

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

June 16, 2015

The Honorable Martin J. Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, DC 20429

Dear Chairman Gruenberg:

On July 21, 2013, the Dodd-Frank Act's moratorium on approvals for industrial loan company (ILC) applications for deposit insurance expired. For nearly two years, there has been no statutory impediment to the approval of ILC applications. The Federal Deposit Insurance Corporation (FDIC), however, has reportedly approved very few, if any, applications since the moratorium expired and is delaying even minor modifications to existing ILCs. The number of ILCs has dropped dramatically, despite Congress's intent that the FDIC should consider and approve ILC applications that comply with the standards set forth in Section 6 of the Federal Deposit Insurance Act. We are writing to request documents and information that will help us understand why.

ILCs are specialized, state-chartered, FDIC-insured banking institutions primarily used to offer financial services that directly support the products sold by the parent company.<sup>1</sup> ILCs serve as an important source of liquidity for businesses seeking to acquire capital equipment.<sup>2</sup> In addition, ILCs can finance the acquisition of vehicles, equipment, or products by individual consumers.<sup>3</sup> ILCs have cumulatively been better capitalized in recent years than other banking institutions and have held fewer troubled assets, leading many to conclude that they are a safe alternative to traditional banks.<sup>4</sup>

According to a January 2012 report by the Government Accountability Office, the federal moratoria on deposit insurance for new ILCs led to a marked decline since 2006 in the number and size of ILCs—from 58 to 34, with the assets of those institutions dropping from \$212.7 billion to \$102.4 billion.<sup>5</sup> As of March 2015, there were only approximately 29 ILCs in existence.<sup>6</sup>

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<sup>1</sup> N. Eric Weiss, Cong. Research Serv., *Industrial Loan Companies/Banks and the Separation of Banking and Commerce: Legislative and Regulatory Perspectives*, (Nov. 9, 2009).

<sup>2</sup> *Id.* at 7.

<sup>3</sup> *Id.*

<sup>4</sup> James R. Barth et al., *Industrial Loan Companies, Supporting America's Financial System*, Milken Institute (Apr. 2011).

<sup>5</sup> U.S. Gov't Accountability Office, *Bank Holding Co. Act* (Jan. 19, 2012) (GAO-12-160) at 15.

<sup>6</sup> Fed. Deposit Insurance Corp., BankFind, available at <https://research.fdic.gov/bankfind/>.

Presently, there are no official restrictions on a company's ability to apply for ILC deposit insurance with the FDIC. Companies that engage in commercial activities are free to file ILC deposit insurance applications to establish ILCs.

We are concerned that the FDIC may not be meeting its statutory obligations regarding these applications. By statute, applicants are entitled to apply for deposit insurance and to have the FDIC consider the application.<sup>7</sup> Applicants are also entitled to receive deposit insurance coverage so long as all of seven statutory factors, enumerated in Section 6 of the Federal Deposit Insurance Act, are resolved in favor of the applicant.<sup>8</sup> In the event the FDIC denies an application, it must inform the applicant of the reasons for its decision.<sup>9</sup>

To help the Committee gain a better understanding about ILC applications for federal deposit insurance submitted outside of the moratorium, please produce the following documents as soon as possible, but no later than 5:00 p.m. on June 30, 2015:

1. All documents from July 1, 2013 to June 1, 2015, referring or relating to:
  - a. The ILC deposit insurance application process;
  - b. ILC deposit insurance application files;
  - c. All pending or withdrawn ILC applications;
  - d. Issued ILC Orders;
  - e. Failed ILCs;
  - f. FDIC onsite supervisory efforts of ILC business operations;
  - g. FDIC offsite monitoring efforts of ILC business operations;
  - h. FDIC monitoring of ILC business plan conditions; and
  - i. Office of Inspector General evaluation reports relating to ILCs.
2. All communications from July 1, 2013 to June 1, 2015, between or among any employee, board member, or agent of the FDIC and any employee, owner, or agent of a company applying to start or gain control of an ILC.
3. All documents, including, but not limited to, reports and formal decision memoranda, referring or relating to FDIC review, examination, or approval of ILCs.

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<sup>7</sup> Fed. Deposit Insurance Corp., Risk Mgmt. Manual of Examination Policies, Section 12.1, *available at* <https://www.fdic.gov/regulations/safety/manual/section12-1.html> (last updated on Apr. 26, 2005).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* However, the Office of Inspector General noted in its July 6, 2006, evaluation report that it is rare for the FDIC to deny applications because most applicants tend to withdraw the application before the application reaches the final decision stage. Office of Inspector General, Federal Deposit Insurance Corporation, *The FDIC's Industrial Loan Company Deposit Insurance Application Process*, Evaluation Report, No. 06-014, July 2006.

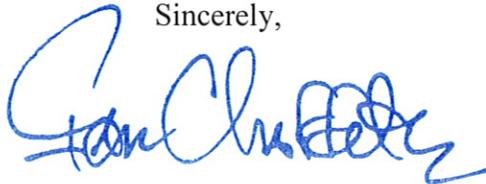
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In addition, please provide a briefing for Committee staff on the ILC deposit insurance application process to occur prior to June 30, 2015. When producing documents to the Committee, please deliver production sets to the Majority staff in room 2157 of the Rayburn House Office Building and the Minority staff in room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate "any matter" at "any time."

If you have questions about this request, please contact Jack Thorlin of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Chaffetz", with a stylized flourish at the end.

Jason Chaffetz  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

Enclosure

## Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:  
  
BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,  
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,  
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,  
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.