



October 10, 2006

By Electronic Filing

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429
Comments@FDIC.gov

Re: Notice and Request for Comment on Industrial Loan Companies and Industrial Banks
71 Federal Register 49456, August 23, 2006

Dear Mr. Feldman:

The Illinois Bankers Association (“IBA”) appreciates this opportunity to comment on the risks presented by granting federal deposit insurance to industrial loan companies and industrial banks (collectively “ILCs”) that are owned by commercial companies. The IBA is a full-service trade association representing state and national commercial banks, savings banks, and savings and loan associations of all sizes in the State of Illinois. Collectively, the IBA represents over 85% of the banking assets in our state.

Congress did not contemplate current developments in the ILC industry when it enacted the Competitive Equality Banking Act of 1987 (“CEBA”), the law that created the modern-day ILC. Since CEBA’s enactment—when a relatively obscure charter in seven states accounted for \$4.2 billion in assets—the total assets of insured ILCs have grown to more than \$155 billion. This increase of more than 3,500% in ILC assets in less than 20 years is largely attributable (more than 60%) to *four* ILCs located in two states (Utah and Nevada). In all, five ILCs have assets in excess of \$10 billion (one has assets of more than \$60 billion), and another nine ILCs have assets of more than \$1 billion, while the remaining 47 insured ILCs have average assets of \$223.6 million. These skewed numbers do not reflect organic growth in the financial services industry. Instead, they represent the exploitation by other industries of what fairly can be described in common terms as a “loophole” in the laws that separate banking and commerce, much like the inadvertent “nonbank bank” exception in the Bank Holding Company Act of 1956 that CEBA was meant to put to rest in the first place.

There presently are nine applications pending before the FDIC for federal deposit insurance of ILCs, and another five federally insured ILCs have filed applications for a Change in Control. The FDIC has acknowledged that *none* of these applicants’ parent companies would be covered under the Bank Holding Company Act or subject to any type of consolidated federal supervision of the kind required for nearly 8,000 other federally insured commercial banks. Meanwhile, from an operational standpoint, these ILCs would pose at least the same qualitative and quantitative risks to the insurance fund as other FDIC-insured institutions, inasmuch as they would have virtually the same powers as commercial banks, including lending and deposit-taking authority and access to the national payment system.

Because these ILCs would not be subject to the Bank Holding Company Act, the FDIC would become the supervisory authority of their holding companies. We respectfully submit that this regulatory oversight at the holding company level would be substantially less robust than that of other FDIC-insured institutions. As the General Accounting Office (“GAO”) noted in a study only last year (GAO-05-621):

"FDIC's supervisory authority over the holding companies and affiliates of ILCs is more limited than the authority that consolidated supervisors have over the holding companies and affiliates of banks and thrifts. For example, FDIC's authority to examine an affiliate of an insured depository institution is limited to examinations necessary to disclose fully the relationship between the institution and any affiliate and the effect of the relationship on the institution. Relationships generally include arrangements involving some level of interaction, interdependence, or mutual reliance between the ILC and the affiliate, such as a contract, transaction, or the sharing of operations. When a relationship does not exist, any reputation or other risk presented by an affiliate that could impact the institution may not be detected. In contrast, consolidated supervisors, subject to functional regulation restrictions, generally are able to examine the holding company and any nonbank subsidiary regardless of whether the subsidiary has a relationship with the affiliated insured bank."

The GAO went on to comment in this study that the FDIC "has no direct authority to impose consolidated supervision requirements, such as capital levels and reporting obligations, on ILC holding companies." To the extent that the FDIC would have the ability to initiate an enforcement action against an insured ILC and, under appropriate circumstances, to an "institution-affiliated party," such as its parent company, the "FDIC's ability to use this authority . . . is less extensive than application of the source of strength doctrine by the [Federal Reserve] Board or the OTS under consolidated supervision." *Id.*

The FDIC itself has noted that an ILC parent company which is not subject to the Bank Holding Company Act, and thus which has no "umbrella federal oversight," has substantially fewer restrictions in key areas of supervisory oversight. For example, such a parent company could not be ordered by a federal banking agency—including the FDIC—to divest the ILC if the ILC becomes less than well-capitalized. See, Mindy West, Senior Examination Specialist, "The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective," FDIC Supervisory Insights, Summer 2004.

We recognize that the FDIC already has granted deposit insurance to certain ILCs that have commercial, non-financial services companies as their parent companies. We respectfully submit that this fact should not be a consideration in deciding whether to approve additional applications of the same nature, particularly in light of the fact that approving such applications would perpetuate far worse asymmetries with respect to the separation of banking and commerce than would the discontinuation of an ill-advised policy.

Thank you for your consideration of our comments.

Sincerely,



Quentin Johnson
Chairman
Illinois Bankers Association



Linda Koch
President and CEO
Illinois Bankers Association