

July 1, 2020

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
1776 F Street, NW
Washington, DC 20006
Delivered electronically

Re: Comments on FDIC Notice of Proposed Rulemaking, Parent Companies of Industrial Banks and Industrial Loan Companies

Dear Chairman McWilliams,

The undersigned civil rights, community, consumer, and faith organizations write to strongly oppose the FDIC's proposed rule on industrial banks and industrial loan companies (together, "ILC"s), as well as the agency's approval of new ILC charters, in light of the threats these charters pose to state interest rate limits and, consequently, to consumers--particularly to those most financially vulnerable.

Interest rate limits are the single most effective tool states have to protect their residents from predatory loans. Predatory loans include payday and car title loans that often carry annual interest rates as high as 300% or more. Predatory loans also include high-cost installment loans and lines of credit with rates approaching and well exceeding 100%. These loans target financially distressed individuals, compound their debt burden, and leave them worse off. High-cost lenders also disproportionately prey on communities of color, stripping them of income, widening the racial wealth gap, and more deeply entrenching systemic racism. Rather than promote financial inclusion, as they claim, high-cost lenders fuel financial exclusion.

These high interest rates do not just make loans dramatically more expensive than mainstream loans. They also fundamentally alter the repayment structure, as borrowers can make payments for many months or even years without seeing any significant reduction in principal. As a result, these high rates also warp market incentives, where lenders succeed even if borrowers eventually default in great numbers.

This proposal comes amidst a number of attacks on state usury limits by federal banking regulators in recent years, as state-regulated lenders increasingly look to federal regulators to help them avoid state laws. The ILC charter is no different. By making it easier for predominantly online non-bank lenders to obtain bank charters, while avoiding consolidated supervision of the Federal Reserve, the FDIC would pave the way for non-banks to benefit from federal preemption far more easily than they otherwise could. Indeed, a law firm representing payday lenders recently wrote of the ILC proposal: "The proposed rule, together with the FDIC's recent approvals of deposit insurance applications for [NelNet and Square], suggest the ILC charter as a viable alternative to the OCC's fintech charter, which has been stalled by litigation."ⁱ

Several traditional FDIC-supervised banks are already facilitating evasion of state usury limits by non-banks through rent-a-bank schemes that the FDIC has not addressed. The loans these schemes peddle are among the most irresponsible loans on the market. **Republic Bank & Trust (of Kentucky)** and **FinWise Bank (of Utah)** are enabling high-cost lenders Elevate (100% APR), OppLoans (up to 160% APR), and/or Enova (up to 99.99% APR) to evade state rate caps in over half the states. **Capital Community Bank (of Utah)** is helping car title lender LoanMart evade state law in a number of states. LoanMart's loans range from 60-222% interest; a typical loan is \$2,500, 18-month loan at 90%, totaling \$2,136 in interest. **Transportation Alliance Bank, dba TAB Bank (of Utah)** is helping **EasyPay Finance** make predatory loans for furniture, appliances, pets, auto repairs and other products, including a \$1,500 loan at a rate of 188.99%. And **Bank of Lake Mills (of Wisconsin)** has enabled predatory small business loans, including a 120% APR \$550,000 small business loan and a 74% APR loan secured by a second mortgage.

A disproportionate number of ILCs are also engaged in rent-a-bank arrangements; these are all chartered in Utah. **First Electronic Bank** is helping Personify Financial make loans up to 179.99% in 22 states. **WebBank** is involved in litigation alleging violation of Colorado's state usury limit through a rent-a-bank arrangement. And **Celtic Bank** is helping OnDeck Capital and Kabbage make small business loans at up to 99% APR.

Experience has demonstrated that parents of ILCs pose excessive risks that the FDIC is unable to constrain. A number of ILC owners failed or nearly failed during the 2008 financial crisis, including predatory mortgage lender Fremont and predatory credit card issuer Advanta. The FDIC's proposed plan, which claims to largely formalize the existing practices that have already proved inadequate, will not compensate for its lack of consolidated supervisory authority. The FDIC proposal also fails to give adequate consideration to the Community Reinvestment Act implications of an expansion of ILC charters, including convenience and needs, fair lending, and consumer protection.

We wholly reject any notion that approval of additional ILC charters may enable lenders to meet the credit needs of the financially vulnerable. To the contrary, they would make the financially vulnerable more so by facilitating the spread of predatory lending and undermining states' ability to stop it.

We appreciate your consideration of our concerns.

Yours truly,

Americans for Financial Reform Education Fund	National
Arkansans Against Abusive Payday Lending	Arkansas
Arkansas Community Organizations	Arkansas
California Reinvestment Coalition	California
Center for Economic Integrity	Arizona
Center for Responsible Lending	National
Consumer Action	National
Demos	National
Indiana Institute for Working Families	Indiana
Jacksonville Area Legal Aid, Inc.	Florida
The Leadership Conference on Civil and Human Rights	National
Maryland Consumer Rights Coalition	Maryland
Missouri Faith Voices	Missouri
National Association of Consumer Advocates	National
National Association of Consumer Advocates (NACA-CO)	Colorado
National Consumer Law Center (on behalf of its low income clients)	National
New Jersey Citizen Action	New Jersey
Public Good Law Center	National
Texas Appleseed	Texas
THE ONE LESS FOUNDATION	PA and CO
Tzedek DC	District of Columbia
Virginia Citizens Consumer Council	Virginia
Virginia Organizing	Virginia

ⁱ Ballard Spahr, March 25, 2020, <https://www.jdsupra.com/legalnews/fdic-issues-proposed-rule-for-approval-86042/>