



## Parity Should Not Depend on a Branch

*The FDIC's State Bank Parity proposal would put state-chartered banks on national banks' footing wherever they serve customers; by the agency's figures, Illinois's interchange law would cost those banks \$308 million to move \$2.28 million a year to merchants.*

3,185

STATE BANKS THE FDIC SAYS  
ILLINOIS'S INTERCHANGE LAW MAY  
REACH<sup>1</sup>

\$308M

ONE-TIME SYSTEM UPGRADES THE  
LAW WOULD FORCE ON THOSE  
BANKS<sup>1</sup>

\$2.28M

INTERCHANGE ON TAX AND TIPS  
THE LAW WOULD SHIFT TO  
MERCHANTS EACH YEAR<sup>1</sup>

### THE ISSUE

Since 1994, federal law has said that a host state's laws apply to a branch of an out-of-state state bank only to the extent they apply to a branch of an out-of-state national bank.<sup>2</sup> Congress wrote that rule, section 24(j) of the Federal Deposit Insurance Act, for an era of branches, and amended it in 1997 with the stated aim of reestablishing parity<sup>1</sup> between interstate state banks and interstate national banks. The text says nothing about a bank that serves another state's customers online, by card or by mail, with no branch there at all. A state bank that wants the protection the statute promises has had one sure way to get it: open a branch, which a national bank need not do.<sup>1</sup>

Illinois has shown what that silence costs. Its Interchange Fee Prohibition Act bars card interchange on the sales tax and gratuity portions of a transaction and carries a civil penalty of \$1,000 per electronic payment transaction.<sup>3</sup> Banks sued. The Illinois Attorney General argued that section 24(j) protects only state bank branches "physically located" in Illinois,<sup>1</sup> so that a state

bank doing business there without one would face the law on its own. After the Comptroller of the Currency confirmed in April 2026 that national banks' power to charge fees includes collecting interchange,<sup>4</sup> a federal court on June 1, 2026, permanently barred Illinois from enforcing the prohibition against national banks, federal savings associations, card networks and out-of-state banks subject to the federal parity provision.<sup>5</sup> The law's effective date has since been pushed to July 1, 2027.<sup>6</sup> A state bank with no Illinois branch is left to guess whether the injunction covers it.

On September 22, 2026, the FDIC proposed to end the guessing. Its State Bank Parity rule would define a host state as one where a state bank maintains a branch or provides services,<sup>1</sup> and would apply host-state law to those services only as far as it applies to an out-of-state national bank's; where the host state's law does not apply, the home state's does.<sup>1</sup> The agency is careful about what the rule is not. It would not determine<sup>1</sup> that any host-state law is preempted; it settles only which state's

law governs a state bank's services, a question national banks already have answered. It leaves the interest rate rules of section 27 of the Act untouched.<sup>1</sup> And it sets aside a narrower proposal the FDIC floated in 2005, limited to interstate branches, which was never finalized<sup>1</sup> and which the agency now says cannot be squared with the statute's structure in an era when customers are served without branches.

The FDIC's own analysis shows the stakes. Of 3,449 state-chartered banks, the agency counts 3,185 that the Illinois law may reach<sup>1</sup> when it takes effect, among them 2,236 small banks with \$850 million or less in assets.<sup>1</sup> The 235 banks headquartered in Illinois, and 29 others with an Illinois branch, are subject to the law under either reading;<sup>1</sup> it is the rest, serving Illinois customers from elsewhere, whose exposure the proposal would settle. Of the affected banks, 111 are acquirers and 3,183 are issuers<sup>1</sup> of cards, and a bank may be both.

Complying with the Illinois law would mean rebuilding payment systems to split tax and tips out of every card transaction. Drawing on declarations filed in the litigation, the FDIC puts the one-time upgrade at \$16 million for an acquirer<sup>1</sup> that runs its own systems and \$8 million for one that partly does, and at \$25 million and \$12.5 million for issuers in the same positions; an issuer that outsources its systems would pay \$45,000<sup>1</sup> if it offers credit and debit cards and \$22,500 if it offers debit alone. Only 3 acquirers fully run their own systems and 5 partly do; 103 outsource.<sup>1</sup> Of the issuers, 516 offer both kinds of card and 2,667 offer only debit.<sup>1</sup> Summed across the affected banks, the upgrades come to about \$308 million.<sup>1</sup>

The work does not end with the upgrade. One large acquirer told the court that manually documenting the tax on each transaction would cost it up to \$50 million a year,<sup>1</sup> about 2.1 cents for every \$1,000 of card sales; applied to the \$305.4 billion in 2025 credit card sales of all 111 acquirers, that is about \$6.4 million a year.<sup>1</sup> A large issuer said it would need at least 100 analysts; scaled to the \$12.5 billion in credit card balances the affected issuers held in December 2025, the issuers' share is about \$261,000.<sup>1</sup> Together the recurring cost is about \$6.7 million a year.<sup>1</sup> Spread over five years at a 7% discount

rate, the one-time and recurring costs the rule would spare state banks come to about \$77 million a year.<sup>1</sup>

Against that stands the sum the law would move. The FDIC estimates that the affected banks' cardholders make about \$1.78 billion<sup>1</sup> in credit card purchases in Illinois each year. At the state's 6.25% sales tax and a 2% interchange rate, the interchange on the tax portion is about \$2.22 million a year.<sup>1</sup> Debit purchases, at a 0.05% interchange rate, add about \$45,000;<sup>1</sup> interchange on card-paid tips adds about \$21,000 on credit and \$437 on debit.<sup>1</sup> The total is about \$2.28 million a year,<sup>1</sup> or about \$713<sup>1</sup> for each affected bank. Merchants would keep that sum; banks would spend \$308 million to let them, as Figure 1 shows. By SPPI's arithmetic, the one-time cost alone is 135 times the annual transfer.

Small banks bear the burden in proportion. None of the 42 small acquirers or 2,234 small issuers run their own payment systems, so each faces the \$45,000 or \$22,500 upgrade.<sup>1</sup> Their recurring costs are modest, about \$2,535<sup>1</sup> a year for each small acquirer and less than a dollar for each small issuer, which is one reason the FDIC presents the rule as deregulatory<sup>1</sup> under Executive Order 14192.

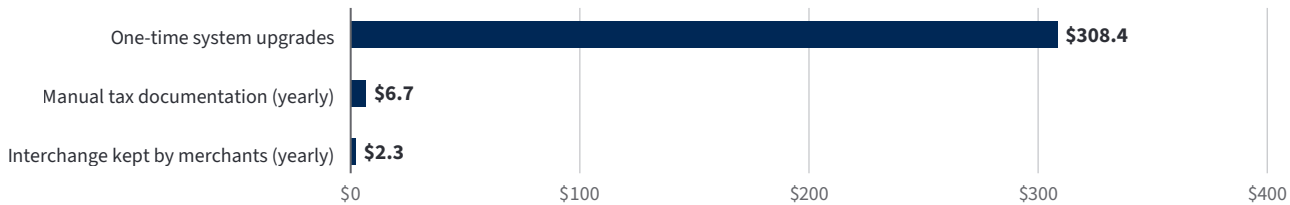
The FDIC's questions to commenters are narrow. It asks whether there are other ways<sup>1</sup> to reach the same end, whether the rule would disturb any settled application of a particular kind of host-state law to out-of-state state banks, whether it should say more plainly that section 27 and the interest rate provisions of part 331 are unaffected, and whether it has missed any effect on small entities. None of the questions reopens the premise, which is that a state bank should not have to build a branch to get what a national bank gets without one. Comments are due November 23, 2026,<sup>1</sup> by email to the FDIC with the rule's identifier, RIN 3064-AG34, in the subject line.

Illinois will not be the last. Eleven other states have begun pursuing similar laws.<sup>5</sup> Arizona is among the states that have taken an interest, and Colorado's legislature passed a bill in May 2026 before the governor vetoed it.<sup>6</sup> Alabama took a different route, excluding card transaction fees from its sales tax base rather than regulating interchange.<sup>6</sup> Every such bill puts the same question to state-chartered banks in every other state, and the FDIC's proposal is the only pending measure that would answer it once.

# WHAT WE RECOMMEND

- 1. **The FDIC should finalize the rule as proposed.** Adopting the revised 12 C.F.R. §§ 331.2 and 331.3 would make parity turn on where a bank does business rather than where it keeps a branch, which is what the 1997 amendments sought.<sup>1</sup> The agency should resist suggestions that it carve out particular kinds of host-state law: the statute already lists consumer protection and fair lending among the laws it governs, and the rule decides only whose law applies, not whether any law is preempted.
- 2. **Southwestern legislatures should set Illinois-style interchange bills aside.** A law that costs state-chartered banks \$308 million to redirect \$2.28 million a year is not a consumer protection, and the FDIC's figures should be read into the record of any such bill in Arizona or New Mexico. A state that wants to spare merchants the tax portion of interchange has Alabama's route, which touches its own tax base and no bank's payment system.
- 3. **State bank regulators in the Southwest should file comments.** The FDIC has asked whether the rule would disturb any settled application of host-state law; the regulators who charter and examine the region's state banks are best placed to say so by November 23, 2026, and to say what the charter is worth if parity turns on a branch.
- 4. **Congress should write the parity into the statute.** Amending section 24(j) of the Federal Deposit Insurance Act to cover branches or services would keep the rule from depending on an FDIC board's discretion, as the narrower rule the agency proposed in 2005 and never finalized<sup>1</sup> shows it does.

**FIGURE 1** FDIC estimates of what the Illinois interchange law would cost affected state banks, and what it would shift to merchants (\$ millions)



From FDIC (2026), *State Bank Parity*, Section V. Estimates for the 3,185 state-chartered banks the agency counts as affected, assuming the Illinois Interchange Fee Prohibition Act applies to them from July 2027. The upgrade cost is one-time; the other two recur each year.

# SOURCES

- 1. Federal Deposit Insurance Corporation (2026). *State Bank Parity. Proposed rule, RIN 3064-AG34, 91 Fed. Reg. 60018 (September 22, 2026).*
- 2. Federal Deposit Insurance Act § 24(j), 12 U.S.C. § 1831a(j).
- 3. *Interchange Fee Prohibition Act, 815 ILCS 151/150-1 et seq.*
- 4. Office of the Comptroller of the Currency (2026). *National Bank Non-Interest Charges and Fees. Interim final rule, Docket ID OCC-2026-0430, 91 Fed. Reg. 22989 (April 29, 2026).*
- 5. *Illinois Bankers Association v. Raoul, No. 24 C 7307 (N.D. Ill. June 1, 2026), memorandum opinion and order on remand.*
- 6. *Avalara (2026). States Ban Swipe Fees on Taxes and Fees. August 18, 2026.*

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202.505.1769 | [info@southwestpolicy.com](mailto:info@southwestpolicy.com) | Post Office Box 320035, Alexandria, VA 22320

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