



**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM**

Hearing On  
**OVERSIGHT OF THE FDIC APPLICATION PROCESS**

Wednesday, July 13, 2016

Statement for the Record of the  
American Financial Services Association

Chairman Chaffetz and Ranking Member Cummings:

The following Statement is filed on behalf of the American Financial Services Association (AFSA) which respectfully requests that it be made part of the record for the July 13, 2016 hearing entitled “Oversight of the FDIC Application Process.”

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.

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 Federal Deposit Insurance Corporation.

For that reason, 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.

The Federal Deposit Insurance Corporation (FDIC) serves the dual role of operating the insurance fund as well as approving the required insurance coverage for new banks chartered under state law. In the case of industrial banks, the bank commissioners of Nevada and Utah, whose statutes permit these institutions, are ready and willing to welcome new entrants. These state banks—whose history predates the national bank charter—include community banks which provide vital economic benefit to smaller markets and industrial banks, the only class of banks which may be owned by commercial companies.

While the 2008 bank crisis is long gone, the FDIC has only approved three new bank charters since 2008. In 2014, the FDIC released an updated FAQ that clarified its guidance on charter applications however, in reality, no action has or is taking place.<sup>1</sup>

While our interest is in the future growth of industrial banks, our comments relating to the lack of charter approvals apply to *all* types of state bank charters. We do not seek special treatment solely for our members—we believe *all* forms of state charters have been constrained by the lack of action by the FDIC.

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 effectively preempted by a regulatory agency operating with no statutory or policy basis.

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<sup>1</sup> See: Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance, FIL-56-2014 (November 20, 2014)

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 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.

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 with respect to industrial bank applications by never deeming applications as completed.

### 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 Utah, California, Colorado, Nevada, Hawaii, Indiana, and Minnesota. Today they principally operate in Nevada and Utah.

Industrial banks are subject to the same banking laws and are regulated in the same manner as other depository institutions. 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.

Most owners of industrial banks are exempted from Federal Reserve Board supervision as bank holding companies. Similar Bank Holding Company Act exemptions apply to many institutions not owned by other companies, and to financial institutions that do not offer a full range of banking services, such as credit card banks, Edge Act banks, grandfathered nonbank

banks and trust banks. These exemptions benefit bank customers by introducing additional competition into the marketplace without increased risk to the deposit insurance system.

Though not required to be regulated as federal bank holding companies, owners of industrial banks are not “*unregulated*.” They are subject to many of the same requirements as bank holding companies, such as strict restrictions on transactions with their bank affiliates. They are regulated under state law and are subject to examination by the FDIC, and to “*prompt corrective action*” and capital guarantee requirements if the banks they control encounters financial difficulties.

Industrial banks evolved from early twentieth century Morris Plan Banks, consumer lending institutions organized at a time when commercial banks generally did not make consumer loans or offer 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.

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 (“NOW” accounts).

#### CONGRESS AND INDUSTRIAL BANKS

In the Dodd-Frank Act, Congress placed a temporary moratorium on commercial firms chartering or acquiring industrial banks in order 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.

Despite Congress’ action, 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 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, although former FDIC Chair Sheila Blair agreed the agency has a “*legal obligation under current statute to process these applications*,” the FDIC has received a number of applications but has not granted any within the one year time frame provided by statute.

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.

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 there was no need for additional legislation:

- **7/28/06**-In response to an application filed by Wal-Mart, FDIC Chair Sheila Bair imposes a six-month moratorium on applications for deposit insurance by industrial banks and on notices of change in bank control for 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 Act passes both Houses including 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 announces her resignation.
- **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.

#### THE FDIC SHOULD LISTEN TO THE STATES AND APPROVE NEW BANKS

In sum, 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 very important and damaging policy. No industrial bank application has been approved since 2006.

The Nevada and Utah legislatures chose to permit, and indeed encourage, these charters but now find their policy decision frustrated by a non-responsive federal agency. 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.

AFSA believes it is time that the FDIC returns to chartering new banks to help our economy. We thank the Committee on Oversight and Government Reform for the opportunity to provide this statement on the FDIC's failure to approve new industrial, and other state, bank charters.

If you have any questions, please contact AFSA's Executive Vice President, Bill Himpler, at 202-466-8616 or [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org).