BlueCross BlueShield Association

An Association of Independent Blue Cross and Blue Shield Plans

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Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Comments in Response to Notice and Request for Comment on Industrial Loan Companies and Industrial Banks

Dear Mr. Feldman:

On behalf of its 39 independently owned and operated Blue Cross and Blue Shield Plans nationwide, which serve more than 97 million health care consumers, the Blue Cross and Blue Shield Association ("BCBSA") submits the following comments in response to the Notice and Request for Comment on issues related to industrial loan companies and industrial banks published in the August 23, 2006 Federal Register (71 *Fed. Reg.* 49,456).

We appreciate the opportunity to comment on these issues. As discussed in further detail below, we urge the FDIC to refrain from imposing harsh new regulations on industrial banks and industrial loan companies (collectively, "ILCs") or prohibiting their formation. In particular, we hope that as you contemplate changes to the ILC regulatory regime, you decline to impose such strictures on proposed ILCs in those circumstances to which the concerns raised by the interest groups urging new regulations are inapplicable, such as when the owner of the proposed ILC is a financial services company or a company operating in a heavily regulated industry.

Who We are: A Committed Advocate for Health Care Consumers

The Blue Cross and Blue Shield Association is a trade association that represents the independent, locally-owned Blue Cross and Blue Shield Plans. Our member companies have been providing American families with top-quality, affordable health insurance for more than seventy years. We have companies in all fifty states, Puerto Rico and the District of Columbia. The Blue System contracts with more hospitals and doctors than any other insurer and is the largest processor of Medicare claims in the country.

The Blue Cross and Blue Shield companies have led the way in creating, adopting and promoting innovative solutions to consumer health insurance needs. For example, the BlueCard® Program enables members to obtain healthcare services while traveling, and the

Technology Evaluation Center, founded by BCBSA, pioneered the development of scientific criteria for assessing medical technology.

Today, the Blues remain committed to the dual goals of high quality and affordability. That is why, for example, they have been a strong advocate of tax-free Health Savings Accounts that bring the virtues of free markets and consumer empowerment into the health insurance arena. This commitment to quality and affordability is the foundation of the recently submitted application by the Plans Holding Corporation for Blue Healthcare Bank, a Utah-chartered industrial bank. This ILC would foster lower cost health insurance for American families without the risks that have been cited by those who oppose the formation of ILCs by commercial companies, and it is an instrumental part of our desire to bring HSA products to the market.

General Comments

While we understand the concerns of the interest groups seeking harsher regulation of ILCs or even an outright prohibition on their formation, we hope that as you study the issues and consider possible changes, you will eschew blanket one-size-fits-all changes that fail to recognize that the concerns raised by the interest groups opposing ILCs are inapplicable to some industries. We urge you to refrain from imposing harsher regulations on or prohibiting formation of ILCs owned by companies in these industries. In particular, financial services companies and companies that are subject to a strict regulatory scheme (both of which categories include the Blue Cross and Blue Shield Plans) should be exempt from further regulation intended to address concerns that relate only to unregulated commercial companies.

Specific Comments

In response to certain of the questions posed in the Notice and Request for Comment, we provide the following responses:

Comment in Response to Question #2:

Do the risks posed by ILCs to safety and soundness or to the Deposit Insurance Fund differ based upon whether the owner is a financial entity or a commercial entity? If so, how and why? Should the FDIC apply its supervisory or regulatory authority differently based upon whether the owner is a financial entity or a commercial entity? If so, how should the FDIC determine when an entity is "financial" and in what way should it apply its authority differently?

As a general matter, ownership of ILCs by commercial entities provides no greater safety and soundness risk and no greater threat to the Deposit Insurance Fund than does ownership by financial entities. The commercial or non-commercial nature of the business in which the parent company is engaged is not a directly relevant risk factor. A more industry-specific inquiry would show that there are more effective proxies for risk than the commercial/financial dichotomy. For example, ILC ownership by a highly capitalized commercial company in a stable industry would generate less risk than ownership by a commercial company in a highly speculative or cyclical industry and perhaps less risk than a highly leveraged financial company that invests solely in speculative securities. So, too, would ownership by a financial company

such as an insurance company with stable cash flows and regulatory-mandated minimum capital requirements.

Despite the lack of any basis for finding that commercial companies inherently create more risk than financial companies in ILC ownership, an important distinguishing feature exists: financial companies are subject to stringent regulation that does not apply to commercial companies. As discussed below, the existence of this regulation renders the concerns raised by the interest groups pushing for stricter regulation inapplicable to financial companies such as insurance companies.

This distinction alone should be sufficient to compel the FDIC to decline to apply restrictive new regulations to ILC ownership by financial companies even if it ultimately decides to take a stricter approach to ILC ownership by commercial entities.

While some proponents of blanket restrictions on ILCs argue that it would be too difficult to distinguish between commercial and financial companies (and thus that none should be allowed to own ILCs without becoming a bank holding company), such an argument is inaccurate. The FDIC could use a simple and objective criterion such as whether the company is allowed to own a bank under the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 ("GLBA"), whether a certain amount of a company's revenues are generated by activities that are financial in nature, or whether the company is regulated by any other state or federal entity or entities with jurisdiction over financial companies. Applying any of these objective standards would enable the FDIC to easily distinguish between commercial entities and financial entities if it adopts separate guidelines.

Comment in Response to Question #3:

Do the risks posed by ILCs to safety and soundness or to the Deposit Insurance Fund differ based on whether the owner is subject to some form of consolidated Federal supervision? If so, how and why? Should the FDIC assess differently the potential risks associated with ILCs owned by companies that (i) are subject to some form of consolidated Federal supervision, (ii) are financial in nature but not currently subject to some form of consolidated Federal supervision, or (iii) cannot qualify for some form of consolidated Federal supervision? How and why should the consideration of these factors be affected?

The relevant distinction should be not whether the owner of an ILC is subject to consolidated Federal supervision but rather whether it is subject to some form of regulatory scheme that adequately ensures safety and soundness. The FDIC appears to have implicitly recognized this in the Notice and Request for Comment when it pointed out that many of the companies that own ILCs but that are not subject to regulation by the Office of Thrift Supervision are nonetheless subject to supervision by state or federal regulators.

As Congress recognized in passing GLBA and broadening the range of activities in which banks may be involved, insurance companies in particular are heavily regulated by state insurance departments. This regulation nullifies the concerns raised by anti-ILC interest groups that ILC deposits and potentially the Deposit Insurance Fund might be used to prop up or bail out an unregulated parent company.

Moreover, because GLBA allows companies such as the Blue Cross and Blue Shield Plans to own banking institutions, any action taken by the FDIC to restrict their ownership of ILCs, the activities of which are more restricted than other banking institutions, would defy logic and undermine a congressional policy determination. Furthermore, to the extent that ILC critics are concerned about a competitive disequilibrium between unregulated commercial entities and bank holding companies, regulation of insurance companies and other non-bank holding company financial services firms renders the concern moot.

Quite simply, ownership of ILCs by regulated financial entities provides none of the risks cited by ILC critics concerned about ownership by commercial entities and falls outside the scope of the policy concerns the FDIC cited in issuing the moratorium in July and the Notice and Request for Comment in August. Indeed, a long and successful history of affiliation between insurance companies and banking companies already exists: the merger of Travelers Group and Citigroup; MetLife Bank, N.A.; Nationwide Trust Company, FSB; and State Farm Bank, FSB to cite just a few examples. The FDIC upheld this tradition in rightly approving the deposit insurance application of Exante Bank, an ILC owned by United Health Care, a competitor of the Blue System.

Ultimately, despite the arguments advanced by anti-ILC interest groups and some policymakers, further restriction of ILCs is neither necessary nor desirable. However, to the extent that the FDIC considers implementing changes to the existing system, these changes should be tailored narrowly. Insurance companies and other financial services companies already subject to regulation stand in different shoes than commercial companies. To sweep them in together and limit the ability of financial companies to own ILCs would not only serve no heretofore stated policy objective but would undermine the power of the free market and the interests of American consumers. We urge the FDIC to refrain from building this "bridge too far" and we thank you again for this opportunity to comment.

Yours in good health,

Scott P. Serota