

February 11, 2019

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

**Re: Request for Information on the FDIC's Deposit Insurance Application Process
(RIN 3064-ZA03)**

Dear Secretary Feldman:

Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. In 1971, AFSA merged with the American Industrial Bankers Association, an organization of industrial banks, thrift and loan companies, and sales finance companies. We are proud to continue to represent those banks.

Industrial banks, known in some states as industrial loan companies, thrift and loan companies, or Morris Plan banks, are among the types of applications for new charters, which recently languished at the Federal Deposit Insurance Corporation (FDIC).

I. The Need For Charter Process Reform

The FDIC serves the dual role of operating the insurance fund as well as approving the formation of new banks chartered under state law. These state banks—whose history predates national banks—include community banks that provide vital economic benefit to smaller markets, as well as industrial banks—one of the few types of banks which may be owned by commercial entities.

While the 2008 bank crisis is long gone, the FDIC has only approved a handful of bank charters of all types since 2008. In 2014, the FDIC released an updated FAQ that clarified its guidance on charter applications. In reality, though, no action took place.

In 2016, then Chairman Gruenberg announced that the FDIC was rescinding a policy that required heightened scrutiny of de novo banks during their first seven years of existence, and was returning to the prior policy, which subjected new banks to regulatory micromanagement for three years. Gruenberg also stated that, “the FDIC welcomes applications for deposit insurance, and we clearly have a role to play in facilitating the establishment of new institutions.” Again, little changed.

We believe Chairman McWilliams put it best:

“Over the past decade, de novo activity has screeched to a historic halt. As FDIC chairman, one of my key priorities is to encourage new bank formation. The FDIC needs to do its part to make that happen.”ⁱ

AFSA welcomes this initiative, and we are grateful to the chairman for her leadership in changing FDIC practice.

The *de facto* moratorium on new charters has been particularly harmful to Nevada and Utah, which permit the chartering of industrial banks. Those two states find their banking law effectively preempted by a regulatory agency operating with no statutory or policy basis.

II. Charter Applications Must Be Processed Promptly

While we believe changes to simplify the charter process will be useful, one simple cultural change would provide immediate benefit. The FDIC should follow the law.

The FDIC is required to process applications on a timely basis. Section 343(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 “requires” federal banking agencies—including the FDIC—to take action on an application within one year of the day “a complete application is received.”

While Congress created a timely and efficient application process, the FDIC peppers applicants with requests for data and additional information to prevent an application from being deemed completed. While the *FDIC Case Manager Manual* (April 2004) states that, “it is expected that processing timeframes approaching the one-year time limit and/or needing a waiver will occur in rare and unusual circumstances,” one pending application was slow-walked by the FDIC for seven years.

The company sent the entire FDIC board and a number of U.S. Senators a widely circulated and publicized letter described its long history of interactions with the FDIC and its repeated submissions in response to numerous requests for additional information.

In fact, the one-year approval period has proven a hollow requirement as the FDIC has the discretion to determine when an application is considered “complete” and has repeatedly delayed decisions with respect to industrial bank applications by never deeming applications as completed.

III. The Agency Must Speak With One Voice

Applicants for industrial bank charters—and, we presume, those for all types of charters—find themselves contending with unwritten and unacknowledged standards that differ in the regional offices and in Washington.

AFSA recognizes the FDIC has to manage difficult and, perhaps, conflicting roles. As an insurer, it is natural to wish to reduce risk to the fund which had to weather the Great Recession. As a prudential banking regulator, the FDIC must charter and encourage banks of all types in order to provide the financial services needed to support a thriving and stable economy.

We welcome this initiative.

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AFSA thanks the FDIC for the opportunity to provide these comments and to the chairman for her interest in addressing the issues raised above. If you have any questions, please do not hesitate to contact me by phone at 202-776-7300 or e-mail at cwinslow@afsamail.org.

Sincerely,



Celia Winslow
Vice President, Legal & Regulatory Affairs
American Financial Services Association

ⁱ McWilliams, Jelena. "BankThink: We Can Do Better with on De Novo." *American Banker*, 6 Dec. 2018 at <https://www.americanbanker.com/opinion/fdic-chairman-jelena-mcwilliams-we-can-do-better-on-de-novos>