GE Capital Financial Inc.

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USA

October 10, 2006

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

Attention: Comments

To Whom It May Concern:

GE Capital Financial Inc. ("GECFI") submits these comments in response to the Federal Deposit Insurance Corporation's ("FDIC") Notice and Request for Comment ("Notice") appearing in the *Federal Register* on August 23, 2006. GECFI is a state-chartered, FDIC-insured industrial loan company ("ILC").

General Summary

There has been much discussion of late regarding ILCs and whether the ILC charter poses unique regulatory or safety and soundness concerns. Many of the so-called "concerns" raised in connection with ILCs are based on the faulty premises that the "mixing of banking and commerce" is inherently risky and traditionally prohibited in the United States. Neither of these assumptions is true. As we discuss in more detail below, ILCs are state-chartered depository institutions subject to thorough and comprehensive regulation by the FDIC. History has demonstrated that ILCs do not pose a disproportionate risk to the Deposit Insurance Fund than other depository institutions. Furthermore, the relationships between an ILC and its corporate parents and affiliates are subject to affiliate transaction restrictions that are at least as strong as those applicable to other banks and their parents and affiliates.

GECFI is pleased to respond to the specific questions posed by the FDIC in the Notice. We urge the FDIC to review its own experiences in connection with these questions, as well. We are confident that the FDIC has the necessary authority and expertise to regulate ILCs, including their relationships with their parents and affiliates, and to ensure that ILCs remain a safe and sound source of financial products and services for consumers. It is our hope that the FDIC will draw the same conclusion based on the law, the facts, and the historical record.

Responses to Questions

1. **Have developments in the ILC industry in recent years altered the relative risk profile of ILCs compared to other insured depository institutions? What specific effects have there been on the ILC industry, safety and soundness, risks to the Deposit Insurance Fund, and other insured depository institutions? What modifications, if any, to its supervisory programs or regulations should the FDIC consider in light of the evolution of the ILC industry?**

The risk profile of ILCs has not necessarily changed relative to other insured depository institutions. Having said this, there has been an evolution with respect to ILCs insofar as more have been chartered and several have grown in size to become relatively large institutions. Yet this does not necessarily change the risk profile. In particular, in order to obtain deposit insurance, an ILC's application is subject to stringent review by the FDIC. Before approving an application for deposit insurance, the FDIC must consider a variety of factors, specifically including "[t]he risk presented by such depository institution to the [Deposit Insurance Fund]." Given that the FDIC has approved these applications, the FDIC must have found that the institutions did not pose an unnecessary risk to the Deposit Insurance Fund.

As for the growth in size of ILCs, the FDIC's oversight is not limited only to approving applications for deposit insurance. ILCs are subject to ongoing oversight by the FDIC, including at least annually reviewing the institutions' current risk profile. The FDIC has the authority to address any risks posed by the growth of an ILC (or any other bank), including through prompt corrective action.

Given that statutes and regulations tend to focus on institutions' activities, as opposed to their size or type of charter, we do not believe it would be necessary or appropriate to alter the bank regulatory regime with respect to ILCs simply as a result of their ongoing evolution. The FDIC should continue to supervise banks based on the particular risk profile of the institution, rather than some artificial demarcation such as its charter type, size, or holding company affiliation.

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?**

The risks posed by an ILC to the Deposit Insurance Fund do not vary based solely upon whether the ILC's owner is a financial entity or a commercial entity. We are unaware of any actual data to support such a finding. Moreover, there is nothing to suggest that the regulation of ILCs is less comprehensive simply because its parent is commercial. The existing regulatory structure gives the FDIC the ability to regulate an ILC's relationships with its parents/affiliates, such as through Sections 23A and B of the Federal Reserve Act and Regulation O. The FDIC could even close the bank entirely if the FDIC felt such drastic action were necessary. The FDIC should continue to regulate an ILC's relationships with its parents/affiliates based on the actual risks presented by each relationship, not based on an unfounded assumption that a relationship with a commercial parent or affiliate is inherently more risky.

We also direct the FDIC to the testimony provided by the American Financial Services Association ("AFSA") to the FDIC on April 10, 2006 as part of hearings on the application by Wal-Mart Bank for deposit insurance. In that testimony, AFSA noted that there has never been a prohibition on the ownership of some form of depository institution by a commercial entity. The significant history of ownership of depository institutions by commercial firms in the United States without disproportionate impact on the Deposit Insurance Fund would appear to support the conclusion that an ILC's risks to the Deposit Insurance Fund are not affected by the nature of the ILC's parent.

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 FDIC has the ability and tools to ensure the safety and soundness of an ILC. Chairman Donald E. Powell has already concluded as much. As he stated in a letter to the Government Accountability Office ("GAO"), "[i]n terms of the relevant goal of safeguarding the federal banking safety net, any conclusion that the FDIC's affiliate examination authority is less effective in practice than that of consolidated supervisors is not supported by the historical record."

Having said this, GECFI and its corporate family are subject to consolidated supervision by the Office of Thrift Supervision by virtue of the fact that an affiliate of GECFI is a federal savings bank. To the extent the FDIC believes that it needs to engage in a more consolidated approach to the regulation of an ILC that is already subject to consolidated supervision, such as GECFI, we urge the FDIC to communicate with the appropriate supervisory agency to avoid potential redundancies.

4. **What features or aspects of a parent of an ILC (not already discussed in Questions 2 and 3) should affect the FDIC's evaluation of applications for deposit insurance or other notices or applications? What would be the basis for the FDIC to consider those features or aspects?**

The FDIC must consider a variety of factors when reviewing an application for deposit insurance. *See* 12 U.S.C. § 1816. These include the adequacy of the depository institution's capital structure and the general character and fitness of the management of the depository institution. It may be appropriate to evaluate an institution's parent in connection with these criteria if the bank is dependent on the parent for capital or management resources. This is true regardless of whether the bank is an ILC or other type of depository institution.

5. **The FDIC must consider certain statutory factors when evaluating an application for deposit insurance (*see* 12 U.S.C. § 1816), and certain largely similar statutory factors when evaluating a change in control notice (*see* 12 U.S.C. § 1817(j)(7)). Are these the only factors FDIC may consider in making such evaluations? Should the consideration of these factors be affected based on the nature of the ILC's proposed owner? Where an ILC is to be owned by a company that is not subject to some form of consolidated Federal supervision, how would the consideration of these factors be affected?**

Please see answers to questions 3 and 4.

6. **Should the FDIC routinely place certain restrictions or requirements on all or certain categories of ILCs that would not necessarily be imposed on other institutions (for example, on the institution's growth, ability to establish branches and other offices, ability to implement changes in the business plan, or capital maintenance obligations)? If so, which restrictions or requirements should be imposed and why? Should the FDIC routinely place different restrictions or requirements on ILCs based on whether they are owned by commercial companies or companies not subject to some form of consolidated Federal supervision? If such conditions are believed appropriate, should the FDIC seek to establish the underlying requirements and restrictions through a regulation rather than relying upon conditions imposed in the order approving deposit insurance?**

The FDIC should not routinely place restrictions or requirements on all or certain categories of ILCs. Any restrictions or requirements should be based on the institution's application and an evaluation of the risks presented by the institution's business plan, not on the applicant's charter. For the reasons described above, we do not believe that the nature of an ILC's parent would affect the FDIC's risk calculus or determination to impose such restrictions.

7. **Can there be conditions or regulations imposed on deposit insurance applications or changes of control of ILCs that are adequate to protect an ILC from any risks to safety and soundness or to the Deposit Insurance Fund that exist if an ILC is owned by a financial company or a commercial company? In the interest of safety and soundness, should the FDIC consider limiting ownership of ILCs to financial companies?**

We do not believe that conditions or regulations should be imposed simply because of the nature of an institution's charter. Any conditions on approval of a deposit insurance application should be based on a careful, case-by-case review of the applicant's business plan. This should be the same policy the FDIC applies to any institution. ILCs should not be singled out for special treatment.

As we have described above, there would be no justification from a safety and soundness perspective for the FDIC to consider limiting the ownership of ILCs to financial companies (however that term may be defined).

8. **Is there a greater likelihood that conflicts of interest or tying between an ILC, its parent, and affiliates will occur if the ILC parent is a commercial company or a company not subject to some form of consolidated Federal supervision? If so, please describe those conflicts of interest or tying and indicate whether or to what extent such conflicts of interest or tying are controllable under current laws and regulations. What regulatory or supervisory steps can reduce or eliminate such risks? Does the FDIC have authority to address such risks in acting on applications and notices? What additional regulatory or supervisory authority would help reduce or eliminate such risks?**

There are no greater risks of conflicts of interest or tying between a depository institution and its parent or affiliates based on the nature of the institution's parent or affiliates or whether the company is subject to consolidated supervision. The law prohibits abusive relationships between a depository institution and its affiliates, and the FDIC has ample authority to ensure that an ILC is protected from such conflicts. Furthermore, Section 106 of the Bank Holding Company Act Improvements Act prohibits tying between an ILC and its affiliates. In fact, the law also treats an ILC's affiliate as though it were a bank subject to the anti-tying prohibition itself. Non-bank affiliates of a bank holding company are not subject to the same limitation.

In addition to the statutory protections against conflicts of interest, we are unaware of historical evidence to suggest that there is a greater likelihood of an ILC succumbing to conflicts of interest compared to other types of depository institutions.

9. **Do ILCs owned by commercial entities have a competitive advantage over other insured depository institutions? If so, what factors account for that advantage? To what extent can or should the FDIC consider this competitive environment in acting on applications and notices? Can those elements be addressed through supervisory processes or regulatory authority? If so, how?**

The bank regulatory regime does not provide for a competitive advantage for ILCs owned by commercial entities relative to other depository institutions. ILCs are subject to the same safety and soundness regulations as other depository institutions. The law provides for a level playing field in this regard.

10. **Are there potential public benefits when a bank is affiliated with a commercial concern? Could those benefits include, for example, providing greater access to banking services for consumers? To what extent can or should the FDIC consider those benefits if they exist?**

The public benefits greatly from the ability of companies to provide financial products and services through ILCs. The presence of ILCs in the consumer financial services marketplace fosters increased competition for customers. This increased competition provides concrete benefits to consumers in the form of lower costs and improved financial products and services. At a time when the traditional banking industry continues to undergo consolidation, ILCs have provided a means for increased competition to offset such consolidation.

11. In addition to the information requested by the above questions, are there other issues or facts that the FDIC should consider that might assist the FDIC in determining whether statutory, regulatory, or policy changes should be made in the FDIC's oversight of ILCs?

We again urge the FDIC to review the facts and the historical record surrounding ILCs. ILCs have been operating successfully for years and through a variety of economic cycles. The FDIC has regulated ILCs for years. There is no evidence in the ample historical record to suggest that ILCs pose a disproportionate risk to the Deposit Insurance Fund. The FDIC's practices and regulatory approach with respect to ILCs (and to any other depository institution, for that matter) has generally been prudent and sound. We are aware of no evidence to suggest that a change in practice is necessary to protect the Deposit Insurance Fund.

12. Given that Congress has expressly excepted owners of ILCs from consolidated bank holding company regulation under the Bank Holding Company Act, what are the limits on the FDIC's authority to impose such regulation absent further Congressional action?

As described above, the FDIC has the ability to condition the approval of an application for deposit insurance based on the risk assessment performed by the FDIC on the applicant. The FDIC also has broad authority under existing law to monitor the health of a bank and its affiliates and to take appropriate steps to address the safety and soundness of the bank. To the extent the FDIC believes in a particular case that an affiliate may present a risk to the institution, the FDIC can take action, such as under Sections 23A and 23B of the Federal Reserve Act.

This also begs the question of whether consolidated supervision under the Bank Holding Company Act is the only effective mechanism to regulate banks and protect the Deposit Insurance Fund. To quote Chairman Powell again from the same letter to the GAO: "The FDIC believes that bank-centric supervision as applied by the...FDI Act, and enhanced by Sections 23A and 23B of the Federal Reserve Act and the Prompt Corrective Action provisions of the FDIC Improvement Act, is a proven model for protecting the deposit insurance funds, and no additional layer of consolidated federal supervision of ILC parents is necessary." In short, although the FDIC's regulatory approach is different than that provided in the Bank Holding Company Act, it is not less effective.

GECFI appreciates the opportunity to comment on the Notice. Please do not hesitate to contact Paul Werner at (801) 517-5640 if we can be of further assistance.

Sincerely,

Jeffery R. Dye
President