



October 10, 2024

James P. Sheesley, Assistant Executive Secretary
Attention: Comments – RIN 3064-AF88
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: *Parent Companies of Industrial Banks and Industrial Loan Companies*

Dear Sir:

The Conference of State Bank Supervisors¹ (“CSBS”) provides the following comments on the Federal Deposit Insurance Corporation’s (“FDIC”) notice of proposed rulemaking entitled “Parent Companies of Industrial Banks and Industrial Loan Companies” (“proposal” or “proposed rule”).² The proposed rule would make several revisions to Part 354 of the FDIC Rules and Regulations (“Part 354”) governing parent companies of industrial banks and industrial loan companies (collectively, “industrial banks”). The proposed revisions include expanding the definition of “covered company” to subject additional industrial bank parents to Part 354, limiting the extent to which the FDIC would consider written commitments when evaluating statutory factors, and creating a rebuttable presumption against applicants deemed to have a “shell” or “captive” industrial bank.

The FDIC should strike the proposed new § 354.6 from any final rule for the following reasons:

- The proposal would establish a bias against certain industrial banks.
- The proposal undermines a valid charter option afforded under state and federal law.

I. The proposal would establish a bias against certain industrial banks.

A newly proposed § 354.6 would establish additional factors that the FDIC would evaluate in assessing potential risks presented by an industrial bank’s parent or affiliates. These additional factors address the business purpose for establishing or acquiring control of the industrial bank, intercompany relationships, the novelty of the parent company’s primary business, the regulatory and consumer compliance histories and supervisory records of all relevant entities, and more.³

Moreover, the proposal would create a rebuttable presumption against approving applications involving a “shell” or “captive” structure, establishing that a shell or captive industrial bank’s characteristics weigh heavily against favorably resolving one or more applicable statutory factors.⁴ The FDIC explains that

¹ CSBS is the nationwide organization of state banking and financial regulators from all 50 states, the District of Columbia, and the U.S. territories.

² FDIC, Notice of Proposed Rulemaking, [Parent Companies of Industrial Banks and Industrial Loan Companies](#), 89 Fed. Reg. 65556 (August 12, 2024).

³ Proposed 12 C.F.R. § 354.6(a), (b). *Id.* at 65568.

⁴ Proposed 12 C.F.R. § 354.6(c). *Id.*



industrial bank applications with these features raise significant “convenience and needs concerns.”⁵ The proposal also provides that written commitments may not be sufficient for the favorable resolution of any statutory factor where the facts and circumstances are otherwise unfavorable.⁶

Historically, the FDIC has recognized that industrial banks with narrow business models can satisfy the convenience and needs statutory factor by meeting Community Reinvestment Act (“CRA”) obligations. Indeed, the FDIC’s “Procedures Manual Supplement: Applications from Non-Bank and Non-Community Bank Applicants” (“Procedures Manual Supplement”) outlines how an industrial bank can meet the convenience and needs of the community through CRA plans or strategies that are based on the particulars of its business model.⁷ This includes industrial banks (and other specialty or niche institutions) with business models that may feature “limited or narrow customer markets, including proposals intended to derive the customer base from affiliate relationships or directly support the sales of affiliates.”⁸ The Procedures Manual Supplement makes no suggestion that such features weigh heavily against satisfying the convenience and needs of the community to be served statutory factor. Moreover, the proposal provides no factual or statutory basis for changing the FDIC’s longstanding approach to evaluating this statutory factor.⁹

Taken together, the changes proposed in § 354.6 would create a regulatory animosity against certain industrial banks that have been granted charters under state law. Concerningly, the FDIC provides no clarity or path for such applicants to overcome the hurdles that would be erected by this rulemaking.¹⁰

II. The proposal undermines a valid charter option afforded under state and federal law.

The proposal creates significant new standards for evaluating industrial banks, contrary to the decision made by Congress in recognizing industrial banks. It is problematic that the FDIC seeks to establish

⁵ *Id.* at 65562.

⁶ *Id.* at 65560.

⁷ [Deposit Insurance Applications. Procedures Manual Supplement: Applications from Non-Bank and Non-Community Bank Applicants](#), pg. 9, FDIC Division of Risk Management Supervision (December 2019).

⁸ *Id.* at 13-14.

⁹ The FDIC simply states that “[t]he evaluation of the convenience and needs of the community is a broad inquiry and would not be limited to strategies or plans under the Community Reinvestment Act.” *Supra* note 2, at 65562.

¹⁰ These concerns were raised by members of the FDIC Board as well. See [Statement by Vice Chairman Travis Hill on the Notice of Proposed Rulemaking on Industrial Loan Companies](#) (July 30, 2024) (“[The proposal] suggests that a commercial company that seeks to establish or acquire an ILC might get approved if it wants a full-service bank, but there is a presumption of disapproval if it only serves the parent (or affiliates), or customers of the parent (or affiliates). Said differently, there would be a presumption of disapproval if a large retailer sought an ILC charter to serve only existing customers of the parent, but no such presumption if it expanded the proposed charter to serve existing customers *and more*. Furthermore, if one of the recent applicants proposing a “captive” model had tried to *cure* the concern around “captives” by expanding its business model to serve a broader customer base, would the FDIC have approved it? I am skeptical.”); see also [Statement by Jonathan McKernan, Director, FDIC, Board of Directors, on the Proposed Amendments to Industrial Bank Rules](#) (July 30, 2024) (“The proposal also does not explain how a captive industrial bank can rebut this presumption with respect to each relevant statutory factor. The preamble and my discussions with staff suggest a concern that the absence of franchise value at a captive industrial bank could pose additional risk to the Deposit Insurance Fund should it fail. If that indeed is one of the concerns, the proposal should clarify whether and how enhanced capital commitments, contingency planning, or other risk management steps could mitigate that incremental risk to the Deposit Insurance Fund.”).



entirely new classes of industrial banks – “captive” or “shell” industrial banks – that are not found in the underlying statute and then creates a presumption against such entities.

When Congress passed the Competitive Equality Banking Act (“CEBA”) of 1987,¹¹ it expressly exempted industrial banks and their parent companies from the Bank Holding Company Act if they received a charter from one of the states eligible to issue industrial bank charters (and where FDIC deposit insurance was required) at the time CEBA was enacted.¹² This provision reflects Congress’s decision to expressly allow for ownership of banks by commercial enterprises in limited and specific circumstances, and it provides a clear avenue by which such new industrial banks can be formed. Congress also imposed several restrictions on industrial banks as part of CEBA, such as limiting their ability to engage in demand deposit taking.¹³ Notably absent from CEBA are any further qualifications or restrictions on industrial banks with the “shell” or “captive” features disfavored by the proposal.

Conclusion

CSBS requests that the FDIC strike the proposed new § 354.6 from any final rule. The industrial bank charter represents a lawful option under state and federal law for commercial firms to own a bank, and this provision would establish additional limitations and restrictions on industrial banks and their parents without justification.

Sincerely,

/s/

Karen K. Lawson
Executive Vice President, Policy & Supervision

¹¹ 100 P.L. 86 (1987).

¹² Under CEBA, the states of California, Colorado, Hawaii, Indiana, Minnesota, Nevada, and Utah were allowed to grandfather existing, and to charter new, industrial banks. Colorado’s last industrial bank became inactive in 2009, and the state has repealed its industrial bank statute.

¹³ 12 U.S.C. § 1841(c)(2)(H)(i)(I).