



July 29, 2020

The Honorable Mike Crapo  
Chairman  
Committee on Banking, Housing, and Urban Affairs  
United States Senate  
Washington, D.C. 20510

The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate  
Washington, D.C. 20510

The Honorable Maxine Waters  
Chairwoman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Patrick McHenry  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Crapo, Ranking Member Brown, Chairwoman Waters, and Ranking Member McHenry,

The Center for Responsible Lending, Bank Policy Institute, and Independent Community Bankers of America are writing to urge immediate Congressional action to address the risks to the banking system and consumers posed by the proliferation of industrial loan companies and industrial banks (“ILCs”) owned by companies that are not subject to the same prudent federal banking regulation and supervision as bank holding companies and savings and loan holding companies. The ILC charter creates a dangerous gap in safety and soundness oversight, described by the GAO as a “blind spot.”.

We encourage Congress to impose a 3-year moratorium, similar to that which was included in the Dodd-Frank Wall Street Reform and Consumer Protection Act, to prohibit the FDIC from approving licensing applications involving ILCs (e.g., an application for deposit insurance for a de novo ILC, a change in control notice involving an existing ILC, or a merger application involving an existing ILC). Congress should not abdicate its duty to address the ILC loophole and allow bank regulators to decide the fate of our banking system. While enactment of legislation to permanently close the loophole is preferable, this intermediate action will give Congress the time necessary to approve an appropriate legislative framework. A moratorium is especially important in light of current economic stress and uncertainty caused by the COVID-19 pandemic and should be included in the next COVID response and stimulus package that Congress sends to the President. This is clearly the wrong time to allow new entrants into the financial system that will increase systemic risk.

ILCs offer banking products and services that are functionally indistinguishable from those offered by banks, but the ILC loophole allows the parent companies of ILCs to avoid oversight by the Federal Reserve Board and to engage in commercial activities, thus introducing risk to the banking system and to taxpayers. Legislative action to close this loophole is necessary to eliminate these risks.

Further, parent companies of ILCs are not subject to federal financial privacy and information security requirements. The absence of these requirements creates risk for customers of the ILCs, whether or not

they also obtain products and services from the parent companies or non-financial affiliates. Bank holding companies and savings and loan holding companies are limited in their use of consumer financial data for commercial purposes. ILC parent companies should be subject to the same restrictions. With the increasing interest from commercial and technology companies in obtaining an ILC charter, it becomes even more important to ensure that controls are in place around the use of customer information. A growth in ILCs poses broader consumer protection risks as well, because non-bank lenders, including very high-cost lenders, view the ILC charter as a far easier way to obtain banking privileges than obtaining a traditional bank charter and, consequently, becoming subject to consolidated Federal Reserve supervision.

In recent months, applications for ILCs have been approved or submitted by companies that engage in commercial or technological activities. After a long hiatus, the FDIC recently approved applications for Square and Nelnet to charter ILCs and is currently reviewing applications submitted by online retailer Rakuten and The Jones Financial Companies. While The Jones Financial Companies do not engage in commercial activities, this is an example of a firm entering the banking space while avoiding consolidated supervision by the Federal Reserve. This company has deliberately chosen the ILC charter over becoming a Bank Holding Company, for which it is qualified, in an effort to skirt Federal Reserve supervision and regulation. Congress should put a stop to this form of “charter shopping,” which only weakens consumer protections and heightens systemic risk.

In the era of dominant Big Tech, we should be cautious before giving technology companies even greater reach into the economic life of Americans by allowing them to own banks. The integration of technology and banking firms would not only result in an enormous concentration of financial and technological assets but also would pose conflicts of interest and privacy concerns to our banking system.

Time is running out, as Rakuten is potentially the next ILC the FDIC will approve. Rakuten is a giant multinational conglomerate and their application outlines extensive foreign affiliate relationships that Rakuten’s ILC, Rakuten Bank America, will leverage. These close relationships between Rakuten’s ILC and its affiliates present significant risks to Rakuten Bank, and, therefore, to the FDIC’s deposit insurance fund (DIF). This danger is compounded by the fact that the FDIC is moving full speed ahead approving ILC applications before finalizing the rulemaking that will govern how they plan to oversee ILC parent companies. In reality, the FDIC lacks the statutory tools to adequately examine and supervise the many e-commerce affiliate relationships, particularly when so many of them operate overseas, at the size and scale of Rakuten. Once Rakuten is permitted to own an ILC, the door is open for other similarly large technology-based commercial firms like Amazon, Apple, and Google to own ILCs as well, effectively changing the landscape and risk profile of the entire banking system, without any Congressional action.

Thank you for your consideration, and we look forward to working with you on this important proposal.

Respectfully,

Bank Policy Institute  
Center for Responsible Lending  
Independent Community Bankers of America