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What to Know About the FDIC's Proposed State Bank Parity Rule

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In response to the competitive disadvantages facing state banks because of recent state law developments, the Federal Deposit Insurance Corporation (FDIC) has proposed revisions to an existing FDIC regulation that provide laws in other states (i.e., a “host state”) apply to an out-of-state state bank to the same extent the laws of the host state apply to an out-of-state national bank. Currently, the FDIC parity regulation applies only if the out-of-state state bank has a branch in the host state and gives parity to out-of-state national banks with a branch in the same state. The proposed rule explains that if a host state law is inapplicable, the laws of the out-of-state state bank’s home state govern.

Here is what banks and their partners should know about the FDIC’s proposal:

The proposed rule is based on an interpretation of Section 24(j) of the FDI Act, which gives out-of-state state banks parity with national banks only if the state bank has a branch in the host state. Section 24(j) was enacted in the early 1990s as part of the Riegle-Neal Act. The FDIC observed that Section 24(j) does not explicitly address the application of host state laws when out-of-state state banks provide services in a host state without a branch in the state. The proposed rule is intended to address the statutory silence. According to the FDIC, the proposed rule reflects how bank services are offered today and is consistent with “the structure and purpose of Section 24(j) of the FDI Act.”

If finalized, the rule would not resolve the pending dispute on the scope of DIDMCA opt-outs. The proposed rule does not affect state banks’ federal interest rate authority.

The proposed rule is not limited to state credit laws. The state bank parity rule applies to all laws of the host state, such as laws regarding community reinvestment, consumer protection, and intrastate branches.

The proposed rule places even more of a spotlight on National Bank Act (NBA) preemption and the Office of the Comptroller of the Currency's recent NBA rulemaking. Under the proposed rule, if the host state laws do not apply to out-of-state national banks, then the host state laws do not apply to an out-of-state state bank. The application of state law to national banks would become a threshold question for state banks.

The FDIC pointed to the uncertainty as to whether the new Illinois interchange fee law applies to state-chartered banks with no branch in the state as the justification for proposing the amended state bank parity rule.

The Conference of State Bank Supervisors (CSBS) strongly supports the proposed rule and the FDIC's efforts to maintain parity between state-chartered and national banks.

If the rule is finalized and withstands any challenge by the states, the state bank parity rule could address other state law developments that are creating an uneven playing field for state banks compared to national banks. Comments are due 60 days after the notice of proposed rulemaking is published in the Federal Register.

Contact Us

We routinely advise national banks, state banks, and their partners on how state law applies to their products, including whether federal laws preempt state laws. Contact Susan Seaman, Shelby Lomax, or your Husch Blackwell attorney if you want to discuss the proposed state bank parity rule or have questions on the applicability of a state law to a bank product.