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Industrial Loan Companies/Banks and the Separation of Banking and Commerce: Legislative and Regulatory Perspectives

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Summary

Industrial Loan Companies (ILCs) are state-chartered and state-regulated depository institutions. The Federal Deposit Insurance Corporation (FDIC) may insure them. Their owners include nonfinancial companies that cannot own (hold stock of) a bank under the Bank Holding Company Act (i.e., cannot be a bank or financial holding company). Their primary federal regulator is not the Federal Reserve, which regulates bank holding companies, but the FDIC. Although prominent large ILCs include subsidiaries of securities firms, their owners also include automotive and retailing companies. The ILC form reflects a persistent tendency to combine the financing of a business with its operations. While this practice is standard in many countries, notably Germany and Japan, it has been in disfavor in America. ILCs, therefore, have developed against a long U.S. two-way tradition of the separation of banking and commerce: (1) Ownership interests that nonfinancial firms may have in banks are generally 25% or less. (2) Commercial banks may generally hold only nominal amounts of corporate stock.

As part of its proposals for financial regulatory reform, the Obama Administration has proposed shifting regulation of ILCs from the FDIC to the Federal Reserve. Opponents of the change have stated that during the current recession, ILCs have not created problems for the financial system.

ILCs evoke at least two policy issues. First, could the combination of state and FDIC regulation provide oversight comparable to that for nationwide banks, especially for bank holding companies? Second, should Congress grant ILCs powers that would allow them to be nationwide banks while in competition with community banks? Arguments over the separation of banking and commerce go back to the Glass-Steagall Act as revised by a series of laws including the Gramm-Leach-Bliley Act.

Most recently, the House Committee on Financial Services (H.R. 3996) and the Obama Administration have suggested regulatory reforms. H.R. 3996 would require ILCs to be owned by bank holding companies that are regulated by the Federal Reserve; the Obama Administration has made a similar proposal.

Previously, interest shown by Wal-Mart and Home Depot in controlling an ILC with nationwide potential heightened industry and congressional interest in these issues.

This report analyzes the controversy by (1) providing an historical overview of the separation of banking and commerce; (2) examining the nature of ILCs and their regulation; and (3) identifying and analyzing the relevant legislation in Congress. This report will be updated as events warrant.

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Introduction

Industrial Loan Companies (ILCs) are state-chartered and state-regulated depository institutions whose deposits the Federal Deposit Insurance Corporation (FDIC) may insure. Congress specifically exempted them from being defined in statutes as "banks." Nonetheless, state banking codes may define them as industrial banks. Although they are subject to FDIC inspection and the same banking laws that apply to all FDIC-insured institutions, parent companies may own them without becoming bank holding companies or financial holding companies and, therefore, not be subject to supervision by the Federal Reserve (Fed). ILCs are now typically found in a few western states. In recent years, large companies such as GMAC, Volkswagen, Target and Harley-Davidson have created or acquired ILCs to provide in-house financial services such as financing customers' accounts.

The Obama Administration has proposed requiring ILC owners to register as Bank Holding Companies (BHCs). As BHCs, ILC owners would be subject to the Bank Holding Company Act and placed under the Fed's consolidated supervision and regulation.[1] Supporters of the current ILC regulatory system believe that ILCs pose little risk to the financial system and provide needed credit for those who purchase items from firms with ILCs.[2]

ILCs are arguably an institutional manifestation of a persistent tendency to combine the financing of a business with its operations. Some entrepreneurs may view this combination as efficient, with the result that it emerges in this country periodically. Yet policymakers and, especially, the Fed have generally opposed it. In America, industrial firms may have only noncontrolling interests in banks as defined in statutes, which generally means 25% or less of bank shares. The combination of banking and commerce, however, is found in many other nations. Germany and Japan are perhaps the most prominent nations mixing capital sources and uses directly.

The 108th and 109th Congresses considered legislation, described below, allowing ILCs to be like regular commercial banks. In the 110th Congress, the House passed a bill that would have limited the growth of ILCs, and the Senate took no action. Wal-Mart withdrew its application to operate an ILC, on March 17, 2007. On January 24, 2008, Home Depot announced that it was withdrawing its application to purchase an ILC. The FDIC moratorium was not extended and expired on January 31, 2008.

There are at least three policy issues concerning ILCs. First, could the presence of financial institutions that receive special regulatory treatment present systemic risk in certain situations? Second, could ILCs become "alternative" nationwide banks, owned by commercial and industrial, or financial businesses? That would contravene long-standing policy prohibiting nonfinancial companies from owning banks. Third, can state and federal (the FDIC rather than the Fed) supervisors regulate ILCs and their owners comparably to other banking institutions and their holding companies? Some observers believe that, should ILCs be allowed to expand, a less-regulated banking system controlled by very large securities firms and nonfinancial businesses

1 U.S. Department of Treasury, *Financial Regulatory Reform: A New Foundation*, June 17, 2009, pp. 34-35, http://www.financialstability.gov/docs/regs/FinalReport_web.pdf. The Bank Holding Company Act is P.L. 84-511, 70 Stat. 133.

2 Senator Robert F. Bennett, "Bennett to Geithner: 'This is Overkill,'" press release, June 18, 2009, http://bennett.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=09d3e051-3fb4-4f94-81f0-80ab53157913&ContentType_id=1faead15-454a-4bbc-b5a7-4cb518dd4b7c.

would emerge, contrary to long-standing laws. If so, deep-pocket companies could operate nationwide ILCs as extensions of their corporate treasuries, in competition with community banks. A three-thousand-or-more branch "Bank of Wal-Mart" could have been the first of many such ILCs. Others note that existing ILCs are small players on the field of finance. They would continue to be regulated by states and the FDIC, maintaining their safety and soundness despite ownership by retailers, securities firms, and others.

This report addresses the controversy over expansion of ILCs by line of business and by branching across the nation as follows. It provides

1. an historical overview of the U.S. separation of banking and commerce;
2. information on ILCs and their regulation; and
3. analysis of relevant legislation in Congress.

Banking and Commerce in American Economic Development

Analysts generally think of banking as a source of funds, and all other activities, including commercial and industrial business, as a use of funds. Much of the history of banking oversight in the United States revolves around current fears of mixing the two versus possible efficiencies from their combination. In the rest of the world, banking and commerce are often combined. In the past, problems have occurred when they have mixed, particularly when users of funds have treated a bank as a captive financier of business activities or as an adjunct to a corporate treasury. The potential for bank failure has been higher in such cases. The combination arguably increases systemic risk, in which the failure of one major lender leads to failures of others.

19th Century

Following calamitous combinations of banking with commercial activities in the early 1800s, New York and Georgia led the way into having banks be purely lending and deposit-taking businesses in 1838. Chartered banks generally moved away from commercial activities. The National Banking System, which Congress created to finance the Civil War,[3] patterned itself on the limited New York banks.

Other state banking systems included banks with significant commercial activities. One notable example of a state-level bank/industry combination was The Bank of California, which owned extensive gold and silver mining properties in Nevada. In the late 19th century, unincorporated private banks, often partnerships, combined financing and investing activities under one roof. The Morgan and Rockefeller commercial/financial/banking empires were prominent among these aggregations. Their deposits financed investments in stocks, often controlling other firms.

[3] 12 Stat. 665, significantly amended by the National Bank Act of 1864, 13 Stat. 99.

Early 20th Century

At the start of the 20th century, many incorporated commercial banks emulated private bank operations through "departments," while trust companies invested in corporate stocks. Deposits essentially funded both types of banks, allowing them large bases of assets. The spread of mixed commercial/investment banking lessened the distinction between financing an enterprise through credit and controlling it through ownership. Losses did occur, especially after the 1929 stock market collapse, when many banks believed to have had significant stock holdings could not meet depositor demands for their money. "Runs" to withdraw deposits caused the failure of many other banks, including some that had not suffered losses, because, although they had operated safely and were solvent, they lacked adequate funds on hand (liquidity) to pay depositors seeking withdrawals quickly. Many critics blamed the Great Depression that followed on "financiers," who abused banks in the service of nonbank business.

In reaction, the Glass-Steagall Act[4] divided banking and industry (including securities operations and their corporate investments) into separate businesses after 1933. The Morgan, Rockefeller, and other complex business combinations with financial firms were split into separate banking and "nonbanking" parts. Glass-Steagall prohibited most banks from holding significant amounts of stock in commercial businesses. The new securities firms, no longer able to invest for their own account based on deposit funding, became transactional financial businesses focusing on commissions and fees. Subsequent attempts to mix sources and uses of funds through corporate combinations generally involved "affiliates."[5]

Holding Companies

Subsequent bank participation in commercial operations turned to the holding company form, which seemingly maintained a certain separation while gaining some efficiencies. This form of an unregulated state-chartered corporation with potentially unlimited authorities could control ("hold" the stock of) regulated banks and any number of unregulated financial and nonfinancial businesses. The archetype of this diversification was the giant Transamerica Corporation. Transamerica owned Bank of America, other large banks in several western states, large insurance companies, real estate and oil development operations, a fish packer, a metal fabricator, ocean shipping, and taxicab operations. Provisions addressing companies holding bank stock in the 1933 Act did not prevent its rise.

Repeated Federal Reserve (Fed) efforts to restrain Transamerica culminated in the Bank Holding Company Act of 1956 (BHCA).[6] This act removed multi-bank holding companies from commercial ownership and activities and interstate expansion. The Fed became the supervisor of multi-bank holding companies, and quickly limited their commercial ties and interstate operations.

Large businesses continued to find it advantageous to own just a single bank. A "one-bank" holding company could own only one bank, which nonfinancial businesses could then control

[4] P.L. 73-66, 48 Stat. 162, §§20, 21, 26, 32.

[5] An analysis of such structures appears in CRS Report RS21680, *Affiliates in Banking, Finance, and Commerce: Development and Regulatory Background*, by William D. Jackson.

[6] P.L. 84-511, 70 Stat. 133.

without restraint. By 1970, more than 700 of these companies had emerged. In that year, major amendments to the BHCA[7] limited such combinations. The amended BHCA's definition of a bank applied only to institutions that both accepted demand deposits (checking accounts) and made commercial loans.

The 1956 statute specified that "control" of banks occurred when a single "company" such as a nonfinancial business or investment enterprise owned 25% or more of voting shares in banks, with significant exceptions; this figure still critically defines the span of prohibited "control" of a bank by a nonfinancial company. The Change in Bank Control Act of 1978[8] extended the 25% value to unincorporated firms, individuals, etc.

Nonbank Banks

Shortly afterwards, limited-service "nonbank banks" (NBBs) arose. NBBs (1) accepted either demand or other deposits, or (2) made commercial loans, but, critically, not both. Corporate buyers would purchase or create a bank with a national or state charter and divest either its business loans or its deposits payable on demand. Thus, their banking operations fell outside the BHCA's 1970 redefinition. Yet, the FDIC insured their deposits.

The Office of the Comptroller of the Currency (OCC), which charters national banks, chartered the first such institution in 1982. Soon the OCC became flooded with applications. Because NBBs fell outside the strict legal definition of a bank, they, their parent corporations, and related companies were not subject to BHCA activity and interstate banking restrictions. Most apparently accepted deposits but made no commercial loans. Prominent NBBs thus became known as "credit card banks." Others apparently functioned as extensions of corporate treasuries and invested largely in money market instruments. This "nonbank bank loophole" allowed financial conglomerates (such as Merrill Lynch, Shearson/American Express, and Prudential) and industrial companies (such as General Electric, Textron, Gulf and Western, Sears Roebuck, Archer-Daniels-Midland, J.C. Penney, and Control Data) to offer FDIC-insured banking services.

Competitive Equality Banking Act of 1987

With strong Fed backing, the Competitive Equality Banking Act of 1987 (CEBA)[9] prohibited new NBBs, reasserting both Fed control and interstate banking restrictions. CEBA more stringently defined "banks" under the BHCA to include institutions insured by the FDIC, with certain exceptions. CEBA broadly defined the terms "demand deposit" and "commercial loan" to cover many variations. Thus, it stopped prospective owners of NBBs from creating more institutions combining banking and commerce across state lines. (A decade later, the Economic Growth and Regulatory Paperwork Act of 1996[10] relaxed some of its numerical restraints.)

In amending the BHCA, this law exempted industrial loan companies or industrial banks from being defined as banks. CEBA legislated that the term "bank" in the BHCA does not generally refer to ILCs, if (1) their chartering state then required them to obtain FDIC insurance, or was

[7] P.L. 91-607, 84 Stat. 1760.

[8] P.L. 95-630, 92 Stat. 3683.

[9] P.L. 100-86, 101 Stat. 552.

[10] P.L. 104-208, 110 Stat. 3009, Title II, §2304.

considering such a requirement; (2) they do not accept demand deposits; (3) they do not incur payments system overdrafts leading to Fed credit on behalf of affiliated companies; (4) they do not offer checking accounts for commercial customers if they grow to $100 million in assets; and (5) they do not become acquired by new owners after March 1987.[11] CEBA affected about 50 ILCs, and now governs a handful more.

Savings and Loan Associations

Created as housing finance lenders when banks could not or would not lend on the security of residential real estate, these associations specialized in consumer mortgage financing and deposit-taking. For many years, policymakers did not perceive these "thrift" institutions as "banks." A holding company act, put into much of its present form in 1968,[12] eventually came to govern them, too. The Change in Savings and Loan Control Act of 1978[13] statutorily made their ownership standards the same as for bank ownership. Nevertheless, for many years their holding company law contained no activity restrictions on companies owning just a single ("unitary") thrift institution. They included Ford, National Steel, Sears, and, again, Transamerica.

By the early 1980s, thrift institutions suffered large losses. Their mortgage revenues, particularly on mortgages made in earlier years and carrying low fixed rates, could not match the high rates then needed to attract and keep deposits. Remediation efforts included regulatory liberalization of ownership with reduced capital in 1982, which allowed new owners to contribute stock, land, real estate, etc. as "in-kind capital." Lawmakers authorized thrifts to make direct investments via the Garn-St Germain Depository Institutions Act of 1982,[14] and this took place in states having permissive laws such as California, Florida, and Texas. Thrifts owned casinos, fast-food franchises, ski resorts, and windmill farms, among other direct investments.

Although such commercial activities were only one of many elements of the financial plight of thrifts, they became viewed as highly visible sources of trouble. In 1985, regulatory tightening restricted to 10% of assets direct investments by thrifts without special federal permission. Systemic disintegration of insolvent thrifts led to strong and costly remedies in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989,[15] followed by the Federal Deposit Insurance Corporation Improvement Act of 1991.[16] Both measures, among their many safety and soundness provisions, severely limited commercial investments for the remaining thrifts, and the latter did so for banks as well. Direct investments came under FDIC veto power in the 1991 legislation, limiting the ability of states to authorize activities and stockholdings for their chartered banks and similar depository institutions.

[11] 12 U.S.C. §1841(c)(2)(H).

[12] P.L. 90-255, 82 Stat. 5.

[13] P.L. 95-630, 92 Stat. 3687.

[14] P.L. 97-320, 96 Stat. 1469.

[15] P.L. 101-73, 103 Stat. 183.

[16] P.L. 102-242, 105 Stat. 2236.

Gramm-Leach-Bliley Act

This legislation (GLBA)[17] liberalized the BHCA in 1999 to provide new corporate forms for owning banks. Such financial holding companies (FHCs), or securities-based investment bank holding companies, may own commercial banks, securities houses, insurance companies, and other financial companies. As specially empowered bank holding companies, FHCs may own more diversified financial businesses than bank holding companies previously could. The Fed regulates FHCs under the BHCA, while the Securities and Exchange Commission regulates investment bank holding companies. Inside both, banks "held" are subject to all federal and state banking laws, including ownership rules. Commercial firms cannot be, or own, these holding companies. FHCs cannot have nonfinancial affiliates, with a few exceptions such as "merchant banking"[18] and insurance company investments. GLBA requires an FHC to obtain at least 85% of its revenue from financial activities.[19]

This law ended the ability of "unitary thrift holding companies" noted above to engage in bank-like activities while being owned by nonfinancial businesses. GLBA also ended some of CEBA's 1987 restrictions on remaining NBBs. GLBA did not disturb the exemption of ILCs and their owners from Fed supervision.

Industrial Loan Companies

ILCs (known as industrial banks in California and Utah and thrift companies in Nevada) can engage in most banking activities under specific state law. Under federal law these institutions cannot now accept demand deposits (i.e., business checking accounts, whether bearing interest or not). In the early 20th century, state-chartered loan companies emerged to serve a niche that commercial banks were ignoring: the borrowing needs of "industrial" workers. Many ILCs later merged with commercial banks; 12 states still have industrial bank-charter options.

The FDIC began to insure the deposits of a few ILCs in 1958. After collapses of state ILC insurance funds in Utah and California, the Garn-St Germain Depository Institutions Act of 1982[20] encouraged the FDIC to cover deposits of ILCs, "operating safely."[21] The FDIC started insuring commercially owned ILCs in 1988.

FDIC-insured ILCs are found mostly in Utah, California, and Nevada. The FDIC has insured 43 of these entities in seven states, which are potentially the basis for an alternative banking system. Insured ILCs have about $147 billion in assets:[22] less than 1.5% of total assets of all FDIC-insured institutions.[23] (Another 900 or more "Industrial Loan Corporations" exist, but are very

[17] P.L. 106-102, 113 Stat. 1338.

[18] See CRS Report RS21134, *Merchant Banking: Mixing Banking and Commerce Under the Gramm-Leach-Bliley Act*, by Gary Shorter.

[19] P.L. 106-102, 113 Stat. 1348.

[20] P.L. 97-320, 96 Stat. 1469, §703.

[21] ILCs must meet Federal Deposit Insurance Act insurability criteria: financial condition and history, capital adequacy, earnings prospects, character of management, community convenience and needs, and corporate powers consistent with law. 12 U.S.C. §1816.

[22] Spreadsheet provided by Federal Deposit Insurance Corporation. Data as of March 31, 2009.

[23] Office of Inspector General, Federal Deposit Insurance Corporation, *The Division of Supervision and Consumer* (continued...)

small, lacking FDIC insurance[24] and sometimes even state banking agency regulation. They are not part of the current congressional interest in ILCs.)

Under their state charters, ILCs are not greatly limited in the types of business they may conduct. ILC activities vary from being community-oriented consumer and small business lenders, to specialty lenders, to auxiliaries of their owners' corporate treasuries, to financiers of their parents' large-dollar products. ILCs and their parent owners need not always carry as much capital as banks and their holding companies. These characteristics have attracted several large owners. ILCs in Utah include subsidiaries of American Express, BMW, Citigroup, General Electric, General Motors, Merrill Lynch, Morgan Stanley, Pitney-Bowes, Sears, UBS, Volkswagen and Volvo. Wal-Mart's attempt to buy an industrial bank in California in 2002 set off protests from community banks and labor groups. California soon enacted legislation to prohibit nonfinancial companies from obtaining an ILC charter. Colorado has barred nonfinancial firms from owning its ILCs. Utah thus is the favored location for enhanced ILCs.

Insured ILCs are subject to state banking supervision, FDIC oversight as state banks, and most other major federal banking laws governing consumer compliance, community reinvestment, and transactions with insiders and related parties. Nonetheless, their owners do not fall under the definition of a bank holding company subject to Fed scrutiny. The Fed allows bank holding companies to own, control, operate, and provide services to ILCs, but, as noted above, may not require ILC owners to become bank holding companies.[25] Opponents of ILCs view the Fed's holding company regulation, reaching to ownership, as "safer" than the FDIC's governance of institutions but not their owners. Yet owners of ILCs face similar restrictions against irregular self-dealings.

From 1985 through early 2004, 21 ILCs failed. Collapsed ILCs were mainly small finance-company-mode companies taking on risky customers. Pacific Thrift and Loan and Southern Pacific Bank were the largest, and most recent, failed ILCs. Collectively, failed ILCs were less than 1% of insured banking firms that collapsed. The riskiest ILCs could not obtain FDIC insurance in the early 1980s, so that the agency expended no federal funds on their liquidations, in contrast to the savings and loan experience.[26] In the other direction, the collapse in 2002 of a prominent owner of an ILC, Conseco, for business reasons unrelated to the ILC, did not adversely affect its insured ILC. GE Capital bought the ILC at its book value, so that no losses resulted.[27]

Today, federal and state regulators expect ILCs to be run in a safe and well-capitalized manner, with defined business plans and relationships to their parent owner firms. As primary federal regulator, the FDIC has authority to examine the affairs of any affiliate of any depository institution, including its parent company, to decide the effect of the relationship between the institution and affiliates.[28]

(...continued)

Protection's Approach for Supervising Limited-Charter Depository Institutions, Evaluation Report, Sept. 30, 2004.

[24] Conference of State Bank Supervisors, *A Profile of State-Chartered Banking* (Washington: 2002), pp. 16-18.

[25] 12 C.F.R. §225.28.

[26] Mindy West, "The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective," *FDIC Supervisory Insights*, vol. 1, summer 2004, p. 5-13.

[27] Christine Blair, "The Mixing of Banking and Commerce: Current Policy Issues," *FDIC Banking Review*, vol. 16, no. 4, 2004, p. 114.

[28] Federal Deposit Insurance Act §10(b)(4), 12 U.S.C. §1820.

Debate over measures granting ILCs banking powers, without requiring that their owners be bank holding companies, involves interrelated questions with regard to competitive balance, the nature and effectiveness of regulation, and safety and soundness issues. Comparisons of ILCs and banks involve value judgments as to the safety and competitiveness of banking institutions, federalism, and relations between ownership and behavior. The following summarizes the contending positions over ILC authorities.

Arguments for ILC Expansion

The FDIC notes that ILCs are subject to its examinations, compliance with banking laws, and supervisory restrictions. In this view, there are no safety and soundness reasons for requiring constraints on this charter type beyond those imposed on other FDIC-insured charter types. The Conference of State Bank Supervisors, as well as the Financial Services Roundtable, believe in the potential for competitive flexibility of ILCs, with their state charters forming just another part of the "dual banking system" of federal and state banking charters.

The Utah ILC regulator has testified that it has the experience and capacity to regulate the ILCs. G. Edward Leary, Utah's commissioner of financial institutions, testified that the industrial banks are "well capitalized, safe and sound institutions."[29]

Merrill Lynch (now part of Bank of America), Morgan Stanley, Goldman Sachs, UBS Warburg, and Wal-Mart have publicly supported the ILC expansion effort. Large firms that own ILCs include Bank of America, American Express, General Electric, Harley-Davidson, USAA Life, BMW, CIT, UnitedHealth, Toyota, UBS AG, Target, Lehman Brothers, SLM, and WellPoint.

It could be argued that if BMW and Toyota can own ILCs, why should applications by competitors such as Ford, Porsche, and Chrysler not be approved?[30] If UnitedHealth and WellPoint can own ILCs, why not Blue Cross/Blue Shield?

Arguments Against ILC Expansion

Fed officials opposing ILC expansion argue that ILCs and, especially, their owners are not subject to the same level supervision as commercial banks and their holding companies, and, in this line of thought, would pose a risk to the financial system if they became prominent. The Fed notes that owners of ILCs, especially large commercial firms, avoid regulations that apply to holding company owners of full service insured banks. Community banks feel threatened by potential competition from Wal-Mart and other deep-pocket owners of in-house ILCs with nationwide banking powers, just as small merchants and labor groups feel threatened by entry of Wal-Mart into their communities. The Independent Community Bankers of America opposes ILC expansion, as does the United Food and Commercial Workers union. Some consumer groups feel that ILCs threaten the FDIC insurance fund, and, therefore taxpayers, by mixing banking with commerce.[31]

[29] Testimony of G. Edward Leary, Utah commissioner of financial institutions, in U.S. Congress, House Committee on Financial Services, July 12, 2006, p.19.

[30] According to the FDIC applications by Ford, Porsche, Chrysler, UnitedHealth, and WellPoint were withdrawn, retuned, expired, or not consummated.

[31] Ibid.

Recent Legislative Action

111th Congress

The House Financial Services Committee's committee print of Financial Stability Improvement Act of 2009, which the committee has announced will become H.R. 3996, is subject to markup. H.R. 3996 would grandfather the owner of an ILC into a "section six" holding company.[32] A section six holding company would be allowed to continue to mix business and commerce in ways not allowed to bank holding companies; it would be regulated by the Fed. Commercial firms that do not presently own an ILC could not become section six holding companies.

The Obama Administration has proposed requiring ILC owners to become bank holding companies.[33] Although details have not been released, this would appear to subject the ILC owners to restrictions on mixing business and commerce. The ILC owners would have to decide which activities to abandon. Like the House Financial Services Committee's proposal, the Administration's proposal would bring the ILCs and their parent companies under Federal Reserve regulation.

An oversight hearing on the Administration proposal was rescheduled June 18, 2009.[34]

110th Congress

H.R. 698, the Industrial Bank Holding Company Act of 2007 would have prevented nonfinancial companies (called commercial companies in the bill) from creating or acquiring new ILCs. This proposed legislation passed the House, but was not considered by the Senate.

The FDIC continued its moratorium on applications from commercial companies for one year on January 31, 2007, after which it was not extended further. The FDIC announced that it would seek authority over industrial bank holding companies similar to the Fed's authority over bank holding companies.[35] The FDIC continued to approve applications from financial companies that wish to own an ILC.

Wal-Mart withdrew its application to operate an ILC, on March 17, 2007.[36] On January 24, 2008, Home Depot announced that it would withdraw its application to purchase an ILC. Other applications by commercial companies such as Ford and Sears were withdrawn or allowed to expire. The FDIC moratorium was not extended and expired on January 31, 2008.

[32] The committee print is available at http://financialservices.house.gov/Key_Issues/Financial_Regulatory_Reform/FinancialRegulatoryReform/Discussion_Drafts/Committee_Print_titleI102904.pdf. See Section 1301.

[33] U.S. Treasury, *Financial Regulatory Reform: A New Foundation*, June 17, 1009, p. 34.

[34] U.S. Treasury Secretary Timothy F. Geithner, *Testimony Before U.S. House of Representatives Committee on Financial Services*, June 18, 2009. Available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/testimony_-_treasury.pdf.

[35] Joe Adler, "FDIC Asking For Fed-Like ILC Authority," *American Banker*, Mar. 23, 2007, p. 1.

[36] Sheila C. Bair, "Statement of FDIC Chairman Sheila C. Bair on the Decision of Wal-Mart to Withdraw Bank Application," available at http://www.fdic.gov/news/news/press/2007/pr07023.html.

109th Congress

Wal-Mart requested permission to create an ILC in Utah in 2006, while pledging to limit its operations to credit and debit card activities and to not open branches in stores. DaimlerChrysler, at the time the world's fifth-largest car maker, announced in November 2005 that it was seeking to open a new Utah ILC subsidiary by early 2006.[37] The FDIC held public hearings concerning the Wal-Mart ILC application.

In July 2006, the FDIC imposed a six-month moratorium on approving ILC applications by nonfinancial companies. This moratorium was extended for one year in January 2007 and allowed to expire in January 2008.

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[37] Chris Noon, "Schrempp's DaimlerChrysler Sees Money In A Bank," at http://www.forbes.com/2005/11/16/daimlerchrysler-bank-finance-cx_cn_1116autofacescan11.html?partner=msn.