October 6, 2006

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

Re: Industrial Loan Companies

Dear Mr. Feldman:

The National Community Reinvestment Coalition (NCRC), the nation's leading economic justice trade association of 600+ community organizations, requests that the FDIC strengthen several of its regulations regarding industrial loan companies (ILCs) in effort to maintain safety and soundness and to continue to meet the needs of communities. Per your August 23 request for public comment, NCRC recommends adopting consolidated supervision, strengthening the Community Reinvestment Act (CRA) for ILCs, and not mixing banking and commerce.

ILCs should not be owned by commercial companies. Banking and commerce should not be mixed. Mixing banking and commerce imperils safety and soundness as it eliminates the impartiality of the bank. A bank with a commercial affiliate will not base its lending decisions on sound underwriting criteria. Instead, the bank will favor its commercial affiliate and cut-off credit for its competitors. The bank may also be tempted to finance speculative and risky ventures by its commercial affiliate. For very large banks, the end result is significant reduction in credit for independent small businesses in favor of financing for its commercial affiliate, regardless of the riskiness of its activities.

Combining banking and commerce poses significant risk because some large ILCs will be able to quickly amass a sizable amount of profits and capital. An example is a special purpose bank processing credit cards. As profits and capital pour in, it is likely that these funds would be invested in risky and anti-competitive activities of the commercial affiliate. The result is inappropriate and unsafe lending behavior.

While commercially-owned ILCs currently exist, this does not rectify the fact that they are exploiting an outdated and already abused loophole. NCRC and other consumer advocate organizations support the complete elimination of the ILC loophole and have petitioned Congress to close the loophole as it considers regulatory relief provisions:[1]

> ILCs were never intended to be large, nationwide banks that offered services indistinguishable from commercial banks. In 1987, Congress granted an exception to the BHCA for ILCs because there were few

[1] Testimony Before the Senate Committee on Banking, Housing & Urban Affairs Regarding the Consumer Impact of Regulatory Relief Proposals Affecting Banks, Thrifts, and Credit Unions, March 1, 2006, Presented by: Consumer Federation of America, U.S. Public Interest Research Group, ACORN, Consumers Union and National Community Reinvestment Coalition, and others; p. 19.

> of them, they were only sporadically chartered in a small number of states, they held very few assets and were limited in the lending and services they offered. In fact, this exception specifically applied only to ILCs chartered in five states (Utah, California, Colorado, Nevada and Minnesota) that have either assets of $100 million or do not offer checking services. Since that time, however, everything about ILCs has grown: the number that exist, the amount of assets and federally insured deposits in them and the services and lending products that they can offer.
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> According to the General Accounting Office (GAO), ILC assets grew by over 3,500 percent between 1987 and 2004, from $3.8 billion [or more] to over $140 billion. In 2004, six ILCs were among the 180 largest financial institutions in the country with $3 billion in assets. According to the Federal Reserve, the majority of ILCs had less than $50 million in assets in 1987, with assets at the largest ILC at less than $400 million. As of 2003, one ILC owned by Merrill Lynch had more than $60 billion in assets (and more than $50 billion in federally insured deposits).

It is time to shut down this parallel banking system, not allow its further expansion. The Federal Reserve Board has also recommended that the ILC exemption from consolidated supervision be eliminated.

The FDIC must have consolidated supervision to regulate parent companies as well as the industrialized loan bank. By approving applications for ILCs, federal regulators allow commercial companies to have the same privileges of a regular bank without the rigorous regulatory oversight required of them. Unlike other banks, industrial loan companies fly under the radar of federal regulating agencies. ILCs are exempt from the Bank Holding Company Act (BHCA), which requires safety and soundness examinations of banks and their parent company. Without these protections in place, the U.S. banking system and American taxpayers who fund the federal safety net for banks and ILCs are put at serious risk. Major corporate scandals, such as at Enron and Worldcom, highlight the potential financial failures future commercial companies could similarly engender. If Enron had been an ILC, the U.S. banking system and American taxpayers would be the ones to foot the bill. Now imagine the potential implications of a massive commercial company owning an ILC. By continuing to approve commercial companies' applications, regulators significantly magnify an already flawed loophole in the banking system and expose American taxpayers to great risk. NCRC would not support lifting the ILC moratorium if consolidated supervision is not adopted and commercial firms were still allowed to affiliate with banks.

ILCs should be held to the same standards as other banks—CRA should be diligently upheld and enforced.

CRA Exams for ILCs Must Be Strengthened

Passed by Congress in 1977, the Community Reinvestment Act (CRA) states that banks have "continuing and affirmative obligations to help meet the credit needs of the local communities in which they are chartered". The act also established a regulatory regime for monitoring financial institutions' level of lending, investments, and services in low- and moderate-income neighborhoods, which have been traditionally underserved by lending institutions. ILCs, however, are exempt from this type of comprehensive exam and are only given a lax test which does not separately examine retail lending or service provisions. As described earlier, this exemption was due to ILCs' limited number, asset size, and lending and services offered at the time. But as industrial loan banks continue to grow in all of these areas, regulations must be updated to reflect these changes.

ILCs must be graded on the same criteria other banks are rated on. For example: the type, number and amount of small business and home purchase loans; the number and amount of loans in low- and moderate-income communities; the location of branches; and the types of products and services offered to the community. Many ILCs offer large amounts of consumer and credit card loans. Their CRA exams could readily include an evaluation of their consumer and credit card lending to low- and moderate-income borrowers and neighborhoods.

As of March 2006, there were 61 industrial loan companies with total assets equaling over $155 billion—roughly the size of ABN Amro. Imagine if a bank of this size attempted to fulfill its community obligations through a CRA exam as lax as those given to ILCs. The American public would not tolerate it. ILCs must then be upheld to the same standards of its peers of similar size and nature. CRA exams for ILCs must be strengthened so that these rapidly growing institutions can be held accountable to the communities in which they serve.

Assessment Areas Must Be Expanded for ILCs

The delineation of assessment areas must also be expanded for ILCs as they do not fully capture the scope of ILC lending operations. Current CRA regulations for most banks define the assessment area (within which regulators evaluate how well a bank meets the needs of its community) as "…one or more MSAs or metropolitan divisions…," including "the geographies in which the bank has its main office, its branches, and its deposit-making ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans." [2] But as ILCs are considered to be a wholesale or limited purpose bank, its assessment areas only include the MSA in which it is headquartered and does not account for the surrounding areas in which a bank has made a substantial portion of its loans. For example large ILCs that offer credit cards nationwide are only responsible for meeting the needs of the city in which they are headquartered. By limiting the assessment area, ILCs are not held accountable to the many communities outside the headquartered region to which they make loans, but still can greatly impact these areas through their unchecked lending practices.

NCRC reviewed several recent CRA exams for large ILCs and analyzed the banks' asset size, assessment areas, number of branches, and types of lending. NCRC found that of the 16 ILCs reviewed, 15 had only one assessment area despite their large size.[3] Combined, the 16 reviewed ILCs have assets over $108 billion. In addition, it appears that many of the banks made a significant portion of their loans outside of their designated assessment area. For example, American Express Centurion Bank is a very large ILC with $14 billion in assets and "a nationwide lender of credit and charge cards."[4] For BMW Bank with $1.5 billion in assets, "a vast majority of the bank's business will originate outside of its Salt Lake County assessment area."[5] And for Advanta Bank, another large ILC and "a national lender of small business credit cards,....the vast majority of [their] loan and deposit customers are located outside the state of Utah."[6] The banks clearly provide a substantial portion of their loans to communities outside of the area of their main office, but are not expected to

[2] Reg. BB, 60 FR 22195 (Title 12 Section 228.41)
[3] See Appendix 1, attached.
[4] CRA Exam, American Express Centurion Bank, *FDIC,* January 9, 2006, p. 3.
[5] CRA Exam, BMW Bank of North America, *FDIC*¸ March 7, 2005, p. 5.
[6] CRA Exam, Advanta Bank Corp., *FDIC*, January 26, 2004, p. 5.

fulfill the requirements of the Community Reinvestment Act to all communities in which these banks do businesses.

For many other CRA exams for ILCs, the scope of their lending is not clearly defined. UBS Bank USA states that it offers "limited loans and deposit services to existing and future clients of affiliate UBS Financial Services, Inc.," but does not clarify where these affiliates are located or who they are.[7] ILCs should also be required to clearly describe their borrowers, their location and other aspects of the scope of their lending practices, as other banks are required to do, so that regulators can properly examine them. Given ILCs nature of providing far-reaching products such as credit cards, regulators must also expand the geographically delineated assessment area for their CRA exams to properly consider their obligations to communities.

Retail Lending Test Needed for ILCs

CRA exams should also be updated to weigh the retail lending made by ILCs, as well as their community development lending. Many if not most ILCs provide credit cards to borrowers nationwide, and this type of lending, as any other, must be considered to determine if a bank is making safe and sound loans to low- and moderate-income borrowers. ILCs should also be rated on the percent of low- and moderate-income borrowers they lend to and if the terms and conditions of their products meet the needs of the community.

Federal regulators recently adopted anti-predatory lending provisions in CRA regulations. Since a number of ILCs are large subprime lenders, ILCs must be subject to rigorous fair lending reviews during CRA exams and receive a lowered CRA exam grade if violations of anti-predatory lending laws or anti-discrimination laws are identified.

Conclusions

NCRC calls upon the FDIC to take this opportunity to strengthen its regulations on industrial loan companies (ILCs) in effort to maintain safety and soundness and to continue to meet the needs of communities. Recent applications for massive ILCs, requests for special exemptions, and the growing industry of ILCs as a whole highlight the need to reinforce existing regulations instead of allowing them to continue to bend. Thank you for the opportunity to comment on ILCs. If you have any questions about our recommendations, please contact myself or Noelle Melton, Research & Policy Analyst, at (202) 628-8866.

Sincerely,

John Taylor
President and CEO

[7] CRA Exam, UBS Bank USA, *FDIC,* June 20, 2005, p. 5.

Industrial Loan Companies (ILCs) Reviewed for NCRC Comment Letter to the FDIC

	Institution	Asset Size (in millions)	# of assesment areas	Assement Areas	# of branches	Type of Bank/ CRA Exam	**Type of Lending** (as described in CRA exam)
1)	Republic Bank	$114	1	Salt Lake City-Ogden, Utah MSA	1	Wholesale Bank	Deposits consist of money market demand accounts (MMDA) and certificates of deposit (CD), acquired primarily through brokers. Bank also purchases commercial leases through brokers on a national basis.
2)	Volvo Commercial Credit Corp.	$17	1	Salt Lake City-Ogden, Utah MSA	1	Strategic Plan	Commercial lender, offering lines of credit to the trucking industry. Loans are extended via credit cards and accounts receivable finance acquisitions. Also finances asset-based commercial truck and luxury motor coach loans.
3)	Universal Financial Corp.	$505	1	Salt Lake City-Ogden, Utah MSA	1	Strategic Plan	The purchase of participated credit card receivables from an affiliate (Citbank USA, N.A.) and the acceptance of brokered deposits from an affiliate (Citigroup Global Markets, Inc.) UFC no longer originates or owns any credit card accounts.
4)	UBS Bank USA	$18,200	1	Salt Lake City-Ogden, Utah MSA	1	Strategic Plan	Offers limited loans and deposit services to existing and future clients of affiliate UBS Financial Services. Customers are strictly high net worth individuals and/or corporations located throughout the world. Primarily offers securities based loan products fully collateralized by marketable equity and fixed income securities which are offered via: Premier Variable Credit Line, and Premier Fixed Credit Line. In December 2004, approved a new loan product called the Dual Collateral Mortgage (DCM) loan, allowing a borrower to provide real property as additional collateral against an underlying securities- based loan to allow more financing flexibilities and tax advantages.
5)	Medallion Bank	$250	1	Salt Lake City-Ogden, Utah MSA	1	Strategic Plan	Offers Asset-based commercial lending, Taxi medallion lending (a fixed term commercial loan financing the purchase of taxi cab medallions, i.e. licenses to operate a taxicab), Marine and Recreation Vehicle lending (non-prime consumer loans for the purchase of boats or other recreational vehicles), FDIC insured deposit account.
6)	EnerBank USA	$66	1	Salt Lake City-Ogden, Utah MSA	3	Strategic Plan	Primary lending product is unsecured energy-related home improvement loans that are made via strategic partnerships with home improvement contractors. Funding comes from brokered deposits.
7)	BMW Bank of North American	$1,500	1	Salt Lake City-Ogden, Utah MSA	1	Strategic Plan	Principal purchaser and service of retail automotive installment sales contracts for BMW automotive products. A vast majority of bank's business will originate outside of its Salt Lake County assesment area. Also offers a home equity (dual collateral) loan option on its indirect installment products, and general purpose credit cards. The home equity product (BMW Advantage Loan) is a non-revolving collateral enhancement vehicle, and is offered as an accommodation to customers who finance a BMW vehicle through the dealer network to provide borrower with a legal tax shelter.
8)	Advanta Bank Corp.	$1,040	1	Salt Lake City-Ogden, Utah MSA	1	Strategic Plan	National lender of small business credit cards with $545 million in card receivables outstanding as of year-end 2003. Also holds $29 million in liquidating lease receivables. Offers certificates of deposit and a statement savings product. Both loan and deposit products are marketed nationwide through various marketing methods and third party efforts, including agreements with affiliates.
9)	American Express Centurion Bank	$14,000	1	Salt Lake City-Ogden, Utah MSA	1	Limited Purpose Bank	Nationwide lender of credit and charge cards. Recently consolidated its local offices into its existing West Salt Lake Valley credit card processing center. The bank does not have any conventional branch offices or deposit-taking ARMS, but does operate an offshore funding source facility located in the Grand Cayman, British West Indies.
10)	GMAC Automotive Bank	$2,400	1	Salt Lake City-Ogden, Utah MSA	1	Limited Purpose Bank	Products consist of automobile retail installment sale and lease contracts assigned to GMACAB by nationwide network of independent GM dealers.
11)	GMAC Commercial Mortgage Bank	$2,400	1	Salt Lake City-Ogden, Utah MSA	1	Wholesale Bank	Principal business is funding liquidity for loans submitted to it by its affiliate, GMAC Commercial Mortgage Corp. Offers variety of commercial mortgage products including both conventional and federal agency loans on a nationwide basis. Also offers interim financing of commercial properties
12)	Merrick Bank	$459	1	Salt Lake City-Ogden, Utah MSA	1	Limited Purpose Bank	Offers credit products, marketed primarily through direct mail campaigns and deposits are only acquired through brokers. The bank offers secured and unsecured credit cards on a national basis. Strategy is to lend to sub-prime borrowers who often have past credit problems or other weaknesses.
13)	Morgan Stanley Bank	$8,670	1	Salt Lake City-Ogden, Utah MSA	1	Limited Purpose Bank	Does not extend home mortgage, small business, small farm or consumer loans to retail customers anymore. Now the new business focus is "Senior Loans" (average size for $30 million) to major corporations, short-term warehouse laons to borrowers secured by specific assets, and purchased portfolios of mortgages on commercial and residential real estate loans.
14)	CIT Bank	$31	1	Salt Lake City-Ogden, Utah MSA	1	Limited Purpose Bank	Offers small, unsecured revolving consumer lines of credit and some, non-revolving business credits in conjunction with its affiliated businesses and nationwide retailers. Short-term financing is offered to faciliate purchases of various consumer goods for individuals requesting credit under the Bill Me Later program offered by sevearl nationwide on-line retailers.
15)	WebBank	$17	1	Salt Lake City-Ogden, Utah MSA	1	Strategic Plan	Primary business consists of factoring receivables. Also obtains income from fees for services rendered to partners in exporting Utah's regulatory environment (interest rates, late charges, prepayment fees, etc) to all fifty states.
16)	Merrill Lynch Bank USA	$58,790	3	New York-Newark-Bridgeport, NY-NY-CT-PA CSA; New York-Wayne-White Plains, NY-NJ MD; and Salt Lake City-Ogden-Clearfield, Utah CSA	3	Wholesale & Limited Purpose Performance Evaluation	Offers a variety of deposit products, brokered through the institution's brokerage affiliate. Deposits can be placed in a variety of Money Market Deposit Account products depending on client's preferences. Credit products currently consist of a variety of securities-based commercial and consumer loan products under the Loan Management Account (LMA) program. Many loan products are also offered through its subsidiaries - products include variety of consumer and business loans, including residential first and second mortgage loans, as well as community development loans and investments.
	Total:	$108,459					