September 19, 2025

Jennifer Jones
Deputy Executive Secretary
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC, 20429

RE: RIN 3064-ZA48 Request for Information on Industrial Loan Banks and Industrial Loan Companies and Their Parent Companies.

Dear Deputy Executive Secretary Jones:

The Consumer Federation of America, Americans for Financial Reform Education Fund, and Professor Arthur E. Wilmarth, Jr. appreciate the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC's) proposed rulemaking to improve the oversight of industrial banks, industrial loan companies, and their parent corporations.

The Consumer Federation of America (CFA) is an association of nearly 250 non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. CFA works to advance pro-consumer policies on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. We communicate and work with public officials to promote beneficial policies, oppose harmful ones, and ensure a balanced debate on issues important to consumers.

Americans for Financial Reform Fund (AFREF) is a nonpartisan and nonprofit organization founded by a coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups that works towards a strong, stable, and ethical financial system and is committed to eliminating inequity and systemic racism and fighting for a just and sustainable economy for everyone.

Arthur E. Wilmarth, Jr. (in his personal capacity) is a Professor Emeritus of Law at the George Washington University Law School. He was a member of GW Law School's full-time faculty from 1986 to 2020.

Thank you for the opportunity to comment on these important topics. As groups focused on consumer protections, safety and soundness, and privacy, we have concerns about the implications of expanding the number of chartered industrial loan banks and industrial loan companies (ILCs).

SUMMARY

I. Parent companies are obligated to serve as sources of strength for their subsidiary banks. Evidence from the financial crisis shows that cyclical downturns in the businesses conducted by financial and commercial parent companies severely compromise their ability to serve as sources of strength for their subsidiary industrial banks during times of severe economic and financial stress.

A. The FDIC should not approve an application for deposit insurance for an industrial bank if the primary motivation for that application is to reduce funding costs for the parent company of the applicant. In that case, the captive industrial bank would effectively be supporting the financial strength of its parent company, in direct contradiction to statutory requirements.

B. Regulators face significant challenges when they are forced to rescue or resolve a failing or failed captive industrial bank.

C. The financial crisis demonstrated how shell and captive industrial banks are particularly susceptible to contagion risks arising out of financial distress at their parent companies.

D. The FDIC should not approve an application for deposit insurance filed by an applicant whose business model will consist primarily or entirely of acting as a bank partner for fintechs.

E. Easing the requirements for approval of new deposit insurance applications filed by captive industrial banks is not an appropriate means to address concerns about the low volume of new de novo approvals.

F. Easing the requirements for approvals of deposit insurance applications filed by captive industrial banks is not an appropriate means to address concerns about the low volume of new de novo approvals.

II. The FDIC should amend the definition of "covered company" to close several loopholes. The FDIC should clarify the definition of "covered company" to ensure that the FDIC can review and assess the risks of all applications involving changes in control of industrial banks or conversions of other types of depository institutions into industrial banks.

A. The FDIC should clarify that a change in control of a parent company that controlled an industrial bank before April 2021 will require that company (and any company that controls such a company) to comply with 12 C.F.R. Part 354.

B. Conversions by existing traditional banks to industrial banks could undermine community needs for credit and other banking services.

III. The FDIC should adopt a very strong presumption against approvals of transactions that would allow commercial firms to acquire control of FDIC-insured industrial banks. That presumption should be conclusive and irrebuttable for transactions that would enable Big Tech firms to acquire control of industrial banks.

A. The FDIC should apply a very strong presumption against allowing commercial firms to acquire control of industrial banks because such acquisitions are contrary to the longstanding U.S. policy of separating banking and commerce.

B. In view of the severe risks and potential systemic dangers presented by commercially-owned industrial banks, the FDIC should apply a very strong presumption against approving acquisitions of industrial banks by commercial firms, in keeping with the policy the FDIC previously followed between 2005 and 2020.

C. Acquisitions of FDIC-insured industrial banks by Big Tech firms would pose intolerable risks and dangers to consumers and our financial system and economy. Accordingly, the FDIC should apply a conclusive presumption precluding approval of such acquisitions.

IV. Industrial Loan Companies Do Not Meet the Convenience and Needs of Communities or Consumers

A. Shell and captive industrial banks are designed to benefit their parent companies and often do not provide meaningful benefits to the public.

B. Industrial banks have far lower Community Reinvestment Act ratings, and those low ratings raise significant concerns about the FDIC's approval of industrial bank charters and transactions.

C. Shell and captive industrial banks' narrow offerings of credit and deposit services raise serious concerns about their ability to meet the convenience and needs of the communities they are obligated to serve.

D. Industrial shell banks — especially those affiliated with fintechs — offer damaging high-cost credit to vulnerable consumers and small business owners.

DISCUSSION

I. Parent companies are obligated to serve as sources of strength for their subsidiary banks. Evidence from the financial crisis shows that cyclical downturns in the businesses conducted by financial and commercial parent companies severely compromise their ability to serve as sources of strength for their subsidiary industrial banks during times of severe economic and financial stress.

The FDIC should ensure that parent companies of industrial banks have the financial resources and stability to serve as a source of strength for their subsidiary banks through all phases of the business cycle. The FDIC should assess the financial strength of parent companies with an appropriate degree of skepticism, given that all financial and commercial firms are likely to encounter cyclical downturns in their lines of business.

The Federal Deposit Insurance Act mandates that all parent companies of FDIC-insured banks must be sources of strength for their subsidiary banks.[1] That obligation is particularly challenging to satisfy for parent companies of industrial banks that are commercial firms. Accordingly, the FDIC should apply a rebuttable presumption that commercial parent companies will not be able to serve as sources of strength for their captive industrial banks.

First, captive industrial banks that are controlled by commercial firms will necessarily be tied to the business cycles of their parent companies. In most cases, the captive industrial bank will depend on its parent company for its entire book of business and the industrial bank's operations will be controlled by the decision-making of the parent company's management. For captive industrial banks that are owned by automobile manufacturers, the captive industrial bank's lending policies will be designed to satisfy the needs and credit profiles of the manufacturer's dealers and retail customers. In most cases, the parent company's control of the captive industrial bank's lending policies will result in greater risk-taking by the captive bank; the parent company's interest in maximizing credit availability for the sale of its products to its customers will place great pressure on the captive bank to credit in circumstances where independent lenders would not do so. In addition, the captive industrial bank will face severe concentration risk because most or all of its loans will be concentrated within the business lines served by its parent company.

A. The FDIC should not approve an application for deposit insurance for an industrial bank if the primary motivation for that application is to reduce funding costs for the parent company of the applicant. In that case, the captive industrial bank would effectively be supporting the financial strength of its parent company, in direct contradiction to statutory requirements.

[1] 12 U.S.C. § 1831o-1

In 2022, Ford Motor Company (Ford) applied to obtain deposit insurance for a captive industrial bank. At the time, Ford had a non-bank division known as Ford Motor Credit Company (Ford Credit). As it does now, Ford Credit engaged in auto lending and dealer floorplan financing but operated outside the regulatory perimeter applicable to FDIC-insured institutions.

Had Ford's application been approved, its charter would have permitted the company to access lower-cost and more stable funding through FDIC-insured deposits—thereby allowing Ford to avoid the financial discipline of funding its operations through the capital markets. As a company whose core automotive business is cyclically exposed to interest rates, unemployment trends, and other macroeconomic risks, Ford's incentive to leverage federal subsidies provided by the federally-insured banking system to subsidize its commercial operations posed clear prudential concerns.

Ford Motor is highly dependent on Ford Credit. Public reporting has repeatedly documented the centrality of Ford Credit to Ford Motor Company's broader financial profile. As *The Detroit News* reported in 2020, non-bank Ford Credit had grown to contribute nearly half of the company's total earnings, up from 15–20% in earlier years. Analysts cited in the same news report stated that Ford Credit has routinely borrowed in the debt markets and funneled dividends upstream to help finance the parent company's turnaround initiatives and support dividend payments to shareholders.[2] This dynamic – the reliance of a parent auto manufacturer on the operations of its financial subsidiary – is antithetical to the statutory requirement, in 12 U.S.C. § 1831o-1, that a parent company must serve as a source of strength to its subsidiary insured depository institution—not the other way around.

Lower funding costs are just one example of how an FDIC-insured industrial bank can confer substantial benefits on its commercial parent company. Why should the federal government (and ultimately U.S. taxpayers) bear the costs of the extensive subsidies that provide such benefits to commercial parent companies? In addition, as discussed below in Part IV, there are very significant questions and concerns about the ability of a commercially-owned industrial bank to serve the convenience and needs of its community beyond the customers of its parent company. For example, how would members of the applicable communities who are not customers of Ford Credit receive any benefits from allowing Ford to own a captive industrial bank? FDIC-insured depository institutions are obligated to serve the convenience and needs of all members of their relevant communities, as further discussed in Part IV.

B. Regulators face significant challenges when they are forced to rescue or resolve a failing or failed captive industrial bank.

The failure of a parent company poses a direct threat to the viability of a captive industrial bank. In isolation, a captive industrial bank faces the same vulnerabilities as any newly chartered depository institution—namely, a limited operating history, uncertain market viability, and insufficient standalone capitalization. However, a captive industrial bank faces much greater challenges because its operations are dependent on the business activities of its parent company and the captive bank typically does not have a robust and well-diversified business plan, a clearly defined addressable market that does not rely on a parent company's business activities, or independent governance that would be required of de novo FDIC-insured banks that are not captives.

[2] Smith, M., & Nauhgton, K. (2020, February 3). Ford's lending arm is generating more profit than ever. *Detroit News*. https://www.detroitnews.com/story/business/autos/ford/2020/02/03/fords-lending-arm-generating-profit-ever/41133523/

Moreover, the close operational and financial integration between a captive industrial bank and its parent can significantly complicate resolution planning. In the event of a failure, such integration may impede the FDIC's ability to execute a standard purchase and assumption (P&A) transaction or establish a bridge bank—both of which rely on the ability to separate the bank's assets and liabilities in a manner attractive to an acquiring institution. If the bank's viability is inseparable from the parent's business activities, the FDIC may be left with no option but to liquidate the bank through a deposit payout and piecemeal asset sales. This approach is not only more costly and administratively burdensome but also increases the probable losses to the Deposit Insurance Fund.

For these reasons, a shell or captive industrial bank—particularly one in which the industrial bank's operations are deeply connected to and dependent on the business activities of its commercial parent—is structurally ill-suited to safe and efficient resolution. A crisis affecting the parent company would almost certainly jeopardize the continued operations of the captive industrial bank, undermining the FDIC's ability to protect insured depositors while minimizing systemic disruption and loss to the Deposit Insurance Fund.

C. The financial crisis demonstrated how shell and captive industrial banks are particularly susceptible to contagion risks arising out of financial distress at their parent companies.

Rather than insulating their captive industrial banks from risk, commercial and financial parent companies are likely to transmit their financial problems and instability to their captive industrial banks through operational, reputational, and financial channels. Those contagion effects quickly erode confidence in the captive industrial banks' viability, particularly during periods of severe economic stress when liquidity and capital support from their parent companies are most needed and least likely to be available.

The experience of the 2007–2009 global financial crisis provides a compelling illustration of how captive industrial banks are particularly susceptible to these dangers. The number of operating industrial banks dropped significantly, a decline driven by the unsustainable nature of the business models of many captive industrial banks.

Notably, the swift downward spiral demonstrated how structural vulnerabilities in commercial-financial integration can be rapidly exposed by changing macroeconomic conditions—particularly rising interest rates. By the mid-2000s, imbalances had built up across various sectors of the U.S. economy, including housing, consumer credit, and auto lending. These risks remained largely hidden during a period of low interest rates and easy credit. However, when the Federal Reserve began increasing interest rates in 2006, the cost of borrowing rose sharply, triggering a wave of consumer delinquencies—not only in mortgages but also in auto loans. For auto lenders, many of which relied heavily on short-term funding and securitization markets, the resulting stress quickly revealed the fragility of their business models. Shell and captive industrial banks affiliated with commercial auto finance firms were particularly exposed, as their operational and financial dependence on struggling parent companies left them without the independence or resilience needed to weather the downturn.

In 2008, GMAC—a major financial affiliate of General Motors—held more than $200 billion in assets, including a Utah-chartered industrial bank with $33 billion in assets and $17 billion in deposits. As the primary source of financing for GM's dealer network and retail vehicle purchasers, GMAC was a critical component of GM's commercial activities. However, in 2007 and 2008, GMAC suffered severe losses stemming from its subprime mortgage lending operations as well as growing delinquencies and impairments in its auto lending portfolio. Facing insolvency, GMAC was granted emergency approval by the Federal Reserve in December 2008 to convert into a bank holding company—an extraordinary measure intended to facilitate GMAC's access to a wide range of federal support programs. In total, GMAC received over $40 billion in assistance from federal agencies, including capital injections under the Troubled Asset Relief Program (TARP), debt guarantees from the FDIC, and emergency liquidity support through the Federal Reserve's commercial paper facilities and direct lending programs.[3]

GMAC was not an isolated example. In varying forms, federal intervention was required to resolve financial crises at six other financial or commercial parent companies with captive FDIC-insured industrial banks and savings institutions. Those parent companies included GE Capital, CIT, and the four largest securities firms in 2007.[4] The collapse of so many large financial and commercial conglomerates with captive industrial banks highlights several important lessons. If a single captive bank failed, it could reflect an isolated problem of poor management. The fact that so many financial and commercial conglomerates failed when the economy experienced a severe downturn is an indictment of the captive industrial bank model in its entirety.

All four of the largest securities firms prior to the crisis—Merrill Lynch, Goldman Sachs, Morgan Stanley, and Lehman Brothers—operated Utah-chartered industrial banks and/or FDIC-insured savings institutions. Only two of those firms—Goldman and Morgan Stanley—survived as independent entities, both received massive federal bailouts, and both were compelled to convert their industrial banks into traditional commercial banks, underscoring the incompatibility of the captive industrial bank structure with long-term financial stability in highly integrated firms.

These historical outcomes highlight the systemic risks associated with permitting commercial entities to operate FDIC-insured industrial banks, particularly when those entities are engaged in speculative or highly correlated market sectors.

D. The FDIC should not approve an application for deposit insurance filed by an applicant whose business model will consist primarily or entirely of acting as a bank partner for fintechs.

It is hard to imagine how a fintech could serve as a source of strength for an industrial bank. In bank-fintech partnerships, the opposite is usually true: the fintech is lightly capitalized, may have a narrow "runway" of capital without any assured source of additional funding, and may offer a business model that is unproven. Despite those clear vulnerabilities, an active industrial bank now uses its FDIC-insured status exclusively to partner with risky fintechs. When First Electronic Bank's commercial parent ceased operations in 2021, the industrial bank continued to operate, but solely as a bank partner for fintechs, a business model that is narrowly concentrated and exposed to unacceptable risks.

Recent events have shown that banks partnering with fintechs require much greater scrutiny for unsafe and unsound operations and business practices. In 2023 and 2024, prudential regulators have issued orders against Blue Ridge Bank, Cross River Bank, First Fed Bank, Evolve Bank & Trust, Axion Bank, Thread Bank, Mode Eleven Bancorp, Piermont Bank, Sutton Bank, and Lineage Bank.[5] This list may not be exhaustive. Additionally, it is likely that other partner banks received "matters requiring attention" notices. The failures were significant, with the most common reasons for orders arising from compliance with regulations implementing the Bank Secrecy Act.

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[3] Arthur E. Wilmarth, Jr., "The FDIC Should Not Allow Commercial Firms to Acquire Industrial Banks," 39 *Banking & Financial Services Policy Report* No. 5 (May 2020), at 1, 4-6 [hereinafter Wilmarth, "Industrial Banks"], https://ssrn.com/abstract=3613022.

[4] *Id.* at 4-6, 8-9.

[5] For a cumulative list of BaaS banks hit with consent orders in 2024. see (2024, December 18). *Banking Dive*. https://www.bankingdive.com/news/a-running-list-of-baas-banks-hit-with-consent-orders-in-2024/729121/.

An exclusive bank-fintech partner model will not fulfill many of the statutory requirements mandated by the Federal Deposit Insurance Act, including the avoidance of unsafe and unsound operations and business practices and the fulfillment of obligations to serve the needs of the bank's entire community. The ebbs and flows of deposits coming from fintech customers could fluctuate greatly, putting great strain on the partner bank's capital structure. For example, Evolve Bank & Trust completely failed to adequately monitor the account maintenance obligations of Synapse, its non-bank banking-as-a-service (BaaS) partner. Evolve also became overly dependent on the deposit flows of its BaaS company's largest partner. Evolve reportedly is linked to several other disasters and scandals involving fintech and crypto firms for which it provided financial services.[6]

E. Easing the requirements for approval of new deposit insurance applications filed by captive industrial banks is not an appropriate means to address concerns about the low volume of new de novo approvals.

The number of de novo bank approvals has slowed considerably. In the early 2000s, it was not unusual for 100 new banks to be approved in a single year, and in the decade prior to the Great Recession, regulators approved 1,243 de novo banks. Since 2008, only 95 de novo charters for FDIC-insured depository institutions have been approved.[7] This year, two de novo applicants have been approved. Over the last twenty years, banking has become much more concentrated. In 2000, the United States had 8,315 FDIC-insured commercial banks. By 2024, it had only 3,928.[8]

Although their solutions vary considerably, representatives from both parties have introduced legislation in Congress this year to address various obstacles that have contributed to the low number of de novo approvals. While more de novo approvals could potentially address pressing issues like the avoidance of banking deserts in underserved rural and urban areas, the availability of much-needed credit for households and small businesses, and the need for more minority depository institutions, granting federal deposit insurance to more captive industrial banks controlled by large financial and commercial firms is not the right solution. Accordingly, we urge the FDIC not to adopt more lenient guidelines for approving federal deposit insurance applications filed by captive industrial banks. As shown below in Parts III and IV, each new chartered captive industrial bank creates additional risks and does little to address financial inclusion goals or to provide much-needed credit for small- and medium-sized businesses. To the extent the FDIC adopts a new and more welcoming policy for reviewing de novo applications, it should apply that policy to applications for deposit insurance for traditional banks, not captive industrial banks.

II. The FDIC should amend the definition of "covered company" to close several loopholes. The FDIC should clarify the definition of "covered company" to ensure that the FDIC can review and assess the risks of all applications involving changes in control of industrial banks or conversions of other types of depository institutions into industrial banks.

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[6] *See* Consumer Financial Protection Bureau, Complaint filed against Synapse Financial Technologies, Inc., Case No.: 1:24-bk-10646-MB (Brkptcy. C. D. Cal., Aug. 21, 2025), ¶¶ 19-57, https://files.consumerfinance.gov/f/documents/cfpb_synapse-financial-technologies_complaint_2025-08.pdf; Jason Mikula, "FBI Probing Evolve's Sprawling Fintech Program, Sources Confirm," *Fintech Business Weekly* (Sept. 7, 2025).

[7] Bauer Financial. (2025, March 14). *Will 2025 Be the Year for a De Novo Comeback?* https://www.bauerfinancial.com/will-2025-be-the-year-for-a-de-novo-comeback/

[8] FDIC. (n.d.). *Number of FDIC-insured commercial banks 2000-2024*. Statista. Retrieved September 15, 2025, from https://www.statista.com/statistics/184536/number-of-fdic-insured-us-commercial-bank-institutions/

Under 12 C.F.R. § 354.4, "covered companies" that control industrial banks must enter into agreements with the FDIC to fulfill a list of required commitments and provisions. If the FDIC does not adopt a sufficiently broad definition of "covered companies," or if the FDIC allows that definition to lag behind innovations in industrial bank arrangements, it will risk allowing regulatory arbitrage and avoidance of the regulatory goals embodied in 12 C.F.R. Part 354. The FDIC must therefore expand its definition of "covered companies" to include all firms that acquire and exercise a controlling influence over industrial banks. As a general principle, the FDIC should focus on the substance of arrangements rather than accept formalist definitions that invite evasions.

A. The FDIC should clarify that a change in control of a parent company that controlled an industrial bank before April 2021 will require that company (and any company that controls such a company) to comply with 12 C.F.R. Part 354.

The FDIC should amend 12 C.F.R. § 354.2(a) to provide that "covered companies" include companies that acquire control of FDIC-insured industrial banks in change of control transactions, including conversions of an existing bank charter to an industrial bank charter. Applying 12 C.F.R. Part 354 to such change in control transactions are necessary to ensure that the FDIC has adequate authority to examine such parent companies for safety and soundness, managerial independence, privacy protections, capital liquidity, and contingency planning, and to require such companies to enter into satisfactory agreements with the FDIC under Part 354.

B. Conversions by existing traditional banks to industrial banks could undermine community needs for credit and other banking services.

The FDIC should ensure that changes in control from a traditional banking charter to an industrial bank charter do not deprive the communities where the applicant does business of the benefits mandated by the Federal Deposit Insurance Act. Consider a scenario where a commercial firm acquires an existing full-service bank. Typically, industrial banks are regulated under guidelines for limited-purpose banks. If industrial banks operate nationwide but only accept deposits in a single area, their obligations under the Community Reinvestment Act will only apply within that metro area. In this situation, a limited-purpose industrial that was previously a full-service traditional bank could shift from being examined under a comprehensive test covering lending, investments, and services to one focused solely on community development investments. Moreover, if a commercial firm acquires a traditional bank and converts it to an industrial bank with a focus outside of traditional retail banking and small business lending, that charter conversion would likely lead to the loss of essential services and capital in the communities that were served by the traditional bank. For example, if a commercial firm bought a traditional, community-oriented bank with ten branches across one or two states, the commercial firm might well shut down the bank's small farm and business loan programs as part of the parent company's plans to build new lending divisions serving customers online in niche lines of business. This scenario is not hard to imagine. An industrial bank charter could help many commercial firms reduce their funding costs and expand their niche lines of business, while shutting down the existing, full-service operations previously conducted by the acquired bank.

As a result, the FDIC should apply a rebuttable presumption that any application to convert an existing full-service banking charter to an industrial bank charter will have highly negative effects in the communities where the full-service bank currently does business.

III. The FDIC should adopt a very strong presumption against approvals of transactions that would allow commercial firms to acquire control of FDIC-insured industrial banks. That

presumption should be conclusive and irrebuttable for transactions that would enable Big Tech firms to acquire control of industrial banks.

A. The FDIC should apply a very strong presumption against allowing commercial firms to acquire control of industrial banks because such acquisitions are contrary to the longstanding U.S. policy of separating banking and commerce.

It is a longstanding and fundamental principle of U.S. banking policy that banking should be separated from commerce. Congress has long imposed strict limits on combinations of banking and commerce because of the great dangers that such combinations pose to the financial system and the economy.[9] Throughout the histories of the U.S. and other countries, commercially-owned depository institutions have exhibited perverse and destructive patterns of biased and imprudent conduct because the primary goal of such institutions is to support their parent companies and other affiliates. The toxic conduct displayed by commercially-owned financial institutions has included (i) making unsound loans to their parent companies and other affiliates, (ii) denying credit and other services to competitors of their parent companies and other affiliates, (iii) paying excessive dividends to their parent companies, and (iv) making hazardous purchases of depreciated assets from their parent companies and other affiliates. In addition, severe problems at commercial parent companies have frequently inflicted great harm on captive financial institutions and caused their failures. The foregoing abuses and failures are the results of pervasive conflicts of interest and risks of contagion that inevitably arise in commercially-owned financial institutions. Such captive institutions invariably serve the interests of their commercial parent companies with little regard for their own long-term safety and soundness.[10]

Section 4 of the Bank Holding Company Act (BHC Act), 12 U.S.C. § 1843, provides the cornerstone of our nation's policy of separating banking and commerce. With narrowly limited exceptions, Section 4 prohibits companies that own or control FDIC-insured banks from engaging in commercial activities or from owning or controlling commercial enterprises.[11] The primary purpose of Section 1843 is to prevent the formation of banking-and-commercial conglomerates that would pose grave dangers to our society, financial system, and economy by creating (1) hazardous concentrations of economic and financial power and political influence, (2) toxic conflicts of interest that would seriously impair the ability of banks to act objectively in providing credit and other financial services, and (3) unacceptable risks of contagion between the financial and commercial sectors of our economy. Such contagion would be likely to cause systemic crises inflicting very severe losses on the federal "safety net" for banks— including the Deposit Insurance Fund (DIF), the discount window of the Federal Reserve System (Fed), and the Fed's payment system guarantees – as well as widespread damage to the U.S. financial system and economy.[12]
The original BHC Act of 1956 applied to all companies that controlled two or more banks (multibank holding companies). The 1956 Act prohibited multibank holding companies from engaging in, or exercising control over other firms engaged in, activities that were not "closely related to the business of

[9] Arthur E. Wilmarth, Jr., "Wal-Mart and the Separation of Banking and Commerce," 39 *Connecticut Law Review* 1539, 1554-87 (2007) [hereinafter Wilmarth, "Wal-Mart"], https://ssrn.com/abstract=984103; Arthur E. Wilmarth, Jr., "Wirecard and Greensill Scandals Confirm Dangers of Mixing Banking and Commerce," 40 *Banking & Financial Services Report* No. 5, at 1, 11-13 (May 2021) [hereinafter Wilmarth, "Wirecard and Greensill"], https://ssrn.com/abstract=3848567. .
[10] Wilmarth, "Industrial Banks," *supra* note 3, at 4-10; Wilmarth, "Wal-Mart," *supra* note 9, at 1559-69, 1576-79, 1594-1613; Wilmarth, "Wirecard and Greensill," *supra* note9, at 1-13;.
[11] The BHC Act permits bank holding companies to make "merchant banking" investments that convey a limited degree of control over commercial firms. However, merchant banking investments are limited to ten years in duration, do not allow bank holding companies to "routinely manage or operate" commercial firms, and are subject to special capital requirements and other significant restrictions. *See* 12 U.S.C. § 1843(k)(4)(H); 12 C.F.R. §§ 225.170 – 225.177; Wilmarth, "Wal-Mart," *supra* note 9, at 1581-84.
[12] Wilmarth, "Wirecard and Greensill," *supra* note 9, at 11-12; Arthur E. Wilmarth, Jr., "The OCC's and FDIC's Attempts to Confer Banking Privileges on Nonbanks and Commercial Firms Violate Federal Laws and Are Contrary to Public Policy," 39 *Banking & Financial Services Policy Report* No. 10, at 1, 6-7 (Oct. 2020), https://ssrn.com/abstract=3750964.

banking." The 1956 Act also required multibank holding companies to divest their nonconforming activities and subsidiaries within two years after becoming subject to the BHC Act. In 1970, Congress expanded the scope of the BHC Act so that it would apply to all companies that controlled one or more banks. The Senate Banking Committee explained that the 1970 amendment would reaffirm and strengthen "our long-standing policy of separating banking and commerce."[13]

In 1987, Congress created an apparent exception to the separation of banking and commerce when it adopted Section 2(c)(2) (H) of the BHC Act, 12 U.S.C. § 1841(c)(2)(H). Section 2(c)(2)(H) exempts industrial banks from the definition of "bank" under the BHC Act, thereby removing industrial banks and their parent companies from the Fed's supervisory and regulatory authority under the BHC Act. To qualify for the exemption provided by Section 2(c)(2)(H), industrial banks must be chartered by one of several states that chartered such institutions in 1987, and industrial banks must not accept demand (checking) deposits from for-profit business firms.

Senator Jake Garn (R-Utah) sponsored the exemption in Section 2(c)(2)(H), which Congress incorporated in the Competitive Equality Banking Act of 1987 (CEBA). When Congress passed Senator Garn's proposed exemption, industrial banks were primarily small, locally-focused institutions that offered deposit and credit services to lower- and middle-income consumers. Commercial firms did not own or control any industrial banks in 1987. Industrial banks were not generally eligible for federal deposit insurance until 1982, and the total assets of all industrial banks in 1987 were only $4.2 billion. Thus, industrial banks played only a "minor" role in the U.S. financial system when Congress passed the 1987 exemption.[14]

There is no evidence indicating that Congress intended or expected in 1987 that Senator Garn's exemption would lead to widespread acquisitions of industrial banks by commercial firms. The legislative history of CEBA does not contain any explanation by Senator Garn or other members of Congress regarding the intended scope of the industrial bank exemption. Congress did not express any understanding or expectation that Senator Garn's exemption would become a Trojan horse enabling commercial firms to undermine Congress's longstanding policy of separating banking and commerce. On the contrary, CEBA reaffirmed and strengthened the policy of separating banking and commerce by closing the "nonbank bank loophole." During the 1980s, many commercial firms had used that loophole to acquire FDIC-insured banks that either did not accept demand (checking) deposits or did not make commercial loans. CEBA closed the "nonbank bank loophole" by expanding the definition of "bank" in the BHC Act to include all domestic FDIC-insured banks except for industrial banks and special-purpose credit card banks that cannot accept retail deposits or make commercial loans.[15]

The Senate committee report on CEBA emphasized the importance of separating banking and commerce, stating that "[n]onbank banks undermine the principle of separating banking and commerce, a policy that has long been the keystone of our banking system. . . . The separation of banking from commerce helps ensure that banks allocate credit impartially, and without conflicts of interest." The Senate committee report further explained that CEBA's closing of the "nonbank bank loophole" would "minimize the concentration of financial and economic resources" and improve "the safety and soundness of our financial system."[16] During the floor debates on CEBA, numerous members of Congress stated that the

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[13] Wilmarth, "Wal-Mart," *supra* note 9, at 1568 (quoting Senate Report No. 91-1084 (1970), as reprinted in 1970 U.S.C.C.A.N. 5519, 5522).

[14] Wilmarth, "Industrial Banks," *supra* note 3, at 2-3; *see also* Mindy West, "The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective," *Supervisory Insights* (Fed. Deposit Ins. Corp., Summer 2004), at 7-9, https://www.fdic.gov/bank-examinations/fdics-supervision-industrial-loan-companies-historical-perspective.

15 Wilmarth, "Industrial Banks," supra note 3, at 3; West, supra note __, at 9; see 12 U.S.C. § 1841(c)(2)(F) & (H).

16 Wilmarth, "Industrial Banks," supra note 3, at 3 (quoting Senate Report No. 100-19 (1987) at 2, 8, 9, reprinted in 1987 U.S. Code Cong. & Ad. News 492, 498, 499).

nonbank bank loophole must be closed to maintain the policy of separating banking and commerce and to ensure parity of regulatory treatment for all companies that controlled FDIC-insured banks.[17]

In contrast, CEBA's legislative history is completely silent as to the purpose and anticipated cope of Senator Garn's exemption. It is extremely unlikely that Congress intended that CEBA would reaffirm and strengthen the policy of separating banking and commerce by closing the "nonbank bank loophole" while, at the same time, deliberately undermining and weakening the same policy by authorizing commercial firms to acquire industrial banks. The implausibility of such a self-contradicting purpose is heightened by the absence of any evidence indicating that Congress expected that Senator Garn's exemption could operate as a Trojan horse enabling commercial firms to break down the established barriers between banking and commerce.[18] In fact, the first acquisition of an FDIC-insured industrial bank by a commercial firm did not occur until 1988, the year after CEBA was enacted.[19]

In 1999, Congress further strengthened and reinforced the policy of separating banking and commerce by passing a statute that prohibited commercial firms from making any further acquisitions of FDIC-insured savings associations. Congress subsequently imposed a three-year moratorium on acquisitions of FDIC-insured industrial banks by commercial firms in July 2010.[20]

Viewed in the context of Congress's repeated and emphatic affirmations of the policy of separating banking and commerce, it is reasonable to conclude that the intent of Senator Garn's 1987 amendment was to exempt FDIC-insured industrial banks from the Fed's regulation and supervision under the BHC Act, but not to authorize large-scale acquisitions of industrial banks by commercial enterprises. Accordingly, the FDIC should not construe the Senator Garn's unexplained exemption as an "open door" that allows commercial firms to acquire FDIC-insured industrial banks without limitation. A much clearer statement of congressional intent would be required to authorize the FDIC to take such a momentous step, as an "open door" policy for commercially-owned industrial banks would undermine and potentially destroy the Congress' longstanding policy of separating banking and commerce.[21] In contrast, it would be entirely consistent with congressional intent for the FDIC to impose a strong presumption against approving acquisitions of FDIC-insured industrial banks by commercial firms – i.e., firms that are not "predominantly engaged in financial activities," as defined in 12 U.S.C. § 5311(a)(6). As explained in the next section, that presumption would be consistent with the policy that the FDIC properly followed between 2005 and 2020.

B. In view of the severe risks and potential systemic dangers presented by commercially-owned industrial banks, the FDIC should apply a very strong presumption against approving acquisitions of industrial banks by commercial firms, in keeping with the policy the FDIC previously followed between 2005 and 2020.

17 Wilmarth, "Wal-Mart," supra note 9, at 1566 n.175 (citing remarks by a dozen members of Congress).
18 Wilmarth, "Industrial Banks," supra note 3, at 3.
19 West, supra note 15, at 9.
20 Wilmarth, "Industrial Banks," supra note 3, at 1-3; Wilmarth, "Wal-Mart," supra note 9, at 1584-86.
21 Wilmarth, "Industrial Banks," supra note 3, at 3; see Maracich v. Spears, 570 U.S. 48, 60 (2013) ("An exception to a general statement of policy is usually read . . . narrowly in order to preserve the primary operation of the provision. . . . Unless commanded by the text, . . . exceptions ought not operate to the farthest reach of their linguistic possibilities if that result would contravene the statutory design.") (internal quotation marks and citations omitted); id. at 65 ("It is necessary and required that an interpretation of a phrase of uncertain reach is not confined to a single sentence when the text of the whole statute gives instruction as to its meaning. *United States Nat'l Bank of Oregon v. Indep. Ins. Agents of Am., Inc*., 508 U.S. 439, 455 (1993) ('In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.').") (internal quotation marks and citation omitted); *see also United States Nat'l Bank of Oregon,* 508 U.S. at 455 ("Statutory construction is a holistic endeavor, . . . and, at a minimum, must account for a statute's full text, language as well as punctuation, structure, and subject matter.") (internal quotation marks and citation omitted).

In 2005, Walmart, the largest U.S. retailer, applied to acquire (and obtain deposit insurance for) a Utah industrial bank based on Senator Garn's exemption. Walmart's application triggered intense and widespread public opposition as well as an extensive public debate about the desirability of allowing large commercial firms to acquire industrial banks. During one of the FDIC's public hearings on Walmart's application in April 2006, former Senator Garn (who retired from the Senate in 1993) testified that "it was never my intent, as the author of this particular section, that any of these industrial banks be involved in retail [commercial] operations."[22]

The FDIC acted properly – in keeping with Congress's repeated actions to uphold and strengthen the separation of banking and commerce – when the FDIC (i) it did not approve Walmart's application to acquire an FDIC-insured industrial bank, (ii) imposed a moratorium on further acquisitions of FDIC-insured industrial banks by commercial firms in June 2006, and (iii) extended that moratorium for another year in January 2007. The FDIC also acted in accordance with congressional intent in June 2008, when the FDIC approved an application for deposit insurance filed by CapitalSource, a newly-organized California industrial bank. CapitalSource acquired the branches, deposits, and certain other assets of Fremont Investment & Loan (Fremont) in an emergency transaction, after Fremont's parent company filed for bankruptcy. In approving CapitalSource's acquisition of Fremont's deposits, branches, and certain assets, the FDIC imposed conditions on CapitalSource's parent companies. Those conditions allowed CapitalSource's parent companies to engage "only in financial activities" and required them to divest any "non-conforming [commercial] investments" within one year. The CapitalSource order was the FDIC's last approval of deposit insurance for an industrial bank until it approved applications by Square and Nelnet in 2020.[23]

Allowing commercial firms to acquire industrial banks would provide very significant and unwarranted competitive advantages to the acquiring firms by giving them access to the federal safety net for insured depository institutions and associated subsidies. Those subsidies would include (i) the ultra-low costs of funding provided by FDIC-insured deposits, and (ii) "catastrophe insurance" in the form of access to the Fed's discount window and other sources of expected federal support during future systemic crises. The likelihood and magnitude of such federal support were demonstrated by the massive bailouts that the federal government provided to two commercial owners of industrial banks – GMAC and GE Capital – in 2008 and 2009.[24] In addition, commercial owners of FDIC-insured industrial banks would gain access to Fed master accounts, which offer highly valuable payment and settlement services and guarantees.[25] Thus, permitting commercial firms to acquire industrial banks would create a highly tilted and fundamentally unfair playing field, which would greatly favor large commercial enterprises that could afford to make the necessary financial investments and commitments to acquire industrial banks and severely handicap smaller commercial firms that could not afford to do so.[26] As explained below in Part III.D, the FDIC should minimize the foregoing risks, systemic dangers, and unwarranted competitive advantages by applying a very strong presumption against approving acquisitions of industrial banks by commercial firms.

[22] Wilmarth, "Industrial Banks," *supra* note 3, at 2-3 (quoting Senator Garn's testimony at the FDIC's public hearing); *see also* Wilmarth, "Wal-Mart," *supra* note 9, at 1544-49 (describing the intense public opposition to Walmart's proposed acquisition of an FDIC-insured industrial bank).

[23] Wilmarth, "Industrial Banks," *supra* note 3, at 1, 3-4, 6, 11, 13, 14, 14 n.4.

[24] *Id.* at 4-10; Arthur E. Wilmarth, Jr., "The OCC's and FDIC's Attempts to Confer Banking Privileges on Nonbanks and Commercial Firms Violate Federal Laws and Are Contrary to Public Policy," 39 *Banking & Financial Services Policy Report* No. 10, at 1, 9-10 [hereinafter Wilmarth, "Banking Privileges"], https://ssrn.com/abstract=3750964.

[25] *The Fed Explained: What the Central Bank Does* 86-98 (Bd. of Governors of Fed. Res. Sys., 11th ed, Oct. 2021), https://www.federalreserve.gov/aboutthefed/files/the-fed-explained.pdf.

[26] Wilmarth, "Industrial Banks," *supra* note 3, at 9-10; Wilmarth, "Wal-Mart," *supra* note 9, at 1588-93.

C. Acquisitions of FDIC-insured industrial banks by Big Tech firms would pose intolerable risks and dangers to consumers and our financial system and economy. Accordingly, the FDIC should apply a conclusive presumption precluding approval of such acquisitions.

Allowing acquisitions of industrial banks by Big Tech firms—including the dominant Big Tech giants such as Alphabet (Google), Amazon, Apple, Meta (Facebook), and Microsoft—would raise especially high levels of risks and public policy concerns. Acquisitions of FDIC-insured industrial banks by Big Tech firms would fundamentally change our financial system and economy in ways that would be extremely harmful to consumers, businesses, and communities.[27] The Department of Justice and the Federal Trade Commission have sued Alphabet, Amazon, Apple, and Meta for a wide range of anticompetitive actions that have severely injured consumers and businesses, and a federal judge has ruled that Alphabet (Google) unlawfully monopolized the online search market.[28] A 2020 House subcommittee staff report found compelling evidence of widespread abuses of market power and systematic exploitation of consumers by the same four Big Tech firms.[29] Permitting Big Tech giants to acquire FDIC-insured industrial banks would enable those commercial behemoths to extend their dominant market power into the financial services sector.

Big Tech firms already enjoy significant technological advantages over traditional banks in the fields of automation, artificial intelligence, data management, data analytics, and mobile payments. Instructive examples of the potential dangers of allowing Big Tech firms to enter the banking business are provided by China's two leading Big Tech firms—Alibaba/Ant Group (controlling Alipay and MYBank) and Tencent (controlling WeChat Pay and WeBank). Ant Group and Tencent expanded their offerings of financial services very rapidly after 2008 and succeeded in building dominant consumer and retail financial franchises in China. The Chinese government responded in 2020 by cracking down on those firms and requiring them to establish separate regulated financial holding companies for their financial activities. However, the meteoric rise and growing dominance of the two leading Chinese Big Tech firms in China's consumer financial markets prior to 2020 indicates that U.S. Big Tech giants would be likely to dominate major segments of the U.S. financial industry if those firms were allowed to acquire FDIC-insured industrial banks and extend their technological advantages and market power into the financial services marketplace.[30]

In September 2023, the Consumer Financial Protection Bureau (CFPB) reported that

> Apple and Google emerged relatively recently as significant players in the consumer payments space, where today they dominate the U.S. mobile tap-to-pay landscape. As two of the largest companies in the world, both could leverage their large networks of users and broad cross-section of existing products and services to gain market share in payments quickly.[31]

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[27] Wilmarth, "Industrial Banks," *supra* note 3, at 9-11; Wilmarth, *supra* note 6, at 10.

[28] Elaine McArdle, "(Anti)Trust Issues," *Harvard Law Bulletin* (Fall 2024), https://hls.harvard.edu/today/antitrust-issues; Ian Tang, "Challenging the Giants: Big Tech's Growing Antitrust Battles in Court," *Capstone* (Jan. 2, 2025), https://capstonedc.com/insights/big-tech-2025-preview/.

[29] *Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations* (Subcomm. on Antitrust, Commercial and Administrative Law of the House Comm. on the Judiciary, 2020), Comm. Print 117–8, Part I, 117th Cong., 2d Sess., https://www.govinfo.gov/content/pkg/CPRT-117HPRT47832/pdf/CPRT-117HPRT47832.pdf.

[30] Wilmarth, "Wirecard and Greensill," *supra* note 9, at 13. For discussions of the rapid expansion of China's Big Tech firms within China's financial sector and the Chinese government's regulatory crackdown in 2020, see Kathryn Petralia, Thomas Philippon, Tara Rice, & Nicolas Véron, *Banking Disrupted? Financial Intermediation in an Era of Transformational Technology* 25–38, 44–82 (Geneva Reports on the World Economy 22, 2019), https://www.cimb.ch/uploads/1/1/5/4/115414161/geneva22.pdf; Christine Menglu Wang & Douglas W. Arner, "Bigtechs and the Emergence of New Systemically Important Financial Institutions: Lessons from the Chinese Experience" (July 10, 2024), https://ssrn.com/abstract=4890458.

[31] *Big Tech's Role in Contactless Payments: Analysis of Mobile Device Operating Systems and Tap-to-Pay Practices* (CFPB, Sept. 7, 2023), https://www.consumerfinance.gov/data-research/research-reports/big-techs-role-in-contactless-payments-analysis-

In October 2023, CFPB Director Rohit Chopra pointed out that the payment services offered by Apple, Google, and other Big Tech firms were rapidly expanding into other fields of financial services. He warned that the growing prominence of Big Tech firms in the U.S. and global payments system raised highly troubling policy concerns about their unmatched ability to collect and monetize vast amounts of private data belonging to their customers. He further warned that the continued expansion of Big Tech firms into the financial services sector could break down traditional legal boundaries separating banking and commerce:

> First, [Big Tech] firms collect a significant amount of data about the consumers using their payment products. And they use this data for a variety of purposes including to develop, market, and sell payments products and, for a majority of them, other products and services to potential third parties.
>
> Second, these entities retain much of the data they collect for extended periods of time. The companies generally require that consumers consent to their data being collected to use the product and that the lack of such consent would restrict their access to many or all product features. Similarly, fulfilling a request to delete data may result in the closure of a consumer's account or their inability to continue use of the product.
>
> Finally, regardless of how these companies use the consumer data they have collected today, their regulations do not appear to commit to meaningful limitations on future efforts to monetize the data. . . . [E]ach new version [of their programs] affords these entities opportunity to change their position on what data is collected or how it used, including how they might share this data with other parts of their corporate conglomerates.
>
> . . . U.S. banks are subject to restrictions when it comes to cross-ownership and affiliation with commercial firms. The payment platforms [operated by Apple and Google] are not banks and are indeed parts of massive conglomerates touching so many areas of commerce in our digital economy.
>
> . . . Big Tech companies are now . . . mov[ing] into finance, threatening the fundamental separation between banking, money, and payments on one side, and our real economy on the other. They can engage in bank-like activities, either on their own or through complex arrangements with banks, without facing many of the same limitations and obligations.
>
> Naturally, Big Tech companies will have a strong incentive to surveil all aspects of a consumer's transactions, since this data can advantage the rest of their businesses. For example, Big Tech firms can use detailed payment data to develop personalized pricing algorithms for e-commerce or increase engagement with behavioral advertising.[32]

As indicated by the foregoing analysis, acquisitions of FDIC-insured industrial banks by Big Tech firms would present a wide array of unacceptable risks and threats to the public interest, including unfair

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of-mobile-device-operating-systems-and-tap-to-pay-practices/full-report/; see also Brian Shearer, "It Takes a GENIUS to Cause a Financial Crisis," *Open Banker* (May 15, 2025) (Big Tech firms are "already in the business of intermediating large volumes of payments between consumers and third parties. For example, Amazon and Meta run platforms at the center of many retail purchases, Apple and Google have popular payment services linked to physical mobile phones."), https://openbanker.beehiiv.com/p/ittakesagenius?utm_campaign=it-takes-a-genius-to-cause-a-financial-crisis.

[32] Prepared Remarks of CFPB Director Rohit Chopra at the Brookings Institution Event on Payments in a Digital Century (Oct. 6, 2023), https://www.consumerfinance.gov/aboutus/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-at-the-brookings-institution-event-on-payments-in-adigital-century/.

competition, exploitation of private customer financial data, violations of customer privacy, and systemic risks resulting from ownership of FDIC-insured banks by giant technology firms. Enabling Big Tech companies to combine their massive datasets of consumer preferences and purchases with the extensive consumer financial information compiled by FDIC-insured industrial banks would greatly expand the reach of Big Tech firms into consumers' private financial information. Acquisitions of industrial banks would give Big Tech firms access to their customers' household income and spending patterns and would allow Big Tech firms and their captive banks (i) to increase their surveillance of customers' private behavior and preferences, and (ii) to exploit and monetize a greater range of their customers' private data for self-interested purposes such as cross-marketing their affiliates' goods and services to their industrial bank patrons.[33]

In addition, Big Tech firms could impose conditions on the access of consumers and merchants to their digital commercial platforms or rewards programs by insisting that consumers and merchants must use the financial services offered by their captive industrial banks. Ant Financial Group and Tencent have been sanctioned by the Chinese government for similar exclusionary practices in China. Allowing Big Tech firms to link their e-commerce platforms with captive industrial banks would also enable them to use their customers' shopping and financial data for the purpose of implementing abusive "surge pricing" practices, which force consumers and merchants to pay higher prices for goods and financial services offered on Big Tech platforms.[34]

If Big Tech giants were allowed to acquire industrial banks, the resulting banking-and-technology conglomerates would inevitably be considered "too big to fail" by financial regulators as well as market participants. The "too big to fail" status of those giant conglomerates would give them massive explicit and implicit subsidies based on expectations of federal bailouts if they ever encountered serious difficulties. In addition, the enormous economic power and lobbying resources of such banking-and-technology conglomerates would give them an unhealthy degree of influence over Congress and federal regulatory agencies, leading to a situation in which those behemoths would be "too big to regulate effectively" as well as "too big to fail."[35]

Acquisitions of industrial banks by Big Tech firms would create intense political pressures on Congress to repeal the BHC Act's limitations on joint ownership of banks and commercial firms. Big Tech firms would not be satisfied with making "toehold" acquisitions of industrial banks. They would push to build a bigger competitive presence in the U.S. financial industry by acquiring full-service commercial banks. Conversely, large commercial banks would argue that Congress must create a "level playing field" by allowing commercial banks to acquire technology firms. Hence, allowing Big Tech firms to acquire industrial banks would almost certainly lead to federal legislation allowing unrestricted combinations between giant technology firms and major banks. Such combinations would intensify the problems our nation already faces due to (i) excessive levels of concentration and market power in our banking and

[33] Laura Alexander, American Antitrust Institute. "[Privacy and Antitrust at the Crossroads of Big Tech.](Privacy and Antitrust at the Crossroads of Big Tech)" December 16, 2021, at 6 (Big Tech firms have an "unlimited incentive . . . to extract and exploit consumer data."); *id.* at 17 ("By preventing mergers between companies controlling separate troves of data, antitrust authorities can prevent the concentration of large amounts of data in the hands of a single company, and thus limit the exploitation of that data."); Wilmarth, "Banking Privileges," *supra* note __, at 10 ("Big Tech firms could potentially dominate major segments of our financial industry if they are allowed to establish 'in-house banks' and exploit their technological advantages.").

[34] Kechelek, Douglas M. "Data mining and antitrust." *Harvard Journal of Law & Technology*. Vol. 22, No. 2. Spring 2009; *see also* Wilmarth, "Wirecard and Greensill," *supra* note 9, at 13 ("Chinese authorities have charged Ant Group, Tencent, and other technology firms with anticompetitive practices (such as blocking their customers from dealing with competitors), misuse of customer data, reckless and unsound lending, and exerting improper influence over government officials.")); Ramsi Woodcock, "The Case Against Surge Pricing," 76 *UC Law Journal* 821, 828-30 (2025) ("Amazon . . . is a global leader in surge pricing, and markets its surge pricing services to the third-party sellers that use its platform."), https://www.hastingslawjournal.org/wp-content/uploads/G-Article-Woodcock.pdf.

[35] Wilmarth, "Banking Privileges," *supra* note 25, at 9-11.

information technology sectors, (ii) unjustified competitive advantages enjoyed by technology and financial giants that are "too big to fail" and "too big to regulate effectively," and (iii) dangerously high levels of political and regulatory influence wielded by our technology behemoths and largest banks.[36] Accordingly, as further discussed in the next section, the FDIC should apply a conclusive presumption precluding acquisitions of industrial banks by Big Tech firms.

D. The FDIC should adopt a very strong presumption against approving applications involving industrial banks controlled by companies that are not "predominantly engaged in financial activities." That presumption should be conclusive and irrebuttable for proposed acquisitions of industrial banks by Big Tech firms.

In view of the longstanding U.S. policy of separating banking from commerce and the analysis set forth above, the FDIC should establish a very strong presumption against approving applications for federal deposit insurance for industrial banks if those banks are controlled by parent companies that are not "predominantly engaged in "financial activities," as defined in 12 U.S.C. § 5311(a)(6). Under Section 5311(a)(6), companies are "predominantly engaged in financial activities" if they derive at least 85 percent of their gross revenues or at least 85 percent of their consolidated assets from subsidiaries that are engaged in "financial in nature" activities, as defined in 12 U.S.C. § 1843(k).

Domestic (U.S.) "nonbank financial companies," which are "predominantly engaged in financial activities," may be designated as systemically important nonbank financial companies by the Financial Stability Oversight Council (FSOC) if they meet certain criteria.[37] FSOC-designated systemically important nonbank financial companies become subject to the same types of enhanced supervision and regulation by the Fed as large bank holding companies with assets of $250 billion or more.[38] In contrast, commercial parent companies of industrial banks, which are not "predominantly engaged in financial activities," cannot be designated by FSOC as systemically important nonbank financial companies. Accordingly, commercial parent companies of industrial banks could not be made subject to the Fed's enhanced supervisory and regulatory powers. Thus, Congress has not provided any type of consolidated supervisory and regulatory regime for dealing with the enormous systemic risks that would be posed by large banking-and-commercial conglomerates.[39]

Under the Federal Deposit Insurance Act, the FDIC must consider several public interest factors when it reviews applications for deposit insurance, changes in control, and mergers involving industrial banks. Those public interest factors give the FDIC broad discretion to deny transactions that (1) present serious risks to the DIF, the stability of the U.S. banking system, or the stability of the U.S. financial system, (2) are likely to have significant anticompetitive effects, or (3) are inconsistent with the "convenience and needs of the community to be served."[40] As the Supreme Court has explained, the "ultimate test

[36] Wilmarth, "Industrial Banks," *supra* note 3, at 10; Wilmarth, "Wirecard and Greensill," *supra* note 9, at 11-13.
[37] 12 U.S.C. §§ 5311(a)(4) & (6), 5323.
[38] *Id.* §§ 5361-71.
[39] Wilmarth, "Industrial Banks," *supra* note 3, at 10-12,
[40] Under 12 U.S.C. §§ 1815 and 1816, in acting on an application for deposit insurance by an industrial bank, the FDIC must consider (i) the "risk presented . . . to the Deposit Insurance Fund" by the application, (ii) the "convenience and needs of the community to be served" by the industrial banks, and (iii) whether the industrial bank's corporate powers are "consistent with the purposes" of the Federal Deposit Insurance Act. Under 12 U.S.C. 1817(j)(7), in acting on a proposed change in control of an industrial bank, the FDIC must consider the "anticompetitive effects" of the transaction, its impact on the "convenience and needs of the community to be served," and any "adverse effect on the Deposit Insurance Fund." Under 12 U.S.C. § 1828(c)(5), in acting on a proposed merger involving an industrial bank, the FDIC must consider the "anticompetitive effects" of the merger, the merger's impact on the "convenience and needs of the community to be served," and any "risk to the stability of the United States banking or financial system."

imposed" by such factors is the agency's assessment of the impact of a proposed transaction on the overall "public interest."[41]

The analysis set forth above demonstrates that acquisitions of industrial banks by commercial firms (A) would pose very serious risks to the DIF as well as the stability of the U.S. banking system and the broader U.S. financial system, (B) would be likely to have very significant anticompetitive effects by creating unfair and unjustified competitive advantages for large commercial firms that could afford to acquire industrial banks over smaller competitors that would not have sufficient financial and managerial resources to make such acquisitions, and (C) would promote toxic conflicts of interest as well as exclusionary and abusive practices that would not be consistent with the convenience and needs of the communities to be served. Accordingly, the FDIC should apply a very strong rebuttable presumption against approving any application for deposit insurance, changes in control transaction, or merger transaction involving an industrial bank that will be controlled by a company (other than a Big Tech firm) that is not "predominantly engaged in financial activities" as defined in 12 U.S.C. § 5311(a)(6).

The foregoing analysis also shows that acquisitions of industrial banks by Big Tech firms would fundamentally transform our banking system and create intolerable risks and systemic dangers, thereby violating all the statutory public interest factors that the FDIC must consider in ruling on such acquisitions. The FDIC should therefore apply a conclusive presumption that would preclude approval of any application for deposit insurance, change in control transaction, or merger transaction involving an industrial bank that will be controlled after that transaction by a Big Tech firm.

1. Proposed rebuttable presumption against approval of acquisitions of industrial banks by commercial enterprises other than Big Tech firms

Our proposed very strong rebuttable presumption would place a heavy burden of persuasion on commercial enterprises (other than Big Tech companies) that seek to acquire control of FDIC-insured industrial banks. A very strong presumption against approving such applications would be consistent with the policy that the FDIC followed between 2005 and 2020, when the FDIC did not approve any applications for deposit insurance filed by industrial banks that would be controlled by commercial firms.[42] To implement our proposed rebuttable presumption, the FDIC should adopt the following new paragraph, to be designated as 12 C.F.R. § 354(c):

"(c) *Rebuttable presumption against approval of an application for deposit insurance, change in control, or merger if any Covered Company is not 'predominantly engaged in financial activities'* –

(1) *Presumption*. The FDIC will apply a very strong presumption against approval of an application for deposit insurance, change in control, or merger that is subject to this Part 354 if any Covered Company that will exercise control over the industrial bank following the FDIC's approval of that transaction either is not, or will not continue to be, 'predominantly engaged in financial activities,' as defined in 12 U.S.C. § 5311(a)(6). To avoid the application of this rebuttable presumption, each Covered Company must provide a commitment in the form of a written agreement pursuant to § 354.3(a), stating that such Covered Company is, and will continue to be, a company that is 'predominantly engaged in financial activities,' as defined in 12 U.S.C. § 5311(a)(6)."

"(2) *Impact of the presumption*. The FDIC will presume from the fact that a Covered Company referred to in subparagraph (1) is not, or will not continue to be, 'predominantly engaged in financial activities,' as

[41] United States v. Third National Bank in Nashville, 390 U.S. 171, 184–85 (1968); *see also* Vial v. First Commerce Corp., 564 F. Supp. 650, 666 (E.D. La. 1983).
[42] Wilmarth, "Industrial Banks," *supra* note 3, at 2-4, 11-14.

defined in 12 U.S.C. § 5311(a)(6), as a highly adverse factor that weighs strongly against approval of the proposed transaction.

"(3) *Rebuttal of presumption*. The FDIC will afford any Covered Company referred to in subparagraph (1) the opportunity to rebut the presumption set forth in this paragraph (c) by explaining in writing why the proposed transaction would be consistent with all the applicable statutory factors that the FDIC must consider, and why any additional concerns identified by the FDIC should not preclude approval of the transaction. Until the FDIC completes its consideration of the Covered Company's written explanation, the FDIC will suspend consideration of any related filings, time periods will be tolled, and the applicable transactions will not be consummated."

Our proposed very strong rebuttable presumption would require the FDIC to disapprove applications that would enable commercial enterprises (other than Big Tech firms) to acquire control of industrial banks unless the relevant commercial firms make a compelling showing that their proposed acquisitions of control of FDIC-insured industrial banks would be consistent with the applicable statutory factors that the FDIC must consider, under statutes such as 12 U.S.C. §§ 1815, 1816, 1817(j), and 1828(c), and any other concerns that the FDIC has identified in connection with the proposed acquisitions.

2. Proposed conclusive presumption against approval of acquisitions of industrial banks by Big Tech firms

Based on the analysis set forth above, there are compelling and irrebuttable public policy reasons for the FDIC to deny all applications for deposit insurance, changes in control, and mergers that would enable Big Tech firms to acquire control of FDIC-insured industrial banks. The FDIC should therefore adopt and apply a conclusive presumption that would preclude approvals of any such transactions. The FDIC should implement our proposed conclusive presumption by adopting the following new paragraph, to be designated as 12 C.F.R. § 354(d):

"(d) *Conclusive presumption against approval of an application for deposit insurance, change in control, or merger if any Covered Company is a Big Tech firm* —

(1) *Presumption*. The FDIC will apply a conclusive presumption against approving any application for deposit insurance, change in control transaction, or merger transaction that is subject to this Part 354 if any Covered Company that would exercise control over the industrial bank following approval of that transaction is a "Big Tech firm." For purposes of this paragraph (d), a "Big Tech firm" is an enterprise that (a) derived more than 50 percent of its consolidated gross revenues during its most recent calendar year from sales of goods and services related to information technology and ecommerce, and (b) had consolidated assets of $100 billion or more or a market capitalization of $500 billion or more at the end of its most calendar quarter."

"(2) *Impact of the presumption*. The FDIC will conclusively presume from the fact that any Big Tech firm would exercise control over an industrial bank after completion of the proposed transaction that the transaction does not satisfy the applicable statutory factors and cannot be approved.

E. Answers to Questions 24-30 Posed in the Request for Information

24. What are the potential societal costs and benefits of permitting companies that are generally nonfinancial in nature to establish an industrial bank?

Regarding Question 24, please see Parts III.A – III.C. above for an analysis of the great risks, dangers, and potential harms that would be inflicted on the U.S. banking system, economy, and society if the FDIC allowed commercial (nonfinancial) companies to acquire industrial banks.

25. What are the advantages and disadvantages of retail companies forming industrial banks?

26. What are the advantages and disadvantages of manufacturing and other industrial companies forming industrial banks?

Regarding Questions 25 and 26, please see Parts III.A and III.B above for an analysis of the great risks, dangers, and potential harms to the U.S. banking system, economy, and society that would be presented if the FDIC allowed retail companies or manufacturing and industrial companies to acquire industrial banks.

27. What are the advantages and disadvantages of technology companies forming industrial banks?

28. To the extent nonfinancial companies are already offering financial products and services, how should this impact the FDIC's framework for analyzing industrial bank applicants?

Regarding Questions 27 and 28, please see Part III.C above for an analysis of the overwhelming and unacceptable risks, dangers, and potential harms that would be inflicted on the U.S. banking system, economy, and society if the FDIC allowed large technology companies to acquire industrial banks. Part III.C also describes the risks, dangers, and potential harms that would be created by allowing technology firms to combine their existing payments services with the banking products and services offered by FDIC-insured industrial banks.

29. If nonfinancial companies begin offering payment stablecoins, how, if at all, should that impact the FDIC's analytical framework?

If nonfinancial companies acquire payment stablecoin issuers and offer payment stablecoins to their customers, they would be able to offer financial instruments that have some similarities to money market funds. However, a payments stablecoin issuer would have far more limited powers and privileges, compared to an FDIC-insured industrial bank, and a payment stablecoin issuer would NOT allow a nonfinancial company to compete on equal terms with companies that own or control FDIC-insured banks. Accordingly, for the reasons stated below, the ability of nonfinancial companies to acquire payment stablecoin issuers should NOT have any effect on the FDIC's determination of whether approving acquisitions of industrial banks by nonfinancial firms would be consistent with the statutory factors that the FDIC must consider in reviewing those transactions:

(a) Payment stablecoins would not be protected by federal deposit insurance and would not be backed by any guarantee from the federal government. *See* the GENIUS Act, Pub. L. No. 119-27, § 4(e), 139 Stat. 419, 437.

(b) Payment stablecoins could not pay interest. GENIUS Act, § 4(a)(11), 139 Stat. 432.

(c) It appears that payment stablecoin issuers would not be eligible for Fed master accounts, would not be able to obtain access to the Fed's payment and settlement services and guarantees, and would not have access to loans from the Fed's discount window. GENIUS Act, § 4(a)(13), 139 Stat. 433.

(d) Payment stablecoin issuers could not make loans or provide many of the other financial services that FDIC-insured banks can offer to their customers. GENIUS Act, § 4(a), 139 Stat. 430.

(e) Insolvent payment stablecoin issuers would be placed in bankruptcy, and holders of payment stablecoins would not receive the protections and benefits provided to depositors in failed FDIC-insured banks under FDIC-administered receiverships. GENIUS Act, § 11, 139 Stat. 457-59.

(f) It is questionable whether customers of payment stablecoin issuers would receive many of the protections afforded to customers of FDIC-insured banks under the Consumer Financial Protection Act, 12 U.S.C. §§ 5481-5603, and the federal consumer laws listed in 12 U.S.C. § 5481(12). *See* GENIUS Act, § 6(c), 139 Stat. 447.

For all the foregoing reasons, payment stablecoin issuers would not be able to compete on anything resembling equal terms with FDIC-insured banks. Accordingly, acquisitions of payment stablecoin issuers by nonfinancial companies would have a far less significant competitive impact on the U.S. banking and financial systems than acquisitions of industrial banks by nonfinancial companies. The ability of nonfinancial companies to acquire payment stablecoin issuers should NOT have any impact on the FDIC's analysis of whether acquisitions of industrial banks by nonfinancial companies would be consistent with the statutory factors that the FDIC must consider in reviewing those transactions.

30. Do nonfinancial companies present particular privacy or data protection issues?

Regarding Question 30, please see Part III.C for analysis of the very severe threats to customer financial privacy and the exploitation of customer financial data that would arise if the FDIC allowed large information technology companies to acquire industrial banks.

IV. Industrial Loan Companies Do Not Meet the Convenience and Needs of Communities or Consumers

The FDIC should carefully evaluate all applications for industrial loan corporation charters or mergers with a strong presumption against the approval of charters or transactions that do not fully meet the convenience and needs of communities and consumers. Federal law requires the FDIC to consider the extent to which institutions seeking deposit insurance would meet the "convenience and needs of the community to be served by such depository institution."[43] The FDIC should reject any application by an industrial bank for deposit insurance or any merger or change in control transaction involving an industrial bank that fails to meet any of the applicable statutory requirements, including a demonstration that the industrial bank resulting from approval of the transaction would meet the convenience and needs of communities to be served.

The Bank Merger Act requires banking agencies, including the FDIC, to consider the convenience and needs of communities and consumers in proposed bank transactions, including for industrial loan companies. Congress intended that the FDIC's evaluation of the convenience and needs factor would assess whether the merger would *enhance* the quality of banking services offered to consumers and communities, rather than merely continue the banks' existing practices. Representative Thomas Ashley stated that proposed bank mergers "must be shown to be sufficiently beneficial in meeting the convenience and needs of the community to be served that, on balance, it may properly be regarded as in the public interest."[44]

The FDIC has not given the convenience and needs factor the weight that it deserves in prior transactions and deposit insurance applications involving industrial banks. Captive industrial banks that offer a narrow

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[43] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73 §207(6), August 9, 1989, https://www.govinfo.gov/content/pkg/STATUTE-103/pdf/STATUTE-103-Pg183.pdf; 12 USC § 1816(6).
[44] United States v. Third Nat'l Bank in Nashville, 390 U.S. 171, 184 (1968).

range of financial products — often tied to goods and services offered by affiliates of the captive industrial banks — do not broadly meet the needs of consumers, communities, or the pubic. Shell industrial loan companies — including those that provide institutional banking services to fintech companies that offer deceptive, high-cost, or unfair products — fail to meet the true needs of consumers, communities, or the public.

When an industrial bank is structured to serve the credit needs of its parent company or affiliates (or their customers or counterparties), either exclusively or predominantly, that industrial bank will find it extremely challenging to meet the community reinvestment goals required of all FDIC-insured depositories. Despite those challenges, under the FDIC's current policy framework, a shell or captive industrial bank can still qualify to receive the privilege of deposit insurance that is ultimately backed by the full faith and credit of the federal government (and ultimately U.S. taxpayers). This contradiction exposes a glaring and unauthorized disconnect between community reinvestment obligations and private corporate privileges, and that disconnect should be rectified. Depository institutions should be deeply rooted in the economic fabric of the communities they serve and the FDIC should make a critical and meaningful assessment of any application based on the applicant's business models, past performance, and prospective plans to meet the convenience and needs of communities and consumers.

A. Shell and captive industrial banks are designed to benefit their parent companies and often do not provide meaningful benefits to the public.

Banks play a critical economic function and are chartered to fulfill a public purpose by meeting the convenience and needs of all communities they are established to serve. Shell or captive industrial banks that primarily service the business interests of their parents or affiliates do not offer banking products or services to the general public. The business model of captive industrial banks contravenes the statutory requirement that institutions receiving deposit insurance must be able and prepared to meet the convenience and needs of communities and consumers. Former Consumer Financial Product Bureau Director Rohit Chopra noted that:

> The shell [industrial] bank model also tends to exclusively serve the clients of the parent company. For example, the [industrial] bank may only lend to or take deposits from clients of the parent company. They generally prohibit the public from accessing the bank's products and services. These facts tend to violate the statutory factor related to the convenience and needs of the community. This model meets the convenience and needs of the parent company and its clients, not the community. Often, the parent company already has an existing nonbank affiliate that engages in this captive financing model. The proposed bank is simply a way to have the public subsidize the existing business model with federal deposit insurance.[45]

The business operations of these captive or shell industrial banks are designed to facilitate the ability of their parent companies to obtain lower-cost corporate financing. A nonbank parent company — like Toyota, Harley Davidson, and others — may attempt to lower its weighted average cost of capital by acquiring an industrial bank, thereby giving the parent company access to low-cost funding through the acceptance of FDIC-insured deposits. Without the benefit of owning an FDIC-insured depository institution, a parent company would be required to finance its operations at a much higher cost by obtaining bank loans or issuing debt and equity securities. Bank loans and debt securities are significantly

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[45] Chopra, Rohit, Consumer Financial Protection Bureau Director, "Statement of CFPB Director Rohit Chopra, Member, FDIC Board of Directors, on the Proposed Rulemaking on Industrial Loan Companies," July 30, 2024. https://www.consumerfinance.gov/about-us/newsroom/statement-of-cfpb-director-rohit-chopra-member-fdic-board-of-directors-on-the-proposed-rulemaking-on-industrial-loan-companies/.

more expensive funding sources than deposits. Issuing equity securities costs even more in terms of funding dividend payments (which are not tax-deductible) and diluting the interests of existing equity owners. During times of lower interest rates, acquiring a depository institution could reduce a private company's cost of capital fourfold or more. The magnitude of that benefit would depend on the amount of deposits the subsidiary industrial bank could attract as well as the market's perception of the riskiness of that bank and its parent company. In addition to the benefits of insured deposit taking, industrial banks can access the Fed's emergency lending programs for depository institutions and Fed-supervised payment systems for checks, debit and credit cards, online and mobile payments, and wire transfers. In any case, the benefits of owning an FDIC-insured industrial bank are likely to be very significant for the parent company.

Captive industrial banks provide benefits solely to parent and affiliated companies and their customers and employees. For example, one of the largest industrial banks, which is controlled by Toyota, only provides banking services to Toyota's car dealerships, car dealership executives, and their families. While Toyota's industrial bank offers home mortgages, it does so only for Toyota's car dealership executives and their families and only as part of its corporate executive relocation program.[46] In 2024, Toyota's industrial bank received an "outstanding" CRA performance evaluation. That coveted rating was awarded even though 98.3 percent of the dollar volume of loans made by that bank were through the SBA Paycheck Protection Program, and its community development lending included loans made outside of its assessment area.

No discernible benefits will accrue to the public from shell or captive industrial bank structures that are primarily designed to serve the narrow interests of their parent companies and other affiliates. Industrial banks do not have any obligation to offer higher rates on their deposits or lower rates on their loans than other banks offer. Many refuse to provide credit or other financial services to eligible prospective customers seeking to finance products or purchase services that are sold by rivals of the captive bank's affiliates, demonstrating the narrowness of the financial offerings of captive industrial banks that does not broadly benefit the public. When a nonbank parent company acquires a shell or captive FDIC-insured industrial bank and uses that industrial bank to provide financing to its customers at a much lower cost to the parent company than the financing provided by its prior captive nonbank finance company, the parent company is not required to provide any additional benefits to consumers in the form of higher-yielding deposits or lower-cost loans. Thus, the benefits to the public of shell or captive industrial banks are highly doubtful, while the risks to the stability of our financial system and the potential costs to the Deposit Insurance Fund are large and undeniable, as the global financial crisis of 2007-09 demonstrated.

B. Industrial banks have far lower Community Reinvestment Act ratings, and those low ratings raise significant concerns about the FDIC's approval of industrial bank charters and transactions.

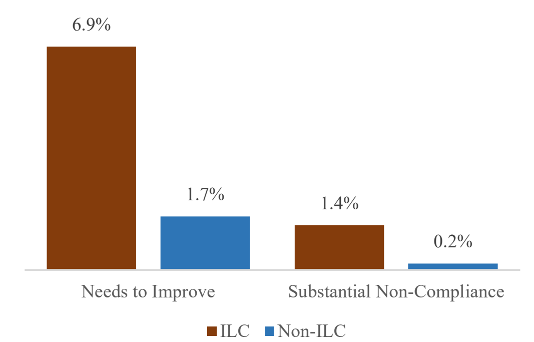
Industrial banks are likely to have Community Reinvestment Act (CRA) ratings that are far lower than other FDIC-regulated institutions, suggesting that industrial banks have much greater difficulty meeting the convenience and needs of the communities they serve. The inferior CRA ratings of most industrial banks warrant far greater FDIC scrutiny for future deposit insurance and transaction applications. The CRA (12 U.S.C. §§ 2901-08), establishes an affirmative obligation for all FDIC-insured industrial banks to meet the convenience and needs of the communities where they do business. The FDIC's regulations under the CRA make clear that the "entire community" served by an FDIC-insured industrial bank

[46] Toyota Financial Services Savings Bank. "Community Reinvestment Act Public File for Toyota Financial Savings Bank." Public File, May 28, 2024. https://www.toyotabank.com/content/dam/tmcc-tfsb/pdfs/CRA%20Public%20File%20-%20Toyota.pdf.

includes households, small businesses, small farms, and community development organizations located in the metropolitan areas where that bank takes deposits. Prudential regulators examine financial institutions for their lending, community investment, and related services in these areas. *See* 12 C.F.R. § 345.16 and other provisions of 12 C.F.R. Part 345, Subparts B & C.

Community Reinvestment Act ratings substantially overestimate depository institutions' actual performance in meeting the convenience and needs of communities,[47] but the FDIC performance evaluations of industrial banks suggests that this class of institutions is substantially less likely to meet the convenience and needs of communities. Despite the widespread prevalence of CRA grade inflation, industrial banks have substantially worse CRA ratings than other FDIC-regulated institutions. Between 2015 and 2024, industrial banks were more than 4 times more likely to receive "needs to improve" CRA ratings than FDIC regulated non-industrial banks and more than 7 times more likely to receive "substantial non-compliance" CRA ratings. During this 10-year period, more than one in twelve (8.3 percent) industrial banks received the two lower CRA ratings, compared to less than one in fifty (1.8 percent) of non-industrial banks (see figure 1).[48] Those assessments may *overestimate* industrial loan companies' CRA compliance, because 56 percent of those CRA evaluations were strategic plan assessments (compared to less than 1 percent of non-industrial bank CRA evaluations). Strategic plan assessments essentially allow industrial loan companies to present their own CRA strategic goals and their own evaluation metrics determine whether the industrial loan company has met its CRA goals.[49]

Fig. 1: CRA ratings of ILC and Non-ILC FDIC-



Source: Analysis of FFIEC CRA ratings.

Several of the lower CRA ratings were for failing to meet the credit needs of customers and failing to comply with consumer protection and fair lending laws. In the 2022 performance evaluation of Wex Bank, which offers fuel and automotive service credit cards, the FDIC found multiple violations of

[47] CRA performance evaluations consistently have awarded far too many outstanding and satisfactory CRA ratings. *See* Reid, Carolina, University of Pennsylvania Institute for Urban Research, "Quantitative Performance Metrics for CRA: How Much 'Reinvestment' is Enough," Working Paper, September 2019. https://penniur.upenn.edu/uploads/media/Quantitative_Performance.pdf; Thomas, Kenneth H., "CRA Grade Inflation," Tenth Annual Hyman P. Minsky Conference on Financial Structure" The Liberalization of Financial Markets: National and International Perspectives, Levy Institute, Working Paper No. 313, Bard College, Annandale-on-Hudson, New York, April 2000, https://www.levyinstitute.org/wp-content/uploads/2024/02/wp313.pdf; Stegman, Michael, Kelly Cochran, and Roger Farris, Brookings Institution, "Creating a Scorecard for the CRA Service Test," Working Paper No. 96, March 2002, https://www.brookings.edu/wp-content/uploads/2016/06/pb96.pdf.

[48] Analysis of FDIC CRA ratings from 2015 to 2024. Industrial banks include Balboa Thrift and Loan Assoc., Beal Bank USA, BMW Bank of North America, Celtic Bank, Comenity Bank, Community Commerce Bank, Eaglemark Savings Bank (Harley Davidson Financial Services), Finance Factors LTD, First Electronic Bank, Hatch Bank, Medallion Bank, Merrick Bank, Milestone Bank, Minnesota First Credit and Savings, Inc., NelNet Bank, Optum Bank, Pitney Bowes Bank, Sallie Mae Bank, Square Financial Services, TAB Bank, Thrivant Bank, Toyota Financial Savings Bank, UBS Bank USA, WebBank, and Wex Bank. Federal Financial Institution Examination Council, CRA Ratings, data available at https://www.ffiec.gov/craratings/Rtg_spec.html, accessed September 2025.

[49] For example, BMW Bank of North America received a "needs improvement" rating for failing to provide the community development hours of service, such as financial education to lower-income communities, that it had pledged in its strategic plan. The bank had pledged to provide 1,300 hours of service over three years but delivered less than half of these hours (613). Federal Deposit Insurance Corporation. "Public Disclosure: Community Reinvestment Act Performance Evaluation for BMW Bank of North America," Performance Evaluation. Division of Depositor and Consumer Protection, February 20, 2024 at 7. https://crapes.fdic.gov/publish/2024/35141_240801.PDF.

prohibitions against illegal, unfair, or deceptive credit practices and that "Each violation impacted a significant number of customers across numerous fuel card programs. The duration of the violations was extensive and the illegal credit practices were ongoing for multiple years during the current evaluation period."[50] The FDIC found discriminatory lending practices in its 2022 CRA evaluation of Milestone Bank (a subsidiary of Lease Corporation of America), finding violations of the Equal Credit Opportunity Act based on the bank's underwriting practice and geographic redlining.[51] Similarly, in 2016, the FDIC found that Celtic Bank had "substantive violations of Section 5 of the Federal Trade Commission Act (FTC) as it relates to unfair or deceptive acts or practices (UDAP) and fair lending violations of Equal Credit Opportunity regarding age discrimination with two consumer lending products offered."[52]

Moreover, despite receiving lower CRA ratings, industrial banks receive a special exemption from community reinvestment obligations, meaning they are held to far lower standards than most other FDIC-insured institutions. Unlike other financial institutions with CRA duties, parent companies whose subsidiary industrial banks have received a less-than-satisfactory grade on their most recent CRA performance evaluation are still permitted to commence new activities.[53] In contrast, the parent bank holding company of any other type of FDIC-insured bank that receives either a "needs to improve" or "substantial non-compliance" is prevented from becoming a financial holding company or from commencing new activities that are authorized for financial holding companies.[54]

C. Shell and captive industrial banks' narrow offerings of credit and deposit services raise serious concerns about their ability to meet the convenience and needs of the communities they are obligated to serve.

Industrial banks frequently do not support the convenience and needs of the communities where they accept deposits. Most industrial banks operate nationally but classify their deposit-taking activities as taking place within a single geographic location where their main office is located. Sometimes, the "main office" or "branch" of an industrial bank is an office inaccessible from the street. In its public file, the industrial bank TAB Bank notes that it does not have a bank lobby open to the public, does not solicit walk-in business, does not offer a branch, teller, or an ATM, and only permits customer communication through interactive voice response phone calls, online, or by mail.[55]

Most industrial banks do not give priority to the credit and investment needs of the communities where they accept deposits above the needs of other communities where they do not accept deposits. For many industrial banks, "community" is a word without any practical meaning. Existing industrial banks that predominantly engage in lending to business sectors or geographic areas related to their parent companies' business operations have a similarly narrow focus. The limited markets they serve have little or no connection to the needs of the local communities where they solicit and accept deposits. In 2024,

[50] Federal Deposit Insurance Corporation. "Public Disclosure: Community Reinvestment Act Performance Evaluation for Wex Bank," Performance Evaluation. Division of Depositor and Consumer Protection, October 3, 2022, at 8. https://crapes.fdic.gov/publish/2022/34697_221003.PDF.

[51] Federal Deposit Insurance Corporation. "Public Disclosure: Community Reinvestment Act Performance Evaluation for LCA Bank Corporation," Performance Evaluation. Division of Depositor and Consumer Protection, November 29, 2022, at 9. https://crapes.fdic.gov/publish/2022/58148_221129.PDF.

[52] Federal Deposit Insurance Corporation. "Public Disclosure: Community Reinvestment Act Performance Evaluation for Celtic Bank," Performance Evaluation. Division of Depositor and Consumer Protection, January 25, 2016, at 3. https://crapes.fdic.gov/publish/2016/57056_160125.PDF.

[53] Mindy West, "The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective," *Supervisory Insights* (Fed. Deposit Ins. Corp., Summer 2004), at 7 (table 2), https://www.fdic.gov/bank-examinations/fdics-supervision-industrial-loan-companies-historical-perspective.

[54] *See* 12 U.S.C. §§ 1843(l)(2) & 2903(c).

[55] King, Kenneth, and Benjamin Kotter. "TAB Bank Community Reinvestment Public File." Community Reinvestment Act Performance Evaluation. Ogden, Utah, July 2024. https://www.tabbank.com/wp-content/uploads/2024/07/TAB-Bank-CRA-Annual-Public-File-2024-03.pdf.

the FDIC approved the conversion of Thrivent Federal Credit Union into an online-only industrial loan company, including shuttering its physical locations in Minnesota.[56]

As a practical matter, credit and deposit service activities offered by most industrial banks are nationwide in scope and are not focused on the local communities they are obligated to serve. In its CRA performance evaluation (PE), TAB Bank (TAB) comments that its "business focus is to provide niche financing to "small- and medium-sized businesses including commercial, account receivable (factoring), commercial equipment, working capital, and truck and trailer purchase programs."[57] Until its most recent PE in 2022, TAB had received "outstanding" ratings on its three previous PEs. In its 2024 strategic plan, TAB acknowledged the challenges it faces in meeting the credit needs of its community:

> A substantial majority of the Bank's small business loans are outside its assessment area. The Bank serves small to mid-sized businesses, offering financial products and services to provide and manage working capital. The expertise of the Bank has been in the transportation industry, specifically in the over-the-road transportation industry. Also, the Bank is primarily a lending institution that does not have the traditional deposit base that competitors use to draw upon for making loans.
>
> With a narrow scope serving a specific industry and limited lending product offerings coupled with a higher cost of funds compared to its competitors, the Bank is limited in its opportunities to serve and compete in its assessment area. As the Bank continues to expand its product offerings, there will be more opportunity to expand in the local market.

TAB's strategic plan admits that an industrial bank with a narrow or captive business model is likely to face very significant challenges in meeting the convenience and needs of consumers, small businesses, small farms, and community development organizations in its assessment area. Indeed, TAB's strategic plan confirms that captive or shell industrial banks are likely to face significant obstacles compared to local, full-service community banks in providing any significant benefits to the community where they are located. Indeed, TAB's strategic plan acknowledges that a shell or captive industrial bank would have to expand its credit offerings and investments substantially to meet community needs effectively. Unfortunately, as shown in the next section, TAB Bank's strategic plan points to another problem. Many industrial banks have moved away from their chartered purpose into high-risk areas of business that create conflicts between the bank's profit motives and consumer welfare.

D. Industrial shell banks — especially those affiliated with fintechs — offer damaging high-cost credit to vulnerable consumers and small business owners

The quality and range of financial product offerings provided by an FDIC-insured bank are an important factor that the FDIC must consider in determining whether that bank is meeting the convenience and needs of communities and consumers. Federal banking regulators considering proposed transactions must evaluate the products and practices that banks offer under the convenience and needs criterion set forth in

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[56] FDIC, [press release], "FDIC approves the deposit insurance and merger applications for Thrivant Bank, Salt Lake City, Utah," June 21, 2024. https://www.fdic.gov/news/press-releases/2024/fdic-approves-deposit-insurance-and-merger-applications-thrivent-bank-salt.

[57] Federal Deposit Insurance Corporation. "Public Disclosure: Community Reinvestment Act Performance Evaluation for Transportation Alliance Bank., d/b/a TAB Bank." Performance Evaluation. Division of Depositor and Consumer Protection, April 13, 2022. https://crapes.fdic.gov/publish/2022/34781_220413.PDF.

the Bank Merger Act.[58] The National Community Reinvestment Coalition has noted that "high-cost lending products that are not affordable and sustainable for customers" and "unscrupulous non-bank lenders that peddle abusive products over a wide area" can inflict significant harms on communities and consumers.[59]

Several industrial banks have faced regulatory or legal challenges demonstrating that their products and services cause severe harm to their customers and fail to meet the convenience and needs of their communities. Merrick Bank paid $16.1 million to settle an FDIC unfair and deceptive practices complaint that it had marketed a credit card add-on plan that misrepresented the plan's effectiveness in protecting credit scores, misrepresented that the plan would make minimum payments, and failing to disclose the terms and conditions of its coverage.[60] A group of investors recently sued Celtic Bank for complicity in encouraging the financing of business franchises by arranging Small Business Administration loans for a company that the Justice Department has accused of operating a $200 million ponzi scheme.[61] The plaintiffs have alleged that Celtic failed to verify the collateral for the loans, approved impermissible passive SBA loans, and failed to disclose the conflicts of interest between its SBA loan officer and the WaterStation franchisor.[62]

Financial technology firms (Fintechs) are increasingly interested in launching, partnering, or buying industrial loan companies to obtain deposit insurance for their banking service apps and compete with national banks. The Federal Reserve Bank of St. Louis noted that this "renewed interest in ILCs has the potential to accelerate growth of a new shadow banking system."[63] Many of these fintechs offer high-cost financial services with opaque, misleading, or deceptive terms or conditions that are likely to harm consumers. Industrial bank charters with federal deposit insurance would exempt these banks from many states' money transmission and usury laws, making it easier for fintech-industrial bank combinations to offer high-cost and high-risk products.

Fintech companies may pose even greater risks to customers' data and personal privacy. These financial product apps are constantly exposed as a prime target for hackers and cybercriminals because of the access they provide to bank accounts, transaction details, and personal financial information.[64] Fintechs face a broad range of cybersecurity risks from data breaches, third-party vendors and partners, identity theft, ransomware attacks, phishing scams, maintaining mobile and digital payment network security, and more.[65] Fintech ownership of FDIC-insured industrial banks that expose customers to increased data

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[58] 12 CFR §5.33(e)(ii)(C); 89 Fed. Reg. 30, February 13, 2024 at 10018. https://www.govinfo.gov/content/pkg/FR-2024-02-13/pdf/2024-02663.pdf.

[59] Van Tol, Jesse, National Community Reinvestment Coalition, Comment to FDIC on Parent Companies of Industrial Banks and Industrial Loan Companies RIN 3064-AF88, October 4, 2022. https://ncrc.org/?sdm_process_download=1&download_id=223673.

[60] FDIC, [press release], "FDIC announces settlement with Merrick Bank, South Jordan, Utah, for unfair and deceptive practices," September 29, 2014. https://archive.fdic.gov/view/fdic/4850.

[61] U.S. Attorney's Office, Southern District of New York, [press release], "Defendants charged in over $200 million water vending machine ponzi scheme and related investment fraud," August 14, 2025. https://www.justice.gov/usao-sdny/pr/defendants-charged-over-200-million-water-vending-machine-ponzi-scheme-and-related.

[62] Karthika Mandyam et al. v. Celtic Bank Corporation, U.S. District Court Central Utah, Case 2:25-cv-00732, August 27, 2025. https://www.documentcloud.org/documents/26078125-celtic-civilcomplaint/.

[63] Stackhouse, Julie L., Federal Reserve Bank of St. Louis, "Fintech Interest in Industrial Loan Company Charters: Spurring the Growth of a New Shadow Banking System?," October 23, 2017. https://www.stlouisfed.org/on-the-economy/2017/october/fintech-interest-industrial-loan-company-charters-spurring-new-shadow-banking-system.

[64] Kytainyk, Vlad, "The human factor in fintech: Tips for improving data security," *Forbes*, July 22, 2024. https://www.forbes.com/councils/forbesbusinesscouncil/2024/07/22/the-human-factor-in-fintech-tips-for-improving-data-security/.

[65] Nanda, Ardhendu Sekhar, "The future of cybersecurity in fintech: Challenges, trends and best practices," *International Journal of Science and Research*, Vol. 13, Iss. 7, July 2024. https://www.researchgate.net/publication/382745569_The_Future_of_Cybersecurity_in_Fintech_Challenges_Trends_and_Best_Practices#fullTextFileContent; "The challenges and opportunities of data privacy and security in the fintech ecosystem." *Finance*

privacy risks, identity theft, or financial fraud would not fulfill the statutory requirement that those industrial banks must meet the convenience and needs of communities and consumers. House Financial Services Committee Ranking Member Maxine Waters noted that the risks fintechs can pose to customers suggest that the FDIC should not be facilitating their access to deposit insurance:

> The FDIC should thoroughly consider the implications of offering access to the deposit insurance fund for ILCs that will result in expanding the type of institutions to it, like fintech firms. Fintech firms, whose operations cross state and international boundaries, and may exist entirely online, were undoubtedly beyond original congressional intent in permitting ILCs to access deposit insurance and it is appropriate for stakeholders to weigh in on whether it is appropriate for these firms to have this access without proper oversight of their parent companies.[66]

Currently, there are several FDIC-insured industrial banks that provide banking services to fintech companies that offer high-cost, high-risk loans and some that are owned by fintech companies. In 2020, the FDIC approved two *de novo* charters for fintech-owned industrial banks: Square Financial Services (owned by Block, Inc. which operates the Cash-App fintech product) and Nelnet, an online student loan lender and servicer.[67] More fintechs are expected to follow suit in seeking to acquire FDIC-insured industrial banks. *Roll Call* reported that "the exploding fintech industry has discovered [industrial bank charters'] potential as a vehicle for setting up national financial institutions that can navigate the hodgepodge of federal and state laws and regulations governing the financial services markets."[68]

Several FDIC-insured industrial banks have effectively become rent-a-banks for predatory fintech companies that charge exorbitant interest rates that would violate many states' usury laws if those loans were not originated by an FDIC-insured bank. Some industrial banks have multiple partners that offer subprime, high-cost, or otherwise exploitive financial products that highlight the failure of those banks to meet the convenience and needs of communities and consumers. TAB Bank's 2022 CRA performance evaluation identified six strategic nonbank partners by name. TAB Bank's examiners acknowledged that three of those six strategic partners facilitated subprime credit, but the examiners did not undertake a more extensive analysis to evaluate the highly problematic record of the credit products offered by those partners. TAB Bank's nonbank strategic partners rely on TAB Bank's ability to export high-cost loans to other states by relying on TAB Bank's unlimited interest rates under Utah law. If those nonbank partners were not connected to TAB Bank, applicable state usury laws would make it impossible for those nonbank partners to make such loans directly. For example, TAB Bank has (i) partnered with Duvera Billing Services' EasyPay Finance product to make loans on a nationwide basis with interest rates as high as 188.99 percent APR, and (ii) partnered with Integra to make installment loans with rates ranging from 99 percent to 149 percent APR.[69]

Magnates. October 7, 2023. https://www.financemagnates.com/fintech/data/the-challenges-and-opportunities-of-data-privacy-and-security-in-the-fintech-ecosystem/.

[66] Waters, Maxine, Ranking Member, House Financial Services Committee, Letter to FDIC Chair Martin Gruenberg, August 25, 2017. https://democrats-financialservices.house.gov/uploadedfiles/ilc_letter_to_fdic_031320.pdf.

[67] FDIC, [press release], "FDIC approves the deposit insurance application for Square Financial Services, Inc., Salt Lake City, Utah," March 18, 2020. https://www.fdic.gov/news/press-releases/2020/pr20033.html; FDIC, [press release], "FDIC Approves the deposit insurance application for Nelnet Bank, Salt Lake City, Utah Area," March 18, 2020. https://www.fdic.gov/news/press-releases/2020/pr20034.html.

[68] Harass, Steven, "Fintechs try old bank charters as 'everything old is new again,'" *Roll Call*, June 16, 2020. https://rollcall.com/2020/06/16/fintechs-try-old-bank-charters-as-everything-old-is-new-again/.

[69] Consumer coalition letter to Acting FDIC Chair Martin Gruenberg, CFPB Director Rohit Chopra, and Acting Comptroller Michael Hsu petition to stop rent-a-banks, February 4, 2022. https://ourfinancialsecurity.org/2-4-22-consumer-fdic-rent-a-bank-letter-final-corrected/.

TAB Bank is not an isolated example. First Electronic Bank (FEB) was formerly the captive financing arm of Fry's Electronics, a consumer electronics retailer, but now Fry's has *become* FEB, and FEB currently partners with two high-cost nonbank lenders: Personify Financial and OppFi.[70] Personify offers installment loans between $500 and $10,000 with effective annual interest rates as high as 179.99 percent. OppFi originates installment loans between $500 and $4,000 with effective annual interest rates as high as 160 percent.[71] In each case, the loans provided by FEB in partnership with Personify and OppFi are offered in states where usury caps would prevent nonbanks from offering credit with those very high interest rates. Consumers have lodged complaints with the CFPB and the Better Business Bureau alleging that OppFi's and Personify's loans lack transparent interest rate disclosures, are unaffordable and very difficult to repay, have exposed customers to identity theft and erroneously originated loans as well as improper debt collection practices, and credit reporting problems.[72] These problems followed a 2015 settlement with the FDIC for an add-on credit card plan that was promoted with unfair and deceptive marketing that violated the Equal Credit Opportunity Act and Servicemembers Civil Relief Act.[73] Rather than serving their local communities, industrial banks such as TAB and FEB facilitate dangerous high-cost loans to vulnerable consumers and small business owners.

The Square Financial Services industrial bank is a subsidiary of Block, Inc., which operates a suite of fintech app products, including the Square point-of-sale payments, the Cash App peer-to-peer payments app, Square Loans, and a Buy-Now-Pay-Later platform and Afterpay BNPL product, among others.[74] The Cash App payments app has racked up mountains of consumer complaints and regulatory actions. Since the start of 2020, consumers have made more 40,000 complaints to the CFPB about Block, Inc. products and services and the vast majority (over 32,000 or about 80 percent) were related to fraudulent activity.[75] In 2024, the CFPB fined Block, Inc. $175 million and ordered Block to fix its weak security protocols that left users vulnerable to fraud, theft, and erroneous transactions and to stop using its terms of service to unlawfully refuse to investigate disputes of unauthorized transactions.[76] In a separate settlement, Block, Inc. agreed to pay $80 million to state attorneys general for violations of the Bank Secrecy Act and anti-money laundering lapses on its peer-to-peer payments platforms.[77] Cash App suffered two data breaches in 2022 and 2023, exposing sensitive personal financial information of millions of users and paying a $15 million settlement without admitting wrongdoing.[78] In 2025, the FDIC approved an application by Square Financial to offer Cash App Borrow consumer loans in addition to the Square Loans product already

[70] Kochkodin, Brandon, "How Fry's Electronics pivoted from retail to backing 180%-interest consumer loans," *Forbes*, December 5, 2023. https://www.forbes.com/sites/brandonkochkodin/2023/12/05/how-frys-electronics-pivoted-from-selling-tech-to-backing-consumer-loans-with-180-interest/.
[71] National Consumer Law Center. "High-Cost Rent-a-Bank Loan Watch List," September 26, 2024. https://www.nclc.org/resources/high-cost-rent-a-bank-loan-watch-list/.
[72] Consumer, community, and civil rights coalition letter to FDIC Chair Martin Gruenberg, Community Reinvestment Act examination of First Electronic Bank, March 21, 2023. https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/comment-coalition-first-electronic-bank-cra-21mar2023.pdf.
[73] FDIC, In the Matter of First Electronic Bank, Consent Order, Order for Restitution, and Order to Pay Civil Money Penalty, FDIC-15-104b, FDIC-15-103k, December 7, 2015. https://www.consumerfinanceinsights.com/wp-content/uploads/sites/9/2016/02/15_0104b_15_0103k_First_Electronic-1.pdf.
[74] Block, Inc. Securities and Exchange Commission 10-K filing, February 24, 2025 at 4, 11, 14, and 101. https://www.sec.gov/ix?doc=/Archives/edgar/data/0001512673/000162828025007376/sq-20241231.htm.
[75] Analysis of CFPB complaint database of complaints with narratives from January 1, 2020 to September 2025 for Block, Inc. Available at https://www.consumerfinance.gov/data-research/consumer-complaints/search/.
[76] CFPB, [press release], "CFPB orders operator of Cash App to pay $175 million and fix Its failures on fraud," January 16, 2025. https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-operator-of-cash-app-to-pay-175-million-and-fix-its-failures-on-fraud/.
[77] California Department of Financial Protection and Innovation, [press release], "California joins $80 million enforcement against Block, Inc., Cash App for BSA/AML violations," January 16, 2025. https://dfpi.ca.gov/press_release/california-joins-80-million-enforcement-action-against-block-inc-cash-app-for-bsa-aml-violations/.
[78] Hauser, Christine, "Cash App users may claim up to $2,500 in data breach settlement," *New York Times*, August 9, 2024. https://www.nytimes.com/2024/08/09/business/cash-app-settlement.html.

offered by the industrial bank.[79] The expansion of Cash App products and further integration of Square Financial Services into an increasingly dominant lender for Block Inc. products raises serious questions about the extent to which Block Inc. will implement rigorous protections to prevent the longstanding consumer protection, data protection, fraud, and money laundering problems that have occurred on Cash App from impacting the consumer protection of customers of Square Financial Services.

E. Answers to Questions 10-12 posed in the Request for Information

10. How should the FDIC assess the convenience and needs of a community to be served by an industrial bank applicant? How should this assessment compare to other types of depository institutions?

Regarding Question 10, please see Parts IV.A — IV.C above for an analysis of the failure of industrial banks to serve the convenience and needs of the communities where they are chartered and maintain their deposit-taking offices. Shell and captive industrial banks are designed to serve narrow audiences targeted by their parent companies and are not structured to meet the convenience and needs of the communities where they do business. Many have no retail locations to serve the communities at all. Some primarily serve the customers or employees of their parent companies and other affiliated companies and others primarily offer high-risk, high-cost credit nationwide. The FDIC must apply enhanced scrutiny to the ability of shell and captive companies to meet the convenience and needs of the communities they are obligated to serve.

The FDIC should require public hearings for all applications by industrial banks to obtain deposit insurance as well as all applications involving mergers, charter conversions, and changes in control of industrial banks. Conducting hearings in local communities to evaluate the convenience and needs of the local community where the applicant industrial bank proposes to solicit and accept deposits, or already engages in a deposit-taking business, should be a necessary step for approving any such applications.

11. If forming an industrial bank would enable the parent company or its affiliates to offer products and services (including the provision of credit) at a reduced cost, should the related consumer benefits be viewed favorably for purposes of the convenience and needs factor? AND

12. If a proposed industrial bank provides lower-cost credit for purposes of purchasing products that are essential to American households or commercial firms, how should this be considered for purposes of the convenience and needs factor?

Regarding Questions 11 and 12, please see Part IV.D above for a discussion of the risks of fintech-controlled industrial banks that are shell or captive companies and do not have the intention or ability to serve the broader needs of their communities and consumers. The FDIC should presume that any fintech partnership that uses a captive or shell industrial bank to issue high-cost, subprime credit nationwide is designed to evade states' usury laws, consumer protection laws, and money transmitter laws and regulations is a business structure that fails to meet the statutory requirement that banks meet the convenience and needs of communities and consumers. In applying the convenience and needs factor, The FDIC must consider not only the issuance of credit but also the quality of the credit products and related services offered, the cost of those products and services (inclusive of all fees, charges, and interest

[79] Block, Inc., [press release], "Square Financial Services, Inc. Receives FDIC Approval to Offer Consumer Loan Product Cash App Borrow," March 13, 2025. https://investors.block.xyz/investor-news/news-details/2025/Square-Financial-Services-Inc.-Receives-FDIC-Approval-to-Offer-Consumer-Loan-Product-Cash-App-Borrow/default.aspx.

rates), the terms and conditions, including but not limited to the protection of personal financial information and data, and the absence of mandatory arbitration clauses. As a coalition of consumer, community, and civil rights groups noted to the FDIC:

> Predatory credit at high interest rates that borrowers cannot afford to repay, credit designed to evade state interest rate laws, credit that is extended using deceptive practices, and credit that leads to violations of debt collection, credit reporting, and other laws does not meet the convenience and needs of communities.[80]

Conclusion

Thank you for the opportunity to provide comments on these important questions. We have very strong concerns about the impact of industrial banks on financial stability and grave concerns about their ability to comply with consumer protection and community reinvestment rules. We also strongly believe that additional acquisitions of captive industrial banks by large commercial enterprises are not in the public interest and should not be approved. The FDIC may soon be called upon to act on applications by Big Tech firms to acquire FDIC-insured industrial banks. For the reasons set forth above, we urge the FDIC to deny any applications by Big Tech firms to acquire FDIC-insured industrial banks.

Please contact Adam Rust (arust@consumerfed.org), Patrick Woodall (pwoodall@ourfinancialsecurity.org), or Prof. Arthur E. Wilmarth (awilmarth@law.gwu.edu) if you have any questions or if you would like to obtain clarifications for any of our comments.

Sincerely,

Arthur E. Wilmarth, Jr., in his personal capacity
Adam Rust, Consumer Federation of America
Patrick Woodall, Americans for Financial Reform Education Fund

[80] Consumer, community, and civil rights coalition letter to FDIC Chair Martin Gruenberg, Community Reinvestment Act examination of First Electronic Bank, March 21, 2023. https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/comment-coalition-first-electronic-bank-cra-21mar2023.pdf.