated definition of a host State likewise refers to the maintenance or establishment of a branch. The FDIC should therefore explain how its interpretation gives effect to those provisions while implementing Congress's objective of parity in the contemporary banking environment. This explanation should identify the relevant statutory authority, rather than rely exclusively on the desirability of uniform treatment. It should also address the FDIC's unfinalized 2005 proposal and explain why that proposal's narrower approach does not govern the present circumstances.[5] Such specificity is particularly important following the Supreme Court's decision in *Loper Bright*, which requires reviewing courts to exercise independent judgment in interpreting statutory provisions rather than defer to an agency's interpretation solely because the statute is ambiguous.[6] The structure of the statute provides further support for this interpretation. Congress limited the application of

[4] N.Y. Banking Law §§ 736(5), 737(1)–(2).
[5] Federal Deposit Insurance Corporation, "Interstate Banking; Federal Interest Rate Authority," 70 Fed. Reg. 60019 (proposed October 14, 2005).
[6] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394–96, 412–13 (2024).

host State law even where an out-of-State bank maintains a physical branch in that State. A reading that affords the host State greater authority over a bank that maintains only a digital presence in that State would invert that legislative judgment.

To the extent the FDIC concludes that an alternative formulation would more securely implement Section 24(j), AFC recommends an approach that does not depend on redefining "host State," a term Section 24(j) defines by cross-reference to Section 44, rather than categorically excluding branchless banks. Specifically, the FDIC could leave § 331.2 unchanged and provide in § 331.3 that the laws of a State other than a State bank's home State apply to services the bank provides there without a branch to the same extent those laws apply to an out-of-State national bank. The services covered should include deposit-taking, lending, account administration, and the bank's own payment and settlement activities, while allowing additional functions to qualify on a reasoned, activity-specific basis. Remote services should not be treated as the equivalent of a branch for any other statutory or regulatory purpose. The agency should avoid an exhaustive list that would quickly become obsolete or inadvertently exclude integral components of lawful banking services. Above all, any refinement should preserve the proposal's central purpose: a State bank should not be placed at a competitive disadvantage solely because it operates without an interstate physical branch network.

II. AFC Supports Clear, Activity-Specific Standards for Applying Host-State Law to Promote Predictability Without Displacing Legitimate State Protections

A useful parity rule should enable a bank to determine which State's law governs a particular activity before a dispute arises. The phrase "provides services," without further explanation, leaves important questions unresolved for institutions whose products are accessible nationwide and whose operations span numerous jurisdictions. The final rule should distinguish between a bank's deliberate provision of an identified service in a State and incidental geographic contacts, including a customer's temporary travel, the mere accessibility of a website, or the routing of a transaction through a processor located elsewhere. None of those facts should independently establish that every component of the bank's operations is conducted in that State.

Rather than adopt a single geographic test for dissimilar activities, the FDIC should provide nonexclusive, function-specific indicia. For deposit services, relevant considerations may include the bank maintaining the deposit liability, exercising control over the account, and performing the underlying account function. For lending, the FDIC should distinguish the identification of services provided in a host State for purposes of Section 24(j) from questions concerning lender identity, the location where a loan is made, or the interest permissible under Section 27. The location of a service provider's personnel, underwriting technology, records, or processing infrastructure should not, standing alone, determine the availability of Section 24(j) parity. Moreover, the geographic location of loan records should not serve as an independent criterion for identifying the lender, particularly where records are maintained through cloud-based infrastructure or their location changes following the transfer or servicing of a loan.

For card transactions, appropriate factors may include the particular bank function being regulated, such as issuance, acquiring, merchant acceptance, authorization, settlement, or fee assessment, rather than automatically assigning all related activities to the merchant's location.

For acquiring activities, the relevant functions include merchant acceptance and the banking functions that support it, and those functions should be analyzed in the same manner as issuing functions. These indicia should inform the analysis without displacing controlling statutory requirements or turning any single technical processing location into a dispositive rule. To provide institutions with sufficient certainty in structuring their operations, AFC recommends that the FDIC incorporate these indicia and the aforementioned incidental contact exclusions into the regulatory text or expressly articulate them in the preamble to the final rule, rather than defer their clarification to subsequent guidance.

The application of interstate parity protections should be determined by reference to the particular host State law and the corresponding banking activity, ensuring that State-chartered institutions receive treatment equivalent to that afforded to national banks performing the same functions. Under the Supreme Court's decision in *Cantero*, determining whether a State law is preempted under the applicable National Bank Act standard requires consideration of whether that law prevents or significantly interferes with a national bank's exercise of its federally authorized powers, informed by relevant judicial precedent.[7]Where a host State law is inapplicable to an out-of-State national bank, whether by operation of an express statutory exemption or federal preemption, the final rule should ensure that a comparable out-of-State State bank receives equivalent protection when performing the same banking function, regardless of whether it operates through a physical branch or digital delivery channels.. Practical guidance illustrating the application of these parity protections across different banking activities would further promote regulatory certainty, particularly in the context of nationwide digital banking, lending, and payment services.

A workable final rule should also identify the authorities on which institutions may reasonably rely when conducting that analysis, including controlling judicial decisions, applicable federal statutes, and valid agency determinations. Where the legal treatment of a host-State law remains unsettled, the FDIC should permit institutions to maintain a documented, good-faith legal analysis without creating a new transaction-by-transaction reporting regime. Any such documented analysis should be retained by the institution and made available to its examiners as part of the existing supervisory process. The agency should make available interpretive examples addressing recurring questions, including interstate payment processing and bank services delivered through contracted technology platforms. Such guidance would strengthen supervisory consistency without suggesting that informal interpretations can override statutory standards or bind courts.

The U.S. banking system has changed significantly since the time that the provisions of Section 24(j) were chaptered, and the FDIC must recognize this fact through its regulatory efforts. In the modern banking system, bank-fintech partnerships have become increasingly important business models and often function as a *de facto* bank branch for consumers using products and services offered through these partnerships. The principles discussed above are particularly important for responsible bank-fintech partnerships. A bank does not cease performing a banking activity merely because it uses a service provider, whether an affiliated or an unaffiliated third party, to supply software, process transactions, or interface with customers. . The final rule should recognize that functions legally attributable to the bank may be performed through appropriate

[7] Cantero v. Bank of America, N.A., 602 U.S. 205, 213–21 (2024); see also 12 U.S.C. § 25b(b)(1).

third-party arrangements, provided the bank retains the requisite authority, oversight, and responsibility. Further, it should be recognized that this arrangement does not diminish the standing of the bank as the controlling entity for the products and services offered or facilitated through a fintech company, whether they be in the form of lending, deposit taking, payments, or some other banking activity. Existing interagency guidance makes clear that reliance on third parties does not diminish a banking organization's responsibility for compliance and sound risk management.[8]

Equally, the final rule should not automatically extend a bank's parity protections to a nonbank for activities the nonbank conducts on its own account. At the same time, parity should govern how a host State law is applied, not only to whom it is applied. Where a service provider performs a function on the bank's behalf and under the bank's control, a host State should not be able to use requirements directed at the provider to restrict the bank's own product or service in a manner that it could not restrict a comparable national bank's product or service delivered through an equivalent arrangement. Distinguishing the bank's functions from those of its partners would preserve legitimate partnerships while leaving in place the requirements that apply to a nonbank's own activities.

AFC's view is that the Proposed Rule leaves the interest rate provisions, including Section 27 of the Federal Deposit Insurance Act and its implementing regulations, unaffected, and the final rule should state that expressly. Preserving clarity concerning the distinct statutory authorities governing interstate banking activities and State bank lending practices is particularly important given the FDIC's request for feedback on whether modifications to the Proposed Rule are necessary to better reflect the continued application of existing interest rate provisions. AFC recommends two refinements to the regulatory text to reinforce that distinction.

First, the FDIC proposes to expand the definition of "host State" in § 331.2, which applies to all of Part 331. Should the FDIC retain its proposed expansion of that definition rather than adopt the alternative regulatory formulation discussed in Section I of this letter, the agency should expressly limit the expanded definition to § 331.3 so that it has no bearing on the interest rate provisions of § 331.4. Secondly, the text of § 331.3, and not only the preamble, should state that a determination that a State bank provides services in a State is made solely for purposes of that section. The provision should further clarify that § 331.3 does not alter the standards governing where a State bank is located or where a loan is made for purposes of Section 27, § 331.4, or Section 525 of the Depository Institutions Deregulation and Monetary Control Act (DIDMCA), nor does it modify existing legal standards governing the identification of lenders. The provision of services in another State without establishing a branch should not, by virtue of this rulemaking, alter the location of a State bank for purposes of Section 27. Though the Proposed Rule notes that Section 27 is beyond the scope of this rulemaking, AFC encourages the FDIC, through appropriate future regulatory engagement, to apply the same functional, technology-neutral reasoning underlying its proposed interpretation of Section 24(j) to its consideration of Section 27, ensuring that interstate lending authority reflects the realities of modern banking and the provision of financial services across State lines. In so doing, FDIC would ensure alignment with the perspectives discussed by its chairman with regards to this and future rulemakings to

[8] Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Office of the Comptroller of the Currency, "Interagency Guidance on Third-Party Relationships: Risk Management," 88 Fed. Reg. 37920 (June 9, 2023).

adapt the U.S. regulatory structure to the modern banking system.[9] Further, such engagement would provide greater clarity concerning the treatment of lending activities conducted through responsible bank-fintech partnerships, particularly where uncertainty regarding the respective roles of banks and their third-party service providers may create unnecessary legal and operational challenges.

The preservation of interstate parity should not be mistaken for the wholesale displacement of State law. Generally applicable obligations concerning contracts, property, taxes, debt collection, data security, breach notification, or other matters may remain enforceable depending on the law, the relevant bank power, and the governing preemption analysis. The final rule should preserve the application and enforcement of nonpreempted State laws, including consumer protection and fair lending requirements, while preventing host States from imposing restrictions that would not apply to a comparable national bank. State data security and breach notification laws illustrate this distinction, as AFC members currently comply with applicable requirements across the States in which they operate, and nothing in the final rule should disturb the application of such requirements where they are not otherwise preempted. Separating these questions would reduce litigation risk and make the rule more useful in day-to-day compliance. AFC also encourages the FDIC to include a severability provision preserving the branch-based framework and any independently valid applications of the final rule should a particular application to branchless services be successfully challenged.

Finally, the allocation of governing law under Section 24(j) should not be conflated with a reduction in supervisory oversight. State-chartered banks remain subject to examination and supervision by their home State regulators and applicable federal banking regulators, including the FDIC where it serves as the appropriate federal banking agency. These institutions likewise remain subject to applicable interagency third-party risk management expectations and retain responsibility for banking functions performed through their partners. Extending parity to branchless banking activities changes the framework for determining which State's law governs a particular activity without diminishing the supervisory oversight of, or accountability imposed upon, the institution performing it.

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AFC appreciates the FDIC's efforts to address the competitive disparities facing State-chartered banks that provide financial services across State lines without maintaining physical branches. The final rule should ensure that interstate parity protections reflect the realities of modern banking while establishing a clear and legally sound framework for determining the application of host State laws.In particular, the FDIC should preserve meaningful protections for branchless banking activities, including those conducted through responsible bank-fintech partnerships, provide greater clarity regarding the geographic and operational scope of those protections, and ensure that State-chartered banks receive treatment comparable to national banks performing equivalent banking functions. In doing so, the FDIC should preserve existing statutory authorities governing interstate lending, maintain appropriate supervisory oversight, and respect the continued application of nonpreempted State laws.

[9] Travis Hill, "Statement by Chairman Travis Hill on the Proposed Rule Regarding State Bank Parity," Federal Deposit Insurance Corporation, September 17, 2026, https://www.fdic.gov/news/speeches/2026/statement-chairman-travis-hill-proposed-rule-regarding-state-bank-parity.

These refinements would strengthen the legal durability and practical effectiveness of the final rule, reduce unnecessary regulatory fragmentation, and reinforce the viability of State charters within the dual banking system. AFC welcomes continued engagement with the FDIC and stands ready to serve as a resource as the agency considers next steps in this rulemaking.

Sincerely,



Ian P. Moloney
Chief Policy Officer
American Fintech Council