September 19, 2025

Jennifer Jones
Deputy Executive Secretary
Attention: Comments RIN 3064–ZA48
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: Request for Information on Industrial Banks and Industrial Loan Companies and Their Parent Companies

To Whom It May Concern,

The Independent Community Bankers of America ("ICBA")[1] appreciates this opportunity to provide feedback on the Federal Deposit Insurance Corporation's ("FDIC") approach to evaluating the statutory factors applicable to the deposit insurance applications submitted by industrial banks and industrial loan companies (Collectively "ILCs").[2] ICBA agrees with the FDIC that the "unique aspects of industrial bank business plans and the issues presented by the range of companies that may form an industrial bank"[3] give rise to salient questions that warrant review. This is especially true given the recent interest in the ILC charter from new applicants.[4]

While the creation of new commercially-owned ILCs remains legal, the FDIC has a statutory duty to reject the applications of institutions that do not satisfy all of the statutory factors enumerated in the Federal Deposit Insurance ("FDI") Act, particularly those that pose undue risks to the DIF and that fail to serve the convenience and needs of the community. This RFI

[1] The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at https://www.icba.org/.
[2] 90 Fed. Reg. 34271, available at: https://www.fdic.gov/board/request-information-industrial-banks-and-industrial-loan-companies-and-their-parent-companies.
[3] *Id.*
[4] Since Donald Trump was elected President, Nissan, Edward Jones, OneMain Financial, Stellantis, and General Motors have applied for new ILC charters, highlighting the continued relevance of the ILC charter to commercial firms and the need for clear rules on how the FDIC evaluates ILC deposit insurance applications.

[redacted]

provides another opportunity to provide information on how the FDIC should analyze the deposit insurance applications of ILCs in light of these factors.

ICBA has regularly raised concerns with ILCs due to their exemption from the definition of a "bank" in the Bank Holding Company Act ("BHCA").[5] The practical effect of this exemption is that ILCs, despite being full-service, FDIC-insured depository institutions (IDIs), can be owned by non-financial commercial firms. No other FDIC-insured institutions are permitted to be owned by non-financial parent companies. In addition, ILCs' exemption from the BHCA definition of a bank means that they are not subject to Consolidated Supervision by the Federal Reserve Board at the holding company level, like all other BHCs.

These unique attributes – the ability of commercial firms to own ILCs and their lighter federal oversight – create the potential for large commercial-financial conglomerates to blur the lines that separate banking and commerce. This introduces unnecessary systemic risk into the banking system. This unique risk is perfectly illustrated by the 2008 failure of the General Motors Acceptance Corporation ("GMAC") and the subsequent bailout which cost taxpayers $17.2 billion.

Question 1: How should the FDIC apply the statutory factors of the FDI Act to industrial bank applications? In what ways, if any, should the statutory factors be applied differently to industrial bank applicants than to other types of applicants? Which factors in particular and why?

Section 6 of the FDI Act requires the FDIC to consider the following statutory factors when evaluating applications for deposit insurance:

1) The financial history and condition of the depository institution.
2) The adequacy of the depository institution's capital structure.
3) The future earnings prospects of the depository institution.
4) The general character and fitness of the management of the depository institution.
5) The risk presented by such depository institution to the Deposit Insurance Fund.
6) The convenience and needs of the community to be served by such depository institution.
7) Whether the depository institution's corporate powers are consistent with the purposes of this chapter.[6]

According to the FDIC's Statement of Policy ("SOP") on Applications for Deposit Insurance, "[i]n general, the applicant will receive deposit insurance **if all** [emphasis added] of these statutory

[5] 12 U.S.C. 1841(c)(2)(H).
[6] 12 U.S.C. 1816.

factors … are resolved favorably."[7] In other words, if an applicant fails to satisfy the requirements of a single statutory factor, the FDIC has a sufficient basis to deny its application.

The FDIC should not apply the FDI Act factors differently to ILC applicants than it should to other traditional bank applicants for deposit insurance. However, if the unique risks posed by commercial ownership of an IDI are present, then FDIC should adjust their review in light of those unique risks. In particular, ILC applicants are more likely to fail to satisfy factors 5 and 6 – risk to the DIF and the convenience and needs of the community to be served – than other applicants for deposit insurance.

ILCs present heighted risk to the DIF

ILC applicants – particularly those with large commercial parent companies – are more likely to present an outsized risk to the DIF than traditional de novo banks. Commercial companies seeking an ILC charter generally intend to use their bank subsidiary to lend to the customers or affiliates of the parent company. This creates an unavoidable conflict of interest which foreseeably leads to the reduction of underwriting standards to increase the sales of the commercial parent company or the profitability of its affiliates. Reducing underwriting standards or offering incentives to drive the parent company's sales increases the risk of insolvency of the ILC, which ultimately creates the risk of losses to the DIF.

ILCs owned by commercial firms—especially those formed to finance their parent company's customers—lack the same incentive to price credit risk accurately. A traditional bank earns a profit only when a loan is repaid. By contrast, an ILC's commercial parent can profit both from the loan's repayment and from the sale of its products. For example, an ILC owned by a car manufacturer may approve loans that other lenders would reject simply to boost vehicle sales.

The FDIC itself acknowledged the risk of ILCs that are deeply intertwined with their parent companies in 2024, saying "[t]he FDIC's experience during the 2008–2009 Financial Crisis showed that business models involving an IDI inextricably tied to and reliant on the parent and/or its affiliates creates significant challenges and risks to the [Deposit Insurance Fund or] DIF, especially in circumstances where the parent organization experiences financial stress and/or declares bankruptcy."[8]

ILCs pose risks to the safety and soundness of other IDIs

ILCs pose a potential risk to the safety and soundness of other IDIs due to the unfair competitive advantages they possess. One significant advantage is the lower cost of compliance

[7] 63 Fed. Reg. 44752 at 44756, available at: https://www.govinfo.gov/content/pkg/FR-1998-08-20/pdf/9821488.pdf.
[8] *See* 89 Fed. Reg. 65556, available at: https://www.fdic.gov/system/files/2024-07/fr-proposed-rule-onparentcompanies-of-industrial-banks-and-industrial-loan-companies_0.pdf.

resulting from the absence of holding company regulation. Unlike traditional banks, ILCs are not subject to oversight by the Federal Reserve that applies to bank holding companies. This exemption allows ILCs to operate with reduced regulatory burdens, lowering their operational costs and enabling them to offer more competitive pricing or allocate resources to other areas, such as customer acquisition or product development. This disparity creates an uneven playing field, as other IDIs must bear the higher compliance costs associated with holding company regulations, potentially straining their financial resources and reducing their ability to compete.

Furthermore, ILCs benefit from subsidies provided by their commercial parent companies, which increase the competitive imbalance and threaten competition. Commercial parents can funnel business directly to their ILC subsidiaries, diverting opportunities that would otherwise go to other IDIs. For instance, a commercial parent might steer its customers or transactions toward its ILC, leveraging its broader business ecosystem to prioritize the ILC's growth over competitors. This practice not only undermines the ability of other IDIs to attract and retain customers but also distorts market dynamics, as ILCs can rely on this artificial support to offer lower rates or more favorable terms. Over time, these advantages could erode the financial stability of other IDIs, reducing their market share and weakening their ability to maintain safe and sound operations in a competitive banking environment.

Typical business model of ILCs is misaligned with convenience and needs under CRA

The FDIC should take special care to assess the convenience and needs of a community for industrial bank applicants by evaluating their deposit and credit services, Community Reinvestment Act ("CRA") plans, fair lending history, and ability to meet unmet market needs without destabilizing existing institutions, consistent with assessments for other depository institutions. However, ILCs with commercial parents, particularly those proposing limited purpose bank status, pose unique challenges. Their narrow CRA evaluations, often restricted to their main office's county despite nationwide operations, hinder the FDIC's ability to ensure they serve low- and moderate-income consumers effectively.

Under this factor the FDIC should also consider whether proposed ILCs will siphon deposits from existing banks by offering above-market rates, potentially destabilizing competitors, as highlighted in *Jones v. Mullen* wherein the West Virginia Supreme Court held that "Were there evidence in the record that the existence of a new industrial loan company would siphon deposits away from existing banks with outstanding loan obligations, the conclusion of the Commissioner [to reject the application of a proposed industrial loan company] … might have been justified."[9]

Finally, the FDIC should consider whether allowing the captive finance companies of auto manufacturers to capture an even larger share of the auto lending market risks creating

[9] *See Jones v. Mullen*, 166 W. Va. 538, 543–44, 276 S.E.2d 214, 217 (1981).

government subsidized oligopoly that could harm consumers. The FDIC must weigh against approving deposit insurance applications that merely lower the borrowing costs of large manufactures with no bona fide plan to serve community needs.

2. How should the FDIC's evaluation of the statutory factors be tailored based on the size, complexity, and nature of the parent and affiliates of a proposed industrial bank?

A proposed ILC with a large and complex parent company that is likely to grow to a large nationwide scale would likely require officers and directors with experience in managing a large financial institution, beyond what would be required of a typical de novo bank. The FDIC should likewise require a more detailed business plan and higher levels of planned community reinvestment from ILCs with large commercial parent companies due to their greater complexity and lending capacity.

In addition, an ILC that is likely to reach a systemically important size because of the size of its parent company's operations should be viewed with a higher level of scrutiny with regard to the risk presented to the DIF. If a traditional de novo bank fails, the losses to the DIF would likely be in the millions, whereas if an ILC the scale of GMAC fails, the losses could be in the billions or tens of billions. A failure of this size would likely have systemic consequences and require a special assessment on all other banks to replenish the losses to the DIF. For this reason, the bar to grant a deposit insurance application of an ILC with a large commercial parent should be much higher.

3. How should the FDIC tailor its analysis if the parent of a proposed industrial bank is (1) a retail company, (2) a company that is financial in nature, (3) a manufacturing or other industrial company, or (4) a technology company?

The FDIC should tailor its approach to evaluating the deposit insurance applications of ILCs based on the line of business that its parent company is engaged in. This would account for the risks posed to the stability of the ILC by its relationship with the parent company's business.

If an ILC exists primarily to lend to the customers or affiliates of its parent company, there is an inherent conflict of interest that foreseeably reduces the ability of the ILC to be a neutral underwriter of risk, therefore increasing its risk of failure. However, even in cases where an ILC with a commercial parent company does not intend to lend primarily to customers or affiliates, other risks may be present that do not exist with a traditional bank holding company structure.

Special considerations with retail parents

When a retail company applies for an ILC charter, as Walmart and Home Depot previously have, the FDIC should consider several unique risks. First, the retailer has an incentive to offer consumer loans and credit cards to its customers to drive sales. This creates the risk of a conflict of interest and reduced underwriting standards as already discussed in this letter. In addition, if a retailer with a nationwide footprint offers banking services from each of its physical stores, each would become the functional equivalent of a bank branch, which would require the delineation of a CRA assessment area. The FDIC would need to ensure that each retail location could provide an adequate amount of lending to low- and moderate income ("LMI") individuals and small businesses in each of these assessment areas in order to ensure that the convenience and needs of the community would be met.

Considerations with a financial company as a parent

If the parent company of an ILC is financial in nature, the FDIC should carefully consider why the applicant is pursuing an ILC charter as opposed to a traditional bank-bank holding company structure. During the 2008 Financial Crisis, all investment banks that owned an ILC either failed or converted to a BHC structure in the aftermath of the crisis. Unlike a bank holding company, the financial parent company of an ILC could later expand into non-financial businesses and become a commercial company. Other challenges with financially owned ILCs may also exist, which the FDIC should consider. For example, if the financial company is structured as a large partnership, the FDIC should consider how difficult it would be to liquidate in the event of an insolvency.

Considerations when the ILC parent is a manufacturing company

In general, when a manufacturing company seeks an ILC charter, it does so to lend to its customers and affiliates, leading to the conflict of interest risk discussed previously. In addition, manufacturer-owned ILCs tend to have very undiversified business models because they depend on the demand for their parent company's products to generate loan demand. If their parent company releases an unpopular lineup of cars, or if a competitor of their parent company introduces a superior product, the ILC subsidiary may find it difficult to originate enough loans to maintain profitability.

ILCs with a technology company as parent

ILCs with a technology company also present unique risks that the FDIC should consider. The most valuable commodity for a technology company is user data – which it can use to target its customers with increasingly precise and personalized advertising. If a large technology company owned a depository institution, it would have a high level of visibility into its customer's transaction history and financial situation. It could use this information to precisely target the

customer with advertisements based on their shopping history, as well as targeting customers with offers for personal loans and other credit products based on their online search history. These practices could become predatory in nature.

To mitigate these risks, the FDIC should establish robust safeguards to protect consumer data and prevent predatory practices by technology companies owning ILCs. This could include strict data privacy regulations, limiting the scope of data sharing between the depository institution and its parent company, and requiring transparent disclosure of how customer data is used for targeted advertising or credit offerings. Additionally, the FDIC could enforce regular audits to ensure compliance with these regulations and impose penalties for misuse of sensitive financial information.

In addition, ILCs with technology companies as parents may engage in anticompetitive practices. For example, Rakuten, a Japanese e-commerce company that previously applied for an ILC charter, offers a promotion called the "Rakuten Shopping Trip." This is a feature where users of the app can earn cash back by making purchases using the Rakuten app. It's promotional materials state "To earn Cash Back, you must click through a Rakuten link every time you shop."[10] Offering cash back in this manner is not in and of itself anticompetitive or harmful to consumers, but if Rakuten was able to use a depository institution to enhance this feature it could be. For example, Rakuten could issue a credit or debit card that offered enhanced cash back rewards when used to make purchases through the Rakuten app – a practice that Rakuten attempted to engage in in partnership with Synchrony Bank. This practice would be anticompetitive because it would amount to a commercial parent company using its FDIC insured subsidiary to force customers to do business with the commercial parent company, to the detriment of its competitors.

4. How should the FDIC analyze an application in which an affiliate of a proposed industrial bank already provides the same lending (or other) services the proposed industrial bank would provide to customers of the parent organization?

If a parent company already profitably offers the same lending services through a non-bank affiliate, such as a captive finance company, there is no need for it to establish an FDIC-insured ILC. Since captive finance companies can already raise funds through debt issuance, a reason for seeking an ILC is to lower borrowing costs by accessing FDIC-insured deposits. This effectively creates a public subsidy for a commercial parent that is already able to lend profitably.

[10] Rakuten, Help Center, "What is a Rakuten Shopping Trip," (accessed September 16, 2025), available at: https://www.rakuten.com/help/article/what-is-a-rakuten-shopping-trip-360002100588.

Subsidizing the borrowing costs of an industrial company is not a sufficient reason to introduce the level of risk into the banking system that is posed by ILCs with large commercial parents. Therefore, if a commercial company already provides lending services to its customers without a bank charter, it should weigh against their application for deposit insurance.

6. How should the FDIC assess an industrial bank applicant's risk to the DIF? Do certain industrial bank applicants' proposed business models, including those that involve significant or material reliance on their parent company—e.g., for the generation of deposit funding or the acquisition of lending assets—present unique risks to the DIF? How does material reliance on a parent company that is generally understood to be financial in nature compare to material reliance on a parent company that is generally understood to be non-financial in nature (including in the non-industrial bank context)? What different considerations, if any, come into play in evaluating these different types of parent companies?

ILC business models that heavily rely on their parent company for deposit funding or lending assets present unique risks to the DIF. For instance, ILCs designed to finance the customers or affiliates of a commercial parent, such as a retailer or manufacturer, face inherent conflicts of interest. These conflicts can lead to reduced underwriting standards to boost the parent's sales, increasing the risk of loan defaults and ILC insolvency. Additionally, reliance on parent-driven deposit funding, often through high-rate, non-core deposits like brokered or wholesale funds, heightens liquidity risks, as these funds can rapidly exit during market stress, potentially triggering a run.

In 2024, the FDIC proposed to create new restrictions on "shell and captive industrial bank" business models. According to the proposed regulation a prospective ILC is a "shell or captive industrial bank" when it:

(i) Could not function independently of the parent company;
(ii) Would be significantly or materially reliant on the parent company or its affiliates; or
(iii) Would serve only as a funding channel for an existing parent company or affiliate business line.

A finding that a prospective ILC is a "shell or captive industrial bank" would have caused the FDIC to "presume that the shell or captive nature of an industrial bank involved in a filing weighs heavily against favorably resolving one or more applicable statutory factors."[11] Companies would have had the opportunity to rebut the presumption.

[11] 89 Fed. Reg. 65568, available at: https://www.federalregister.gov/documents/2024/08/12/2024-17637/parent-companies-of-industrial-banks-and-industrial-loan-companies#page-65568.

The FDIC justified creating this new categorization of ILCs by citing the fact that "[t]he FDIC's experience during the 2008–2009 Financial Crisis showed that business models involving an insured depository institution inextricably tied to and reliant on the parent and/or its affiliates creates significant challenges and risks to the DIF, especially in circumstances where the parent organization experiences financial stress and/or declares bankruptcy."[12]

The FDIC further stated that, "[s]hell and captive bank business models create potentially significant supervisory concerns for industrial banks. The level of concern with these business models is inherently heightened due to the substantial reliance on the parent company or its affiliates, particularly with respect to the primary business operations of the industrial bank. This may include total or nearly exclusive reliance on the parent organization for sourcing business, conducting key operational elements (e.g., underwriting, administering, or servicing customer accounts or relationships), and obtaining a wide range of critical business support services."[13]

ICBA supported the FDIC's proposal to create a presumption against approving the deposit insurance applications of shell and captive industrial banks. Although the FDIC rescinded the proposed rule that would have created this presumption against shell ILCs, ICBA urges the agency to revisit that decision. FDIC appropriately identified the risks to the DIF that are associated with ILCs that materially rely on their parent company to generate loans or deposits.[14] In response to the FDIC's 2024 proposal, ICBA argued that, in the event of an insolvency, the franchise value of a failed ILC is severely reduced. The captive ILC would not have the same value to any independent buyer as it would to the parent company because its operations are intertwined with that parent's operations. This loss of franchise value would require the FDIC to sell the failed captive ILC at a substantial discount, which would heighten losses to the DIF.

Even in cases where an ILC applicant cannot be described as "shell or captive," heightened concerns about the resolvability of ILCs with commercial parents exist. Commercial companies are outside the scope of the FDIC's OLA, and international commercial parent companies create additional challenges regarding international bankruptcy laws. These significant obstacles could prevent the FDIC from liquidating an ILC's commercial parent company's assets in a timely manner, which would lead to greater losses to the DIF. The FDIC should consider the practical inability to recover commercial parent company assets in the event of an insolvency and weigh it heavily when considering the risk presented to the DIF when evaluating the deposit insurance application of any industrial bank with a commercial parent company.

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[12] 89 Fed. Reg. 65561.

[13] 89 Fed. Reg. 65562.

[14] *See* ICBA, "RE: NOTICE OF PROPOSED RULEMAKING ON THE PARENT COMPANIES OF INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES [RIN 3064 – AF88]" (Oct. 11, 2024), available at: https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/icba-comments-on-industrial-loan-company-proposal.

8. Do industrial banks present different types of resolvability concerns depending on the nature of the parent company and its affiliates or the business plan of the industrial bank?

ILCs with commercial parent companies present unique resolvability concerns because the FDIC lacks the statutory authority to liquidate the assets of commercial parent companies in the event of an insolvency. Unlike bank holding companies, the commercial parent companies of ILCs are outside the scope of the FDIC's OLA as provided by the Dodd-Frank Act. OLA provides "the necessary authority to liquidate failing **financial companies** (emphasis added) that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard."[15] Commercial parent companies of ILCs are, by definition, not financial companies, and are therefore outside the scope of OLA.[16] This would make recovering assets from the commercial parent companies of failed ILCs difficult or impossible in a timely manner, amplifying losses to the DIF.

10. How should the FDIC assess the convenience and needs of a community to be served by an industrial bank applicant? How should this assessment compare to other types of depository institutions?

According to the FDIC SOP on deposit insurance applications, "[t]he essential considerations in evaluating this factor are the deposit and credit needs of the community to be served, the nature and extent of the opportunity available to the applicant in that location, and the willingness and ability of the applicant to serve those financial needs."[17]

The FDIC has the authority to consider a wide array of factors when evaluating whether an institution will serve the convenience and needs of the community. It may consider the adequacy of a prospective depository institution's CRA plan, a record of previous fair lending and consumer compliance violations whether the depository institution will meet an unmet need in the market, whether the institution will serve its entire market, whether the institution will destabilize competitors by siphoning deposits away from existing institutions, and other factors.

Many of the current applicants for ILCs propose to be evaluated as limited purpose banks – meaning that while they will take deposits and make loans nationwide – they will only be evaluated for meeting the community development needs of the county where they have their main office. A limited purpose bank is currently defined as "a bank that offers a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market" that has been

[15] 12 U.S.C. 5384(a).
[16] 12 U.S.C. 5381(a)(11).
[17] Federal Deposit Insurance Corporation, "Statement of Policy on Applications for Deposit Insurance" (July 7, 1998), available at: https://www.fdic.gov/regulations/laws/rules/fdic-interagency-statements.html.

designated as a limited purpose bank.[18] This narrow CRA evaluation makes it more difficult for the FDIC to fully assess whether the prospective institutions are serving the convenience and needs of LMI consumers in the communities where they are actually doing business.

Another issue posed by the pending applications is the extent to which they will siphon deposits from existing financial institutions. In West Virginia, the state banking commissioner rejected the charter application of an industrial bank because he concluded that the bank would not serve "the public convenience and advantage" because it would destabilize existing banks in the area it proposed to serve. The West Virginia Supreme Court overturned his decision because it lacked sufficient evidentiary support but said that "[w]ere there evidence in the record that the existence of a new industrial loan company would siphon deposits away from existing banks with outstanding loan obligations, the conclusion of the Commissioner … might have been justified."[19]

The *Jones* case is significant because it stands for the proposition that, in evaluating a charter application, the reviewing agency may appropriately consider, as part of its evaluation of whether it will serve the convenience of its community, the extent to which a new ILC would siphon deposits away from existing banks. Given that none of the pending ILC applicants propose to operate a branch network, it seems likely that they would need to pay a premium over market rates to attract deposits. The FDIC should evaluate the extent to which this would harm existing banks by siphoning away deposits.

ICBA is also concerned that the anticompetitive nature of the relationships between the ILC applicants and their commercial parent companies will harm consumers, therefore failing to serve the convenience and needs of the community. In the context of bank mergers, agencies must reject any "proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served."[20] If Congress intended for federal regulators to reject bank mergers that promoted anticompetitive effects or strengthened a market's oligopolistic structure, it is not reasonable to believe that Congress would have intended for the FDIC to approve new deposit insurance applications if the effect of doing so would be anticompetitive.

In 2024, captive finance companies like GM Financial and Ford Credit were the leading lenders for new cars, with a 62.07% market share.[21] Relative to the thousands of banks and credit

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[18] 12 CFR 345.12(n).
[19] *Jones v. Mullen*, 166 W. Va. 538, 543–44, 276 S.E.2d 214, 217 (1981).
[20] 12 U.S.C. 1828(c)(5).
[21] Experian, "State of the Automotive Finance Market Q1 2025" available at: https://www.experian.com/automotive/automotive-credit-webinar.

unions they currently compete with, this is a dominant market position that will only be strengthened by the approval of their deposit insurance applications. In addition to pushing the market for new car auto loans further towards oligopoly, approving these applications would strengthen the oligopoly of the domestic car manufacturers. Approving the pending applications of the captive finance companies will effectively subsidize the auto industry, making it more difficult for financial institutions to compete in the auto lending market and more difficult for a new car manufacturer without an FDIC-insured subsidiary to enter the market.

15. Do applications relating to industrial banks controlled by foreign parent companies present unique considerations? If so, what are those considerations? Are there different types of foreign parents that present different issues?

While we oppose all commercial ownership of FDIC-insured depository institutions, ILCs with foreign parent companies raise additional challenges due to cross-border regulatory and supervisory complexities. Several applicants for ILC charters are commercial companies headquartered abroad including Nissan, Rakuten, and Stellantis. The FDIC should not approve deposit insurance applications from ILCs with foreign commercial parent companies because it lacks the authority and legal jurisdiction to supervise international commercial companies to ensure they can serve as a source of strength for their depository institution subsidiaries.

In addition, in the event of an insolvency, liquidating the assets of a foreign commercial parent company would be practically impossible to do in a timely manner due to differences in international bankruptcy laws and procedures. This would diminish the ability of the FDIC to prevent losses to the DIF by recovering assets from the ILC's parent company. Assets like factories or inventory held by commercial parents are often illiquid and subject to complex legal processes abroad, delaying or preventing recovery efforts within the timeframe that the FDIC typically resolves a failed institution.

19. Does an industrial bank with a parent of a certain size and/or market share have a greater ability to scale? To what extent should this be viewed positively or negatively? What potential impact would this have on the banking industry and the provision of banking services in the United States?

Yes – an ILC with a large commercial parent company has a greater ability to grow to a large scale, potentially becoming systemically important in a rapid manner. This should weigh against approving an ILC with a large parent company's application for deposit insurance because the failure of a large ILC would lead to greater losses to the DIF. In addition, an institution that scales very rapidly may face operational challenges if it grows faster than its staff and information technology systems are equipped to handle. Finally, if growth is fueled primarily by

wholesale deposits instead of core deposits, these funds could flow away from the bank rapidly if market conditions change, causing a run.

24. What are the potential societal costs and benefits of permitting companies that are generally nonfinancial in nature to establish an industrial bank? How should such costs and benefits be factored into the FDIC's analysis of the statutory factors? Are there approaches the FDIC can pursue to mitigate any potential societal costs?

The primary societal cost of permitting nonfinancial companies to own ILCs is the erosion of the separation between banking and commerce, which introduces systemic risks to the financial system. Nonfinancial parent companies, exempt from the Bank Holding Company Act, are not subject to consolidated supervision by the Federal Reserve, potentially allowing unchecked risk-taking that could destabilize the ILC and lead to losses for the DIF. Furthermore, technology companies owning ILCs could exploit customer data, raising privacy concerns and enabling predatory lending practices.

The FDIC should integrate these societal costs into its evaluation of the statutory factors under the Federal Deposit Insurance Act, particularly when assessing the "risk to the DIF" and the "convenience and needs of the community." The potential for systemic risk and losses to the DIF due to conflicts of interest or weak oversight of nonfinancial parents should weigh heavily against approving ILC applications, especially for large commercial firms with the capacity to scale rapidly. The convenience and needs factor should be scrutinized to ensure ILCs genuinely serve underserved communities rather than merely subsidizing their parent's commercial activities, which could lead to anti-competitive outcomes. The FDIC should also evaluate the "general character and fitness of management" to ensure leadership can navigate the unique risks of commercial ownership, and the "corporate powers" factor to confirm alignment with safe banking practices rather than commercial objectives.

29. If nonfinancial companies begin offering payment stablecoins, how, if at all, should that impact the FDIC's analytical framework?

If non-financial companies begin issuing payment stablecoins, they may become competitors with banks for deposits because payment stablecoins are deposit-like for some purposes. Coupled with the ability of non-banks to lend, this may allow commercial firms to replicate the services offered by a bank without having a bank charter. The ability of non-banks to offer bank-like services to customers is an important trend with implications for the competitive landscape of the banking industry and financial stability.

The FDIC should continue to monitor consumer adoption of stablecoins and whether they have a potential to disintermediate community banks. To the extent that stablecoins become seen

by consumers as a substitute for bank deposits, the FDIC has an important role in educating the public about the difference between funds stored in an FDIC insured bank account and funds stored in stablecoin wallets – namely that the latter are not FDIC insured and that the customer may be at risk of losing their funds in the event that the stablecoin issuer becomes insolvent.

Conclusion

In conclusion, ICBA strongly urges the FDIC to rigorously apply the statutory factors of the Federal Deposit Insurance Act when evaluating deposit insurance applications from industrial banks and industrial loan companies, particularly those with large commercial parent companies. The unique risks posed by ILCs—stemming from their exemption from the Bank Holding Company Act and lack of consolidated supervision by the Federal Reserve—demand a thorough and consistent evaluation to protect the Deposit Insurance Fund and ensure financial stability.

The FDIC must carefully assess the potential for conflicts of interest, reduced underwriting standards, and systemic risks introduced by commercial ownership, as evidenced by historical failures like GMAC. By prioritizing the statutory factors, especially the risks to the DIF and the convenience and needs of the community, the FDIC can mitigate the dangers of blending banking and commerce, which could otherwise destabilize the banking system and harm consumers.

Furthermore, the FDIC should tailor its analysis to the size, complexity, and nature of the parent company, applying heightened scrutiny to ILCs with large, non-financial parents due to their potential to rapidly scale and create systemic vulnerabilities. The resolvability concerns, particularly for ILCs with foreign or commercial parents outside the FDIC's OLA, underscore the need for a cautious approach. By rejecting applications that fail to meet all statutory factors or that introduce undue risk, the FDIC can uphold its mandate to safeguard the banking system and serve the public interest.

We appreciate the opportunity to provide input on this critical issue and encourage the FDIC to maintain a robust and consistent regulatory framework to address the unique challenges posed by ILCs. Please contact me at [redacted] if you have any questions about the positions stated in this letter.

Sincerely,

[redacted]

Mickey Marshall
Vice President and Regulatory Counsel