

From: Robert Rutkowski [REDACTED]
Sent: Thursday, July 02, 2020 4:11 PM
To: Public Information; Comments
Cc: Keith Abouchar
Subject: [EXTERNAL MESSAGE] Comments on FDIC Notice of Proposed Rulemaking, Parent Companies of Industrial Banks and Industrial Loan Companies

Jelena McWilliams, Chair
Federal Deposit Insurance Corporation
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Re: Comments on FDIC Notice of Proposed Rulemaking, Parent Companies of Industrial Banks and Industrial Loan Companies

Dear Chairman McWilliams,

Strongly opposed is the FDIC's proposed rule on industrial banks and industrial loan companies (together, "ILC"s), as well as the agency's approval of new ILC charters, in light of the threats these charters pose to state interest rate limits and, consequently, to consumers--particularly to those most financially vulnerable.

Interest rate limits are the single most effective tool states have to protect their residents from predatory loans. Predatory loans include payday and car title loans that often carry annual interest rates as high as 300% or more. Predatory loans also include high-cost installment loans and lines of credit with rates approaching and well exceeding 100%. These loans target financially distressed individuals, compound their debt burden, and leave them worse off. High-cost lenders also disproportionately prey on communities of color, stripping them of income, widening the racial wealth gap, and more deeply entrenching systemic racism. Rather than promote financial inclusion, as they claim, high-cost lenders fuel financial exclusion.

These high interest rates do not just make loans dramatically more expensive than mainstream loans. They also fundamentally alter the repayment structure, as borrowers can make payments for many months or even years without seeing any significant reduction in principal. As a result, these high rates also warp market incentives, where lenders succeed even if borrowers eventually default in great numbers.

This proposal comes amidst a number of attacks on state usury limits by federal banking regulators in recent years, as state-regulated lenders increasingly look to federal regulators to help them avoid state laws. The ILC charter is no different. By making it easier for predominantly online non-bank lenders to obtain bank charters, while avoiding consolidated supervision of the Federal Reserve, the FDIC would pave the way for non-banks to benefit from federal preemption far more easily than they otherwise could. Indeed, a law firm representing payday lenders recently wrote of the ILC proposal: "The proposed rule, together with the FDIC's recent approvals of deposit insurance applications for [NetNet and Square], suggest the ILC charter as a viable alternative to the OCC's fintech charter, which has been stalled by litigation."¹

Several traditional FDIC-supervised banks are already facilitating evasion of state usury limits by non-banks through rent-a-bank schemes that the FDIC has not addressed. The loans these schemes peddle are among the most irresponsible

loans on the market. Republic Bank & Trust (of Kentucky) and FinWise Bank (of Utah) are enabling high-cost lenders Elevate (100% APR), OppLoans (up to 160% APR), and/or Enova (up to 99.99% APR) to evade state rate caps in over half the states. Capital Community Bank (of Utah) is helping car title lender LoanMart evade state law in a number of states. LoanMart's loans range from 60-222% interest; a typical loan is \$2,500, 18-month loan at 90%, totaling \$2,136 in interest. Transportation Alliance Bank, dba TAB Bank (of Utah) is helping EasyPay Finance make predatory loans for furniture, appliances, pets, auto repairs and other products, including a \$1,500 loan at a rate of 188.99%. And Bank of Lake Mills (of Wisconsin) has enabled predatory small business loans, including a 120% APR \$550,000 small business loan and a 74% APR loan secured by a second mortgage.

A disproportionate number of ILCs are also engaged in rent-a-bank arrangements; these are all chartered in Utah. First Electronic Bank is helping Personify Financial make loans up to 179.99% in 22 states. WebBank is involved in litigation alleging violation of Colorado's state usury limit through a rent-a-bank arrangement. And Celtic Bank is helping OnDeck Capital and Kabbage make small business loans at up to 99% APR.

Experience has demonstrated that parents of ILCs pose excessive risks that the FDIC is unable to constrain. A number of ILC owners failed or nearly failed during the 2008 financial crisis, including predatory mortgage lender Fremont and predatory credit card issuer Advanta. The FDIC's proposed plan, which claims to largely formalize the existing practices that have already proved inadequate, will not compensate for its lack of consolidated supervisory authority. The FDIC proposal also fails to give adequate consideration to the Community Reinvestment Act implications of an expansion of ILC charters, including convenience and needs, fair lending, and consumer protection.

Wholly rejected is any notion that approval of additional ILC charters may enable lenders to meet the credit needs of the financially vulnerable. To the contrary, they would make the financially vulnerable more so by facilitating the spread of predatory lending and undermining states' ability to stop it.

Yours sincerely,
Robert E. Rutkowski

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