AFSA
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American Financial Services Association

March 20, 2017

Hon. Blaine Luetkemeyer
Chairman
Subcommittee on Financial Institutions
& Consumer Credit
House Financial Services Committee
Washington, DC 20515

Hon. Wm. Lacy Clay
Ranking Member
Subcommittee on Financial Institutions
& Consumer Credit
House Financial Services Committee
Washington, DC 20515

Dear Chairman Luetkemeyer and Ranking Member Clay:

The American Financial Services Association (AFSA)[1] respectfully requests that this statement be made part of the record for the March 21, 2017 hearing entitled *"Ending the De Novo Drought: Examining the Application Process for De Novo Financial Institutions."*

The Federal Deposit Insurance Corporation (FDIC) should return to chartering new banks to help our economy. Your subcommittee's hearing is especially timely in light of the differing attitudes about new charters shown by the federal banking agencies. While the Office of the Comptroller of the Currency embraces new charters, the FDIC refuses to process insurance approvals for existing types of bank charters.

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 languish at the FDIC. (For more information, please see the appendix.) AFSA has a keen interest in the outcome of this hearing. We are grateful to you both for holding this hearing and we hope our statement is helpful.

For the past 40 years, industrial banks, many owned by commercial parents, have compiled the best record of capitalization and profitability of any group of banks in the nation. There is no evidence that states have inadequately regulated the industrial banks they chartered. Yet, for a decade, the FDIC failed to process any industrial bank application. During most of this time, the moratorium was imposed by administrative fiat without any legal authorization, public announcement, statement of reasons, or opportunity for public input on this critical and damaging policy.

This *de facto* moratorium on new charters is particularly harmful to Nevada and Utah, which permit the chartering of industrial banks, only to find their banking law preempted by a regulatory agency operating with no statutory or policy basis. These states serve their role as laboratories for change and have demonstrated beyond any reasonable and objective doubt that industrial banks operate as safe, sound, responsible and beneficial providers of credit.

Chartering a bank is, properly, a rigorous process that follows requirements found in Sections 4, 5 and 6 of the Federal Deposit Insurance Act. In the case of state-chartered banks, applications are reviewed by both the FDIC and the state banking regulator. However, a rigorous process

[1] *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 and we are proud to continue to represent a number of these banks.*

need not be an endless process. 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 upon which a complete application is received.

While Congress created this 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 "it is expected that processing time frames approaching the one-year time limit and/or needing a waiver will occur in rare and unusual circumstances," one pending application, filed by a publicly traded company with global operations and already owning a domestic bank and international bank, has been slow-walked by FDIC bureaucrats since November 2009. Another AFSA member—an iconic, global brand with experience in financial services was discouraged from pursuing a charter.

In reality, the one-year approval period is a hollow requirement as the FDIC has the discretion to determine when an application is considered "complete" and has repeatedly delayed this decision on industrial bank applications by never deeming applications as completed.

The FDIC should be encouraged to charter new banks to improve the American economy. To supplement our statement, we commend to the subcommittee the thorough testimony presented by the National Association of Industrial Bankers and the Utah Bankers Association before the July 13, 2016 United States House of Representatives Committee on Oversight & Government Reform hearing, entitled *Oversight of the FDIC Application Process.*

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Thank you for the opportunity to share our views. If you have any questions, please contact AFSA's Executive Vice President Bill Himpler at 202-466-8616 or bhimpler@afsamail.org.

APPENDIX

What is an industrial bank?

Industrial banks are state-chartered banking institutions that may be owned by a commercial entity. First chartered in 1910, industrial banks predate the Federal Deposit Insurance Act by 23 years. Industrial banks are FDIC-regulated depository institutions chartered under the laws of California, Colorado, Hawaii, Indiana, Minnesota, Nevada, and Utah. Today, they principally operate in Nevada and Utah.

Industrial banks engage in consumer and commercial lending on both a secured and unsecured basis. They accept time deposits, money market accounts, savings accounts and deposits that may be withdrawn through negotiable orders of withdrawal.

Industrial banks are subject to the same banking laws and are regulated in the same manner as other depository institutions. Though not required to be regulated as federal bank holding companies, owners of industrial banks are not unregulated. Like any other state bank, they are supervised and examined both by the states that charter them and by the FDIC. They are subject to the same safety and soundness, consumer protection, deposit insurance, Community Reinvestment Act, and other requirements as any other FDIC-insured depository institutions.

Industrial banks evolved from early twentieth century Morris Plan Banks, consumer lending institutions organized at a time when commercial banks rarely made consumer loans or offered deposit accounts to individuals. The word “industrial” in their names stems from the original mission of providing credit to industrial workers, not to the industries themselves.

In the past four decades, industrial banks have compiled among the best record of capitalization and profitability of any group of banks in the nation and represent a sector of the financial services industry that should be encouraged to grow.

When did the moratorium on industrial bank charters start and when did it end?

In the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress placed a temporary moratorium on commercial firms chartering or acquiring industrial banks to allow Congress time to study the merits of allowing commercial firms to own these banks. Congress decided *not* to renew the moratorium when it expired in July 2013, meaning that federal law continues to allow commercial firms to charter and acquire industrial banks.

Even though Congress did not renew the moratorium, the FDIC has failed to process any new industrial bank applications, thereby blocking states’ rights to grant new charters and providing additional credit to consumers and small businesses. This decision disregards the preexisting federal law that requires the processing of applications within a reasonable time frame and ignores Congress’ intent to maintain a dual banking system in the United States. In fact, even former FDIC Chair Sheila Bair agreed the agency has a legal obligation under current statute to process these applications.

Despite federal law, Congress’ intent, and the safety and soundness of industrial banks, the FDIC has continued a *de facto* moratorium on granting industrial bank charters. There has been no legal authorization, public announcement, statement of reasons, or opportunity for public input to this policy. Industrial banks formerly were subject to two moratoria on new charters both of which

ended after a GAO study found *no* need for additional legislation.

Below is a timeline of the moratorium over the last decade.

- **7/28/06:** In response to an application filed by Walmart, FDIC Chair Sheila Bair imposes a six-month moratorium on applications for deposit insurance by industrial banks and notices of change in bank control of existing industrial banks.

- **1/31/07:** The FDIC votes to extend the moratorium until 1/31/08. Oddly, Chairman Bair noted, "Industrial banks have a history of strength and innovation. *Today's action ensures that industrial banks will continue to remain safe and important participants in the financial system and that the parent company will be a source of strength and not a source of risk."*

- **11/28/07:** FDIC Chair Bair announces she will lift the moratorium saying, *"We've extended it for 18 months already, and I think if we go much longer, we expose ourselves to litigation. We have a legal obligation under current statute to process these applications."*

- **6/25/10:** The Dodd-Frank conference report includes section 603 which imposed a three-year moratorium on the ability of *"commercial firms"* to acquire FDIC-insured industrial banks and credit card banks and directing the GAO to study issues arising from commercial ownership of industrial banks.

- **7/21/10:** The Dodd-Frank Act is signed into law.

- **5/9/11:** FDIC Chair Bair resigns.

- **7/9/11:** Martin Gruenberg becomes Acting FDIC Chair and is later confirmed.

- **1/19/12:** The GAO Report is published making no recommendations for additional legislation.

- **7/22/13:** The Dodd-Frank Act Moratorium expires.

- **Today:** The last new industrial bank charter was approved in 2008.